

**MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES**

**Thursday, July 19, 2007
G5, State Office Building**

EQB Members Present: Susan McCarville, Dennis Wenzel, Jonathon Bloomberg, Gene Hugoson, Dana Badgerow, Dan McElroy, Randy Kramer, Julie Goehring, Glenn Wilson, Mark Holsten

EQB Members Absent: Brad Moore, Dianne Mandernach, Lt. Gov. Carol Molnau

EQB Staff Present: Robert Roche, Michael Sullivan, Gregg Downing, Jon Larsen

The meeting was called to order at 9:07 a.m. by Chair Hugoson.

I. Adoption of Consent Agenda and Minutes

Commissioner Wilson moved and Member Bloomberg seconded approval of the consent agenda and minutes of the April 19, 2007 EQB meeting. The motion was approved.

II. Chair's Report

The chair welcomed the two new citizen members, Dennis Wenzel and Julie Goehring.

III. Executive Director's Report

Mr. Sullivan indicated that additional handouts include a revised sample resolution, comments received regarding the wild rice portion of the rules, comments from MCPZA regarding changes to the rules, and a revised work plan of the Subcommittee on the Future Direction of the EQB. Mr. Sullivan advised members that SOB staff are now enforcing the no food/beverage restrictions that have always been in place and invited members to let him know if they preferred meeting at PCA full time. The Subcommittee on Future EQB Directions will have a report in August to make up for the cancelled July meeting. Subcommittee meetings are scheduled for August 3 and 10. Mr. Sullivan invited all members to pass on their thoughts and ideas to the Subcommittee.

IV. Legal Counsel Report

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

V. Phase 2 Amendments to the Environmental Review Program Rules; authorization to initiate the formal rulemaking process

Gregg Downing reported that EQB staff requests authorization from the Board to begin the formal rulemaking process on the proposed “phase 2” amendments to the Environmental Review program that the EQB has been developing for several years. A staff draft of the proposed amendments and of the supporting document, the Statement of Need and Reasonableness, are included in the packet.

A sample resolution using standard “boilerplate” language for the authorization to begin rulemaking is provided. The resolution would direct the Chair, Executive Director, and staff to undertake the various logistical actions necessary to holding a hearing on the proposed rules before an Administrative Law Judge. If the Board authorizes rulemaking in July, it is anticipated that the hearing would occur in November and that the rules could be back before the Board, along with the ALJ’s report, by January or February.

While issues remain, the scope of the issues has been narrowed enough that the best forum is now the hearing process with the Office of Administrative Hearings. Remaining phase 2 amendments affect 28 subparts of the rules. Shoreland issues affect 12 of the subparts. Cumulative potential effects/impacts affect 5 subparts. The Alternative Urban Areawide Review (AUAR) process affects 4 subparts. There are clarifications to the language of the rules that affect 7 subparts.

Commissioner Badgerow asked for clarification regarding the issue of genetically engineered wild rice. Jon Larsen from the EQB staff reported that the last session of the Legislature enacted a session law directing the EQB to write into their rules a specific requirement that any proposal to release genetically engineered wild rice required an environmental impact statement and that the EQB would be the responsible governmental unit for that action. As such, the EQB is obligated to enter into rulemaking to insert that new portion in the rule. Staff has moved forward with a request for comments that was placed in the State Register and the EQB Monitor. The comment period ended July 16. Commissioner Hugoson reported that in the past year or two there has been interest in banning the introduction of any genetically altered wild rice into Minnesota, based, in part, on cultural and religious concerns from Native American groups. Minnesota has naturally grown wild rice and cultivated wild rice. Genetically altered wild rice has the ability to spread and cross-pollinate. However, there is no one in the U.S. that is considering or experimenting or doing any research on genetically altered wild rice. The rules requirement was made in an effort to avoid placing a complete ban on the introduction of genetically altered wild rice. Member Kramer asked what possibilities there were for such an action being taken on other farm crops in the state based on this precedent. Mr. Roche explained that the legislation only pertains to genetically engineered wild rice and that passing the rule does not set a precedent for any crops; whether it sets a precedent for the Legislature to mandate EIS requirements for other crops would be up to the Legislature.

