

MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING MINUTES

**Friday, November 18, 2011
MPCA Room Board Room, 520 Lafayette Road, St. Paul**

EQB Members Present: Paul Aasen, Jonathan Bloomberg, Spencer Cronk, Kristin Weeks Duncanson, Ed Ehlinger, Dave Frederickson, Julie Goehring, Tom Landwehr, Paul Moe (representing Mark Phillips), Brian Napstad, Mike Rothman, John Saxhaug, Tom Sorel, and Erik Tomlinson

EQB Members Absent:
Mark Phillips

Staff Present:
EQB Staff: Princesa VanBuren Hansen, Mary Osborn, Bob Patton, and John Wells
EQB Counsel: Robert Roche

The meeting was called to order at 9:01 a.m. by Chair Frederickson.

I. Introductions

Members introduced themselves. The Chair then asked for others in the room to introduce themselves, and thanked members of the public for their attendance.

II. Adoption of Consent Agenda and Minutes

The motion to approve the consent agenda and minutes of the September 21, 2011, EQB meeting was moved, seconded, and passed.

III. Chair's Report

Chairman Frederickson discussed Executive Order 11-32, Directing the Work of the EQB, signed by Governor Dayton on November 16, 2011. This was the result of Chairman Frederickson meeting with the Governor and his staff to discuss the activities of the Board, the scoping process, the Board's visioning work, and the importance of the work that all of the members have contributed towards creating vitality in the EQB Board. Chairman Frederickson stressed the importance of having more involvement, and stated that the Governor and his staff liked the idea of energizing the Board. They were very quick to work out the technicalities of an Executive Order, but the Chair believes that the substance of the Order is something we can all agree on and can move forward with. It gives us a clear vision and a clear road map. It's very aggressive with time lines that are not that far away. Chairman Frederickson invited comments from the members; there were none.

IV. Executive Director's Report

Executive Director Patton explained the handouts given to the board members:

- Letter from the Chair dated November 10, 2011
- Package that contains the news release by Governor Dayton, the progress report on streamlining the permitting and environmental review process
- Executive Order 11-32

- Summary from the League of Minnesota Cities on the permitting and environmental review bill (HF 1, which became chapter 4 in the laws)
- Summary of the Legislative Auditor's report on environmental review and permitting
- BWSR's Strategic Plan update

Executive Director Patton informed the Board that Karen Kromar of the Minnesota Pollution Control Agency (MPCA) will be providing the EQB with environmental review support, and that her help is very much appreciated.

V. Reassignment of the Responsible Governmental Unit (RGU) from the City of St. Paul to the Minnesota Pollution Control Agency (MPCA) for the Gerdau Ameristeel Contaminated Sediments Remediation Project

Executive Director Patton pointed out that a representative from the City of St. Paul, and Karen Kromar and Craig Affeldt from the MPCA were in the audience to answer questions, if needed.

Mr. Patton explained that a RCRA permit (from the MPCA) is being updated/modified that requires remediation of contaminated sediments that are in North Star Lake – a lake that is adjacent to the Gerdau facility in St. Paul. An EAW is required by law and the RGU assigned is the City of St. Paul. As explained in the letter from the City and stated in the letter from the MPCA, the MPCA is substantially involved with the proposed remediation and, therefore, has greater expertise in analyzing the potential impacts of the project. The City of St. Paul has requested the shifting of RGU responsibilities to the MPCA, and the MPCA has agreed to that.

Commissioner Landwehr asked where the project is located. Josh Williams, City of St. Paul planner, was asked to come forward to answer that question. Mr. Williams stated that the facility is located nearly at the southern edge of the city, off of Highway 61. Northstar Lake is separated from the Mississippi River by a thin strip of land. It is where North Star Steel used to be, right at the intersection of I-494 and Highway 61.

Commissioner Paul Aasen stated for the record that the MPCA is willing and able to accept this re-designation.

Erik Tomlinson questioned the seemingly increased trend in re-designations of RGUs.

Commissioner Aasen stated that, in this particular case, the MPCA has an involvement regardless. This is a matter of the governments talking to each other, and avoiding overlap and redundancy. There are fewer resources at the county and city level, that initial designation tends to be geographically driven, and that we're all trying to sort out who has what capability to bring to the questions that need to be answered. He stated that he believes it is in the midst of re-sorting itself and doesn't know if the trend will continue. He added that there is a standing question across every level of organized government, and that is, "Who has what resources left available?"

Mr. Tomlinson followed up with a concern that this seems like a punting of financial responsibility to pay for the EAW, and the state is left with that burden. Commissioner Aasen agreed that this is a very valid concern.

