

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, April 19, 2007
Pollution Control Agency, Board Room

EQB Members Present: Jonathon Bloomberg, Julie Goehring, Dennis Wenzel, Dianne Mandernach, Susan McCarville, Dana Badgerow, Dan McElroy

EQB Members Absent: Mark Holsten, Lt. Gov. Carol Molnau, Glenn Wilson, Gene Hugoson, Randy Kramer, Brad Moore

EQB Staff Present: Ann Cohen (for Robert Roche), Michael Sullivan, John Wells, Gregg Downing, Jon Larsen

The meeting was called to order at 9:00 a.m. by Vice Chair Bloomberg.

I. Adoption of Consent Agenda and Minutes

Commissioner Mandernach moved and Commissioner Badgerow seconded approval of the consent agenda and minutes of the March 15, 2007 EQB meeting.

II. Chair's Report

There was no report.

III. Executive Director's Report

Mr. Sullivan explained handouts and an outline that the Subcommittee on Future EQB Directions is working from in their discussions. He directed members' attention to legislation currently being discussed at the Legislature.

IV. Legal Counsel Report

Ms. Cohen indicated that there are no legal issues being addressed at this time.

V. Report of the Subcommittee on Future EQB Direction

Vice Chair Bloomberg reported that the subcommittee is looking at the broader mission and purpose of the EQB in an effort to refocus the EQB and map out a future path. The committee is discussing the "lens" or screening tool by which it will evaluate and carry out its task. The first task is looking at existing agency authorities and determining what should be retained, what could be modified, and what existing authorities fit with the concept of what the EQB wants to do in moving forward. Beyond that, the subcommittee

will be looking at what other authorities or tasks and roles the EQB may take on. Bloomberg referred members to the subcommittee's handout.

VI. Adoption of *Protecting Minnesota's Waters: Priorities for the 2007-2009 Biennium*

John Wells presented a draft of the report "Protecting Minnesota's Waters: Priorities for the 2007-2009 Biennium." A motion to adopt the report, as amended by discussion and the errata sheet, was made by Commissioner McElroy and seconded by Commissioner Badgerow. The motion passed unanimously.

VII. Phase II Amendments to the Environmental Review Program Rules; New Mandatory Categories for Projects in Shorelands

Gregg Downing presented information regarding Phase 2 rule amendments. He oriented Board members as to the background of rulemaking. He explained that the purpose of his presentation is to get EQB approval to proceed to the comment portion of the process.

Commissioner Badgerow moved that the process continue and staff move to the next step of obtaining comments regarding the proposal. Commissioner Mandernach seconded the motion. The motion passed unanimously.

VIII. Phase 2 Amendments to the Environmental Review Program Rules; Cumulative Impacts/Cumulative Effects—Possible Options for Amendments

Mr. Downing addressed the Board regarding rule amendments relating to "cumulative impacts."

There were two citizens who appeared to present testimony before the EQB regarding phase II rulemaking. David Aafedt from Winthrop and Weinstine spoke on behalf of the Builder's Association of the Twin Cities. Mr. Aafedt remarked that the Builder's Association of the Twin Cities feels that the Court of Appeals interpreted the rule as it was intended to be interpreted and it gave clarity where it had been lacking for the previous 25 years in the environmental review process. The Builder's Association is concerned that the proposed language appearing on page 6 of the April 11, 2007 memo will only add more confusion and add to much more litigation taking another 25 years for the issue to be resolved. The Builder's Association has made these comments to the EQB in the Phase II Rulemaking process and will continue to do so and participate actively throughout the process. The Builder's Association is satisfied with the interpretation of the Court of Appeals ruling.

Janette Brimmer, Legal Director for the Minnesota Center for Environmental Advocacy, addressed the Board, asking to be included with development interest groups going forward as they had not previously been on the list. MCEA has been interested in the process for many years and were parties in both pieces of litigation that Mr. Downing

referenced, as an amicus with the National Wildlife Federation in the CARD case and supporting the EQB position; MCEA was also the primary party in the River's Edge case. As regards cumulative impacts, Ms. Brimmer addressed comments made by Board members related to whether and to what extent the Supreme Court decision should be followed and to what extent is that desirable. MCEA argues that EQB not artificially tie itself to that opinion; the EQB should interpret the laws that it administers. It appears that what the Supreme Court said is that the rules have spoken unclearly; but it is important that the EQB not tie itself to that interpretation. Incorporating what the opinion says of the rules is also not desirable because the opinion is complicated and not clear and the EQB would then be taking something that was trying to interpret an unclear rule and incorporate it into new rules. MCEA urges the EQB to follow the federal law, as do other states. There is a large body of case law and existing rules that already utilize the same definition that federal law uses. Existing guidance has referred to federal guidance. The Counsel on Environmental Quality has a very detailed and helpful guidance that EQB has long referred to as it relates to cumulative impacts and government units or project proposers already look to. MCEA has researched the federal law and uses it for federal environmental review cases. There is much to wade through, but MCEA feels that the guidance is there.

As regards being more prescriptive and trying to draw geographic boundaries, MCEA advocates against that. It will be beneficial for EQB to not be too prescriptive but make general statements and then utilize guidance effectively, allowing the agency to keep up to the moment on science and how we are impacting the world around us and what may be the resource of most concern.

As regards the AUAR issue, MCEA was a litigant for a large mixed residential/commercial project that spanned several municipal boundaries, St. Paul Park, Grey Cloud Island township and Cottage Grove. If the project had gone forward as proposed, it would not have conformed to some of the zoning requirements relative to the critical area. Cumulative impacts became a big deal in that case and there was an argument from the developer and from the municipality that they didn't have to look outside the boundaries of the project because the project was large and it would look at cumulative impacts. There was confusion there and it was clear at oral argument that some of the justices were struggling with project boundaries, cumulative impacts. MCEA supports clarification of the rules because project boundaries are not adequate and development trends now push for getting an AUAR instead of an EAW or EIS because it is faster and doesn't require certain things like cumulative impacts. MCEA feels that the EQB needs to fix the problem in wording and speak clearly on cumulative impacts. MCEA will be submitting formal comments.

Commissioner Badgerow moved that the process continue and staff move to the next step of obtaining comments regarding the proposal. Commissioner McElroy seconded the motion. The motion passed unanimously.

IX. Technical Representative's Report to the EQB on Environmental Review

Mr. Downing, Susan Heffron and Bob Patton presented the Technical Representative's report addressing the EQB's role in environmental review

X. Annual report on Federal Programs for the Management of High Level Radioactive Waste

Mr. Sullivan explained to the Board that this report was previously completed by the State Planning Agency, which became the Office of Strategic and Long Range Planning and the entity described in the statute as being responsible for preparing the report. The Office of Strategic and Long Range Planning still exists. The Board is not required by statute to approve the report, but historic precedent supports the Board for reviewing and commenting prior to the report being handed to the Director of the Office of Strategic and Long Range Planning, who is charged under the statute with transmitting the report to the Legislature.

Jon Larsen, EQB staff, presented the Annual Report on Federal Programs for the Management of High Level Radioactive Waste.

Kristen Eide-Tollefson asked to speak to the EQB regarding the nuclear waste report. She expressed disappointment that it is not yet before the Legislature and hopes that future reports are delivered in a more timely manner. Mr. Sullivan reassured Board members that in future the report would be handled in a more timely manner.

Ms. Eide-Tollefson commented on the tech rep report that it was interesting to see all of the issues boiled down and the summary of alternatives is on target. She reported her disappointment to find that in her community some local units of government are adopting the EAW as their application for development. She noted that there are powerful new tools, such as GIS, for integrating geographic information data. She expressed support for the work of the Board.

Commissioner Badgerow moved and Member McCarville second a motion to adjourn the meeting. The motion passed unanimously.

The meeting was adjourned at 11:50 a.m.