

Environmental Review: Proposals on Process and Thresholds

This information brief summarizes some of the key recommendations by the Environmental Quality Board to change the way environmental reviews are conducted. It also briefly describes the changes proposed over the last 15 years.

The process of environmental review—ordering environmental assessment worksheets (EAW) and potential environmental impact statements (EIS)—was first authorized by the legislature in 1973. Basically, a review is a study of how a major development project will affect its environmental surroundings. The Environmental Quality Board (EQB) governs the rules for conducting environmental reviews. The actual reviews are conducted by public bodies, such as a county board, city council, or state agency.

Not every development project requires environmental review. The size, nature, and location of a project determine review through possible exemption and threshold categories. If an environmental review is required, the governmental body with jurisdiction over the project works with the developer to complete an EAW and a possible EIS. The former is a screening tool that determines if a full-fledged EIS is needed on a project.

Over the past 30 years, certain statutory changes have been made in the environmental review law ([Minn. Stat. § 116D.04](#)). Additionally, many changes have been proposed in the last 15 years in both rules and statutes. A renewed effort for change is happening because of legislative attention and recommendations made by various groups over the past two years.

EQB Recommendations

Because of recent legislative attention and a couple of advisory task forces to the governor, the EQB decided to concentrate on the mandatