

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, March 15, 2007
Pollution Control Agency, Board Room

EQB Members Present: Gene Hugoson, Randy Kramer, Jonathon Bloomberg, Susan McCarville, Dana Badgerow, Brad Moore, Dan McElroy

EQB Members Absent: Mark Holsten, Dianne Mandernach, Lt. Gov. Carol Molnau, Glenn Wilson

EQB Staff Present: Robert Roche, Michael Sullivan, John Wells, Princessa VanBuren, Gregg Downing

The meeting was called to order at 9:10 a.m.

I. Adoption of Consent Agenda and Minutes

Member Kramer moved and Member Bloomberg seconded approval of the consent agenda and minutes of the January 18, 2007 EQB meeting. Chair Hugoson asked that election of a vice chair be added to the agenda. The motion passed.

II. Chair's Report

Chair Hugoson reported that the Governor had reappointed Susan McCarville and Jonathon Bloomberg to another term on the EQB. Two other citizen member vacancies are filled and will be announced within the next few weeks. There remains one citizen member position to be appointed, replacing Paige Winebarger, who moved to the PCA Board.

III. Executive Director's Report

Mr. Sullivan explained the handouts in the Board packets. The report from the retreat facilitator summarized activities of the retreat and that the agenda includes approval of the activities of the subcommittee. He explained three legislative initiatives: the delete everything amendment to SF 1101, requiring a report on the issuance of permits for biofuel processing facilities and requiring that PCA, DNR, and the EQB report to the Legislature on the process; HF 1663, providing for regulating genetically engineered organisms, requiring EQB to monitor any permit issued for genetically engineered wild rice anywhere in the country; and HF 1750, relating to natural resources and modifying the Critical Areas Act of 1973 by adding two new subdivisions defining the terms "base of the bluff" and "bluffline."

Commissioner Hugoson responded that HF1663 is the result of Native American nations' interest in the issue because of the significance of wild rice in their culture. At this time,

there are no plans or research going on as it relates to genetically altered wild rice anywhere in the country, and the legislation is pre-emptive in nature.

Regarding the environmental review topic specified in SF 1101 that EQB, DNR, and PCA are responsible for, Commissioner Moore commented that there needs to be a serious review and discussions with legislators regarding Minnesota's process. He asserted that DNR takes the role seriously and regardless of the bill's passage DNR will be responsive to the issues addressed.

IV. Legal Counsel Report

Mr. Roche indicated that there are no legal issues being addressed at this time.

V. Clean Water Cabinet Report

Chair Hugoson explained the origins of the Clean Water Cabinet. The EQB has had a water sub-cabinet. Several years ago, the Governor's office created the Clean Water Cabinet, thus creating two different entities. The Board is to consider merging the Clean Water Cabinet with the EQB water sub-cabinet, dealing with water issues that are then reported on a regular basis to the EQB. Commissioner Moore chairs the committee and his staff and EQB staff also work on the cabinet. Commissioner Moore was asked to prepare a report on the status of the Clean Water Cabinet.

Commissioner Moore reported that the Clean Water Cabinet and the EQB Water Sub-Cabinet met on February 21, 2007 with one decision item on the agenda, The Wetland Conservation Act Assessment. That assessment was approved by the members of the sub-committee. The Wetland Conservation Act Assessment was requested by the Governor to look at further ways to reduce the loss of wetlands. The report is very extensive in terms of the discussion and recommendations. In addition to the one decision item, there were information items related to the Clean Water Legacy Act, the Drainage Workgroup Recommendations, and the farm bill recommendations. Members discussed some of the future items of the sub-cabinet.

VI. Update on Environmental Review Program

Gregg Downing provided an update on the status of Environmental Review Program reform efforts, primarily on Phase 2 rulemaking. He first noted that comments have been received in response to the supplemental request for comments from December 2006. There were two issues raised in the supplemental request.

First, although the original request for comments indicated a need for reform regarding cumulative effects, it primarily focused on the standard for ordering an EIS. Throughout the Rules other revisions regarding cumulative effects may be required.

Second, the issue of whether or not an agency can issue simultaneous notice of a draft permit and an EAW, as has been common practice among many agencies but was meeting criticism from environmental groups. Staff indicated in the supplemental request that it would be explicit in the Rules that it is an acceptable procedure.

There were four letters of comment on this request; three of them from parties that had been active in the prior rulemaking process and one new party. Regarding the dual notice issue, one letter of comment opposed the idea and a second one was in favor of the idea. Regarding the cumulative impacts topic, there were a number of comments, summarized in the annotated agenda. Highlights of those comments include the Association of Counties being concerned that in revising the rules in respect to cumulative impacts EQB staff should be careful not to make the level of effort necessary to deal with that so difficult that local units, such as counties, could not deal with it. They want the EQB to be clear and simple. Other comments suggested that EQB need not do anything in the Rules and rely on the Supreme Court's opinion, issued last year.

As regards rule amendments addressing cumulative impacts/cumulative effects, staff have been working with the Attorney General's office to develop a proposal of options for the Board regarding what to do about cumulative impacts. This is a difficult topic. Staff have looked to other states with similar programs to determine how they have handled the situation; however, very few states have even clearly defined the issues. Recently staff met with the Attorney General's staff and talked about ideas derived from California, the CARD case, and the two memos that Robert Roche wrote for the Board about treatment of cumulative effects on Minnesota and federal law. Staff felt that more work needs to be completed and, hopefully, by the next board meeting there would be a proposal.

The other main Phase 2 topic is development of EAW and EIS mandatory categories for projects in shorelands. In the original request for comments staff included a proposal based largely from the Department of Natural Resources. There was a lot of negative response to that proposal, mostly from the County Zoning Administrators, who are responsible for implementation of the rules. Their basic complaint was that the proposal was too complicated to be effectively implemented. Several months ago, EQB staff met with DNR staff and the staff people who worked directly on the original proposal presented a concept for revision that looked promising. That proposal is still under development and review at the DNR, and they are close to being in a position to present something to EQB staff, possibly by the next meeting.

The annotated agenda includes a timeline for Phase 2 rulemaking. From the point that the idea is proposed it will take approximately three months to develop rule language and the Statement of Need and Reasonableness (SONAR), partly because data from the counties will be required in order to estimate the fiscal impact that changing those

categories would cause to local units. Once the draft SONAR is ready and the Board authorizes rulemaking, it will be three months before hearings can be held; once hearings are held it will be another two to three months to receive the report from the administrative law judge in order to put a final proposed rule before the Board for adoption. The total time is eight to nine months, starting perhaps as early as next month. By late spring or early summer there should be a draft rule brought before the Board.

At the EQB retreat in January, the technical representatives and staff were asked to look at the environmental review program and develop recommendations for the Board on what reforms are needed, beyond housekeeping/rulemaking changes being worked on currently. The technical representatives committee has begun to work on the assignment and two special meetings, in addition to regularly scheduled meetings, have been held. A sub-group of the technical representatives has done additional background work. It is hoped that by next month there will be a report to present. The committee is looking at reform ideas and issues that have been looked at over the past 15 years and trying to sort through those to determine the underlying issues that were prevalent and recurring problems, to examine those and see what the implications are and what recommendations might be made to the Board as a result of that examination. EQB staff would like to note that technical representatives have been very helpful in this effort, particularly Susan Heffron of the PCA and Bob Patton from Department of Agriculture, who did a lot of background work, searching old reports for ideas that the committee can deal with.

Member McCarville asked for clarification on a response letter from the MCEA, talking about the dual notice process and how the Pollution Control Agency appears to misrepresent the publication of draft permits. She asked how they are published and how or where information for these groups to base a protest on the permits would be located. Mr. Roche replied that the PCA has a well institutionalized method of public noticing draft permits. Public notice is standardized to indicate unambiguously that the permits are only drafts and that the final decision can't be made, by law, until after a 30-day public notice inquiry period. Typically, if there is an environmental review on a permit, by law, if anybody requests an EIS be done for that project, then the decision must come to the full PCA board. That would be the normal way that a group would choose to protest or to have an opportunity to appear and be heard.

VII. Approval of Work Plan for the Subcommittee on Future EQB Directions

Chair Hugoson explained that the subcommittee formed after the EQB retreat in January included Member Bloomberg, Lt. Gov. Molnau, and Commissioners McElroy and Hugoson along with staff members Mike Sullivan and John Wells. Lt. Gov. Molnau is not able to continue on the subcommittee. The subcommittee put together a work plan talking about evaluations that are planned. Subcommittee meetings will be the week prior to tech rep meetings. The work plan includes timelines to keep the process moving along. One item discussed and planned for incorporation is whether there needs to be a

different EQB meeting timeline, such as every two months and incorporate some mechanism for conducting business in between board meetings that would be appropriate and legal and meet the public's right to know.

Mr. Sullivan added that the subcommittee is looking for feedback from all board members in an effort to determine how the outcomes should be explored. He asked for tech rep staff to get back to EQB staff with recommendations.

Commissioner Badgerow asked if the subcommittee is looking at resource levels required and should not be constrained by the current budget levels and staffing. The EQB has suffered from a number of budget cuts and does not currently have a staff or resources to fulfill its statutory responsibilities. In looking at what the EQB could be, she hoped that commissioners consider what it might cost and that part of any proposal would include budgetary considerations.