Mr. Patton pointed out that the Office of the Legislative Auditor made two recommendations, one of which was that the EQB should identify best practices for the environmental review process and encourage their widespread use. More on point, they should modify the process for re-designating agencies responsible for environmental reviews, and should also assist local government associations with training and other resources for the environmental review process. It was pointed out that there is unevenness in terms of expertise at the local level to do environmental review. Some jurisdictions do a lot of environmental reviews, while some may do one in their lifetime. It's a challenge that we need to be able to provide at the state level – training, different ideas for service delivery, etc. at the local level.

Vice Chair Bloomberg stated that the requirement to do an environmental review is something of an unfunded mandate. Our job is to figure out where the best expertise to do the best review lies rather than worry too much about resources. If we go to where the best expertise is, we reach the most efficient result. Mr. Bloomberg went on to say that he believes that the MPCA is the best choice in this case.

Commissioner Landwehr made a motion for the EQB to approve and adopt the Findings of Fact, Conclusions and Order designating the MPCA as the RGU for the environmental review of the proposed Gerdau Ameristeel Contaminated Sediments Remediation Project in St. Paul, Minnesota. He proposed making a further resolution: "Be it further resolved that the City of St. Paul and the MPCA develop a cost-sharing plan to develop the EAW." Commissioner Rothman seconded.

Josh Williams stated that the City of St. Paul would have no problem working with the MPCA on a cost-sharing arrangement. He explained that the City's decision in asking for the re-designation was based on expertise, and permitting and regulatory authority (none of which lies with the City) and not the financial aspect. He further explained that the City of St. Paul asks project originators to help share the costs of environmental review, and that the City of St. Paul has no financial stake in this project.

Chairman Frederickson asked if anyone had a sense of the parameters of that cost. Commissioner Landwehr replied that he would assume hundreds of thousands of dollars.

Commissioner Aasen stated that the reason there hasn't been language in a resolution like this before is that in many of the cases where the MPCA is involved in the regulatory side, the agency has a fee structure that covers the expenses. He has concerns about getting into cost-share negotiations on each re-designation.

EQB Counsel Roche recommended that the resolution be changed to a recommendation, because it is not clear that the EQB has the authority to require a cost-sharing agreement between the City and the MPCA. Mr. Patton suggested the motion be worded, "Be it further resolved that the EQB recommends that the City of St. Paul and the MPCA develop a cost-sharing plan to develop the EAW." Mr. Roche stated that the language accomplished what he was advising.

Commissioner Landwehr stated that he thinks a possible outcome could be that the City and the MPCA determine that no cost-sharing agreement is needed, and therefore he

accepted the wording stated by Mr. Patton with the addition of a phrase between the words “MPCA” and “develop”: “...consider and, if deemed appropriate...” Mr. Roche indicated that the amended language would be acceptable.

The motion to approve the resolution carried unanimously.

VI. Authorization to Initiate the Rulemaking Process Under the Good Cause Exemption to Amend the Environmental Review Program Rules to Conform with Statute with Respect to the Environmental Assessment Worksheet Petition Process

Mr. Patton explained that the Legislature amended the environmental review statutes last year in a number of respects. One of those was to change the threshold for petitioning for an EAW from 25 persons to 100. They also added language regarding residency in Minnesota – that persons should either own property or be residents of Minnesota. The proposal is simply to amend the environmental review rules to reflect the same language to avoid confusion of citizens. Under the Good Cause Exemption of the Administrative Procedure Act, this can be accomplished without a hearing, quickly, and at low cost.

Mr. Patton noted that there are a number of other pieces of statutory change that were made that will need to be reflected in rule. Some may be able to be done through the Good Cause Exemption as well, but others may require full rulemaking. Mr. Patton explained that the Good Cause Exemption is available for a number of circumstances, including when the change can be done to the rule without making any legal interpretation of the statute.

Chair Frederickson called for a motion to approve authorization to initiate the rulemaking process. Ms. Duncanson made the motion, and it was seconded by Commissioner Sorel. Chair Frederickson then called for comments.

Commissioner Landwehr commented that it is redundant to have something stated specifically in statute and then re-stated in rule. This is an example of problems that arise when you do. He asked whether there is a reason either to not tie this to the statute or to delete that provision completely. Mr. Patton responded in agreement. He explained that to strike the language could possibly be construed as legal interpretation. Mr. Roche stated that something has to be done, as the rulebook is not consistent with the statute. The options are to conform the language to the statute or to strike the language. He explained that the statute talks about the fact that people have a right to petition for an EAW and lays out very broad parameters of how people do that. The rules then fill in the blanks as to how that’s done. The Board has the discretion to decide how specific it wants to be in that filling in of the blanks on the petition process, but the rulebook is out there, published and printed, and the only way to change that is to do a rulemaking. He stated that what he would recommend is to either conform the rule to the statute or, if the Board thinks it would be more practical, to simply eliminate it or to tie it directly to the statute.

Chair Frederickson stated that there was a motion to approve the resolution.

Mr. Patton re-iterated that he believes the most expedient route is to just change the language. In subsequent rulemaking, we can go back and fix it how we want it.

Mr. Tomlinson asked how difficult it would be to go back and change the rule. Mr. Patton responded that the rulemaking process can require a hearing before the Administrative Law Judge. He went on to explain that it is more complicated, more time consuming, and more costly. With other statutory changes that were made, we will need to do rulemaking in the future. There may be efficiency changes we can make to the rules that don't require statutory change that we might want to think about as we try to do reform under the Executive Order.

Commissioner Rothman stated that he is comfortable with the process and that a vote should be taken.

Commissioner Napstad asked that legal counsel address the importance of the fact that the fifth WHEREAS in the resolution is specific to individuals, but the fourth WHEREAS does not specifically state that the petitioners must be individuals, leaving open the door to interpretation that it could be a corporation or organization. Mr. Roche responded that the legally operative document would be the rule, and the resolution is for the EQB to give permission for the staff to start the process. The resolution is not what will become law.

The motion was then voted on and carried unanimously.

Commissioner Aasen asked for a reminder of what constitutes a signature. How do electronic signatures and e-mails play into our count? Mr. Patton responded that as of right now, there must be a physical signature. The EQB however does accept electronic transmissions of scanned documents that include the signatures.

VII. Discussion of EQB's Future Agenda

Chairman Frederickson requested that a discussion be held on the five points of the Governor's Executive Order.

Vice Chair Bloomberg suggested that what we need first is a plan. He felt that the discussion should be centered on the plan for the plan. The EQB should direct staff to establish that work plan in relatively short order, in terms of milestones and resources they believe are necessary to pull this off. We could then look at that plan at the next meeting.

Commissioner Aasen stated that he believes it imperative that staffs from the agencies be brought into the conversations so that they understand what's being asked, and so that we can determine what resources are available. It is very important that agencies be collaborative.

Mr. Napstad stated that in carrying out this Executive Order, it is important to not focus only on the major corporate projects in terms of permitting. As an example, he told of the County Highway Engineers Association's concern of the time it takes to get road projects through the environmental permitting process. He went on to say that many of these projects are not complicated (re-makes of roads, widening of roads, etc.), that the time and amount of money spent on them is excessive, and that there is no value provided at the end of the projects.

Commissioner Aasen commented that there are really four distinct projects here:

1) reviewing environmental review; 2) environmental policy governance; 3) a report card; and 4) holding a congress. In terms of the first item, there are probably at least three layers: 1) operational issues, 2) application of environmental review, and 3) what environmental review was supposed to accomplish in the first place, and what pieces of environmental review are now covered by other environmental regulatory processes. He ended by saying that this is a good opportunity to ask some of the bigger questions.

Mr. Napstad added that it would be beneficial if we had a more clear understanding from various stakeholders that have been through the process of what the frustrations were, the hang-ups, where the costs were incurred, etc. so that we have a better idea of what we're fixing.

Commissioner Sorel indicated that from a transportation perspective, Mr. Napstad's issues can be addressed. Mn/DOT understands the issues with the cities and counties from a road building perspective and feels that by using this collaborative approach, those issues will be addressed and, Commissioner Sorel believes, easily accommodated.

Vice Chair Bloomberg agreed with Commissioner Aasen that there are four projects and each one needs a work plan, very soon. He asked what would be a reasonable date to get these done and brought back to the EQB (December 15, December 30?).

Mr. Patton replied, and Mr. Roche agreed, that he thinks the first move should be to get the technical representatives together to start thinking about these work plans, and getting all of the agencies thinking about the resources needed. A subcommittee meeting is scheduled for Monday, November 21 to begin the work plan discussion.

Erik Tomlinson suggested that the findings of the multi-stakeholder EAW streamlining work group might be useful to have at the meeting. Mr. Patton explained that, due to staff reductions and other priorities, that project was put on hiatus. Commissioner Landwehr stated that Randall Doneen is going to try to find the time to lead the work group through to the completion of that project.

Commissioner Landwehr also inquired whether there is an intention, or budget, to fill EQB staff vacancies. Mr. Patton responded that there are budgetary limitations that the MPCA now faces in filling those positions. MPCA staff is assisting in environmental review functions, and the EQB will be drawing on expertise from other agencies as well.

Chair Frederickson stated that the Department of Agriculture is prepared to commit staff to the process, and he has identified a person that he thinks will be able to be utilized. He expressed his hope that other commissioners will do the same.

Chair Frederickson asked for public comments, and opened a discussion on who will fill out and approve the "report card" outlined in the Executive Order. Chair Frederickson and Commissioner Aasen's take is that it would be filled out by the EQB as a vehicle to let the public know "how we are doing" in protecting the environment. Brian Napstad suggested that at least an interim report card be filled out by the stakeholders, setting forth goals that Minnesotans set forward and that we need to conform with.

Ms. Duncanson emphasized the importance of defining and communicating the matrix we

use to evaluate and let the citizens of Minnesota know what those matrixes are.

Mr. Bloomberg stated that he believes there should be opportunity for citizen involvement as the report card is developed, and that the report card process, in general, is meant to be ongoing.

John Wells was then called forward by Chairman Frederickson to summarize the public comments received on how the EQB can best serve the long-term interests of Minnesotans and the environment. Over a dozen comments have been received to date.

Mr. Napstad shared his opinion that he thinks it would almost be easier and more effective to start over than to fix the government's environmental processes. Chair Frederickson pointed out that the processes in place are driven by law, but believes this resolution is a good starting point to move us in the direction of improving the model.

Chairman Sorel discussed his hope that the resolution will bring forth a statewide conversation on sustainability.

VIII. Board of Water and Soil Resources (BWSR) 2012 Strategic Plan Update

Chairman Frederickson welcomed John Jaschke, Executive Director of BWSR, to the Board.

Mr. Jaschke explained that he was at the meeting to deliver a mid-term report on the Strategic Plan "adjustment" and to get feedback from the Board and/or their staffs. He began with an overview of the BWSR 20-member Board. Mr. Jaschke explained that the Board is comprised of representatives of the Department of Natural Resources, Department of Agriculture, Department of Health, Minnesota Pollution Control Agency, and Minnesota Extension Service. Its members also include county commissioners (Chairman Napstad being the current Chair, appointed by the Governor), SWCDs, watershed districts, cities, townships, and three citizens.

He went on to say that the focus of BWSR is on private lands. They work with local governments that work with landowners and local organizations, so their programs are delivered through local governments. Their strategy "is focused largely on making sure that the local delivery system is good and getting better."

In 2010-2011, the BWSR Board identified and prioritized strategic issues related to land and water conservation. The 2012 Strategic Plan Update includes new and revised strategies to address these issues. Mr. Jaschke discussed the update in more detail, focusing on the three points under **Strategic Issues and Strategies**: 1) Defining Reality; 2) Incentives for Change; and 3) Support for Change.

Mr. Jaschke ended by welcoming comments, which will be taken until December 12, 2011.

Commissioner Landwehr asked Mr. Jaschke where he sees discussions around wetland mitigation going, and wondered whether that needs to be mentioned in the strategic plan, or as a part of program refinement.

Mr. Jaschke responded that BWSR has wetland mitigation under way on two fronts: one in northeastern Minnesota where we know there is a great abundance of wetlands; and in the other part of the state, which is agricultural. He explained that specifics will probably be kept out, but some of the concepts would be applied on that subject, perhaps based on the strategic plan.

Commissioner Napstad invited other agencies to share updates with the EQB Board. One of the comments received for the EQB Board was that each meeting should have an educational component, so that the Board can get a better feel for “how this engine works.”

Kristin Duncanson concurred with Commissioner Napstad’s suggestion as time allows, and asked for a hint at future meeting dates.

Mr. Patton responded that changes to the schedule for Cabinet meetings have been impacting our ability to schedule our normal meeting days. We will work at finding common dates.

Commissioner Aasen suggested that potential agency presentations go through Mr. Patton for scheduling. He went on to say that there is some interesting ecosystem evaluation modeling work going on in the world, and we might want to schedule something on that topic, even in December, if we have time.

Chairman Frederickson stated that the ad hoc subcommittee meeting to begin the process of developing a work plan for implementation of the Governor’s Executive Order will be held on Monday, November 21, in room 555 at the Department of Agriculture.

Chairman Frederickson adjourned the meeting at 11:32.