Jay Squires, an attorney representing the MN Association of Counties addressed the Board regarding cumulative potential effects. The Association of Counties is concerned

about the issue of cumulative potential effects. In the SONAR, it appears that EQB staff is recommending Option B, incorporating the Supreme Court decision into the rules. The proposed rule is not consistent with the goal. The Supreme Court imposed geographical limitations on the analysis, saying that the analysis should focus on other projects in the geographical area. The proposed rule does not focus on geographical area, it focuses on “the environmentally relevant area.” Mr. Squires is of the opinion that it is different and goes beyond what the Supreme Court ruled. A second concern regards the discussion of what a basis of expectation is and the factors that are proposed in the rule. One factor is whether financing has been procured for the project. The concern for RGUs is that with the scope of the inquiry they would have to probe into the financing arrangements that may exist on a particular project in order to conduct the requisite inquiry that the rules would require. That information is oftentimes not available and the requirement that RGUs obtain information that is not readily available makes the requirement onerous.

Chair Hugoson asked how the Association of Counties suggestion is more definitive than that of the EQB staff. Mr. Squires explained that “geographical area” lends itself to interpretation and disagreement and that issue is currently being engaged, but that “geographical area” is more precise than “environmentally relevant area,” recognizing that either is a definition that lends itself to argument. The process requires an EAW summary level analysis that is designed to be done at an economical cost, in-house, and by people assigned to be the RGU; and not the type of analysis required of an EIS, where experts have to be brought in. “Environmentally relevant area” is too amorphous a term to assist RGUs with the goal of being able to understand the issues and also with the goal of reducing litigation. Mr. Roche asked if the term “geographic area” should be substituted for the “environmentally relevant area.” Mr. Squires agreed that that would be a better option. By simply incorporating the Supreme Court’s decision, as indicated in the SONAR, then the Supreme Court’s decision should be used across the board. Mr. Roche inquired if the Supreme Court used the term “geographic” or “surrounding.” Mr. Squires was unable to recall, but noted that whichever term was used the term was a matter of geography.

Commissioner Wilson moved and Commissioner Badgerow seconded the motion to authorize staff to begin rulemaking. The resolution was adopted by roll call vote. Voting aye were: Commissioners Badgerow, McElroy, Wilson, and Hugoson, BWSR Chair Kramer, and Members McCarville, Wenzel, Bloomberg, and Goehring. There were no nay votes. The motion was adopted.

VI. Report of the Subcommittee on Future EQB Direction

Chair Hugoson went over the Subcommittee handout for members present. The subcommittee has completed an initial review of the Assessment of EQB Authorities and considered elements of the “lens” necessary to strategically focus the EQB and asking “Does this authority solidly address these elements or is it tangential?” The elements included:

- Policy coordination

- Working toward regulatory efficiency among agencies
- Interdisciplinary analysis
- Establishing environmental priorities/goals
- Managing the environmental review program
- A forum to process complex issues

The Subcommittee suggested the following to take place in the fall and include:

- An ad hoc citizens roundtable, focused stakeholder meetings, or other means to engage interested parties
- A Web-based survey and solicitation of comments and suggestions
- Strategic conversations with key stakeholders, including legislators

Public participation activities will include representatives of business, environmental, public and local government interests. Stakeholder comments will guide the board and the subcommittee as they identify opportunities and issues for consideration.

The subcommittee will develop a package of recommendations, including a possible legislative initiative, for Board approval and consideration by the Governor prior to the coming legislative session.

The Chair asked Tech Reps to urge their commissioners to attend future EQB meetings, as many of the suggestions of the Subcommittee relate to moving authority for specific areas of responsibility from the EQB to the appropriate Department.

The meeting was adjourned at 10:25 a.m.