Commissioner McElroy responded that the subcommittee is smaller than anticipated. He asked if there was another member who wished to participate. Chair Hugoson agreed and asked for volunteers. Commissioner Moore volunteered to become part of the subcommittee. Chair Hugoson invited members to use their tech reps as resources.

Commissioner Badgerow moved and Member Kramer seconded a motion to approve the subcommittee work plan as presented. The motion passed.

VIII. Approval of the revised Water Sustainability 2030 report: *“Use of Minnesota’s Renewable Water Resources: Moving Toward Sustainability”*

John Wells reminded the Board that the preliminary draft of the Water Sustainability 2030 report was presented to the Board in January. Since that time, the report has undergone some technical and formatting changes to make it less dense. The statutory mandate directs EQB staff to work with the Department of Natural Resources to coordinate and assess analysis of the quality of surface and ground water to meet the state's needs. Other partners that have been important to the project, including the U.S. Geological Survey, University of Minnesota, Electric Power Research Institute, Department of Health, Minnesota Geological Survey, and the Metropolitan Council all of which provided assistance and research. Staff worked to define the state's water availability and use and how that will change in the next 25 years. Many decisions are not made at the state regulatory level but also at the local level for specific water demands. There are many constituents for the study who need to be communicated with, especially with the ongoing drought for the last year and continuing drought conditions in north central Minnesota.

Princesa VanBuren explained the technical methodology of the report. Use was projected down to the county level using the year 2005 data and extrapolating that

information to 2030. Water use in 2005 for counties include: Ramsey County using 135% of its available water and four metro counties using more than 50%, providing a range from 10% to 135% of available water use. Greater Minnesota ranged from less than 1% to 36%. Extrapolated to 2030, with increased population and increased demand, Ramsey County's use will increase to 177% of available water resource, Washington County will increase to 172%, and the seven metro counties will use more than 50% of available water resources, with a range from 23% to 177%. Greater Minnesota will range from less than 1% to 81%.

The study was the first of its kind in the state. It looked at five different supply values. There was a high level of agreement in the methods used and allowed staff to determine it was on the right track. All 15,000 active DNR permit installations were surveyed, looking at current use and future population growth. Based on information available a "most likely" scenario was developed looking at median values for population, use and supply. Scenarios did not include any safety factor. Results of the survey are not to be used for site-specific permitting.

Since the January report to the Board, changes include: moving the majority of methods to the Appendix; discussions of methodologies were clarified; concurrent activities of the Metropolitan Council were referenced; a discussion of instream flow needs was added; research needs were modified; and activities for future assessments were expanded.

Mr. Wells continued the presentation by explaining that Minnesota, while historically having been considered "water rich," is no longer in that category. A new meaning needs to be generated based on the fact that available resources in the metro area are being consumed at such a dramatic rate. Minnesotans can no longer be "wasteful" in their use of water resources. There have been many discussions in the last months regarding priority setting, tools for planning, and a call for better water resource information. The assumption is that water is spread out evenly across the county (which is not true) and that counties in southwest Minnesota don't have much demand. There needs to be more information about isolated aquifers throughout Minnesota. This report is an opportunity to realize how to better understand the location, capacity and characteristics; determine ecosystem needs; understand the effects of land use change and climate change.

Systematic assessment lays a strong foundation for future work, fosters important discussions, and identifies what we know, don't know, and what needs to be done about it.

Member Kramer asked how the report addresses the quality of water in Minnesota? Water that is not drinkable or usable is of no use. Mr. Wells replied that the next time this report is done that information should be addressed. There needs to be an understanding of that information. County zoning administrators in Olmstead County have indicated that they have written off use of the surficial aquifers because it's a karst

area that is contaminated, or at risk of being contaminated, and from a public health perspective it is safer to not put that into the public supply.

Commissioner Moore asked about rivers coming from counties to the north and if information regarding those percentages and what it means to the communities involved is coming in the next report. Mr. Wells responded that imported waters were not detailed in this report. In the net analyses, water demand was removed from the equation also and done in an effort to compare like systems. Ramsey County has the safety valve of water from the Mississippi deposited into the Vadnais chain of lakes. The water value for Ramsey County is only groundwater used in Ramsey. The analysis is internally consistent but it needs to also contain information from the imported waters component.

Chair Hugoson asked for an explanation of the difference between gross and net as it relates to water in terms of how it's used in the tables. Mr. Wells responded that staff received a lot of help from the data manager from DNR Waters. Mr. Wells explained that the gross analysis is an apples/oranges analysis and that's why the "net" is the figure to focus on. He explained that Ms. VanBuren went through 1,600 surface water permits to obtain figures. There was an analysis of how water was permitted and used during the 11-year period from each county. In the future, it is hoped that there will be a way to move seamlessly between a county analysis and a small watershed analysis, depending on need and define explicitly how it might change from month to month. There are different ecosystem needs that can change frequently and it is important to start recognizing that. Ms. VanBuren explained that when permits are issued there is a balance that has to be maintained between instream flow needs, habitat needs, and recreational needs and trying to address those questions.

Chair Hugoson asked for clarification of the figure 10 square miles. Mr. Wells explained that it was one method of referring to an abstract area to give a crude analysis of variables. The fictitious county created was a county of median land area, median water demand, and median estimated water supply. Estimated water supply is based on inches that infiltrate into the ground per square mile of area. 750M gallons per year would take 10-12 square miles if it was spread evenly across the county. If you had a 100 square mile county, this requirement would use 10% of their land area. It's a basic rule of thumb for how to understand this requirement.

Kent Lokkesmoe was introduced to the Board. He explained that there had been some internal Department of Natural Resources struggle with the report and more discussion on the topic is required.

Commissioner Badgerow asked what external use will be made of the report and what the next steps are. Mr. Wells responded that it will be packaged and there would be an acknowledgment page defining the cost of preparation and partners. By law it must be

sent to the chairs of the environment committees of the Senate, House, and the LCCMR. The Board would decide further distribution and use.

Commissioner Badgerow responded that Ramsey County usage sticks out and she wondered what the implications of that usage is for the county. Mr. Wells stated that it's a wake up call, not that they're running out of water. There have been no dramatic changes in water well levels, but it does indicate that they are using ground water that is migrating from adjacent counties. Ramsey County is densely populated. The Metropolitan Council is dealing with this in its master plan for water supply. The Met Council is moving into the second phase consisting of a more technical analysis of what the counties can handle.

Commissioner Moore asked if it would be a fair statement to say that this is a broad, high level assessment looking at the sustainability of Minnesota's water supplies, giving people the context of different tools on how to look at them. More importantly, it raises the specific questions that we need to address in the coming years to better understand that supply and how it's used. Research questions, permitting questions, etc., it's almost a work document in that respect. Mr. Wells responded that it also informs the discussion in those areas like the southwest where there are a number of counties using less than 1% of use. We know that there is trouble there and why? We know that water is not spread evenly and may not be in a position where you have an easy location for a high capacity well. Water may be available throughout the county but not available in a high capacity vein.

Member McCarville stated that the Ramsey County number seems to pose a huge potential for hysterical misrepresentation of that number. She wondered whose responsibility it would be to speak up and explain. Mr. Wells responded that it might be himself or Mr. Lokkesmoe. Most logically news agencies would go to the state expert on water appropriation and permitting, and that would be Kent and his staff. It speaks to the issue of scale but it does make you wonder how it could be. Even if the report is off by 50% in its estimates it doesn't change the overall message that the county is using a significant part of the resource now and that there needs to be a more thoughtful approach to how water is allocated in the future and how efficiently water is used in the future. The message is that there needs to be more rigorous assessment of surface water/ground water connections and aquifer characteristics.

Commissioner Badgerow moved and Commissioner Moore seconded approval of the report. The report was accepted unanimously.

Commissioner Hugoson thanked Mr. Wells and Ms. VanBuren for the work done on the report. He also thanked Mr. Lokkesmoe and his staff for their involvement as well.

IX. Information Sharing

Commissioner McElroy mentioned that the Department of Employment and Economic Development is involved in work on contaminated sites and site clean-up. The Governor's budget contains a \$10M in one-time funding for clean-up initiatives in the Department, including \$2M in redevelopment funds. There has been legislative questioning in the House saying that the \$2M will be appropriated and used for other legislative priorities and no longer fund the redevelopment fund. This fund is often the gap financing needed to get contaminated sites cleaned up. Without that fund, greater Minnesota sites, such as the former Manhattan Paper Mill in Little Falls would still be a challenge.

Member McCarville asked how many sites are needed to be helped in Minnesota and how much of the \$2M would the Little Falls site use. Commissioner McElroy responded that the Little Falls site is a completed project. Grants out of the fund are often used in conjunction with other programs, with money from contaminated sites clean-up, Petro Fund, or sometimes federal funds. Grants from that fund could be as little as \$100K to as much as \$250K. Funds can be used to tear down a blighted structure and is more flexible than the Petro Fund.

X. Election of Vice Chair

Member Kramer nominated and Commissioner Badgerow seconded Jonathan Bloomberg as Vice Chair of the Environmental Quality Board. There were no other nominations. Jonathan Bloomberg was elected unanimously.

The meeting was adjourned at 10:54 a.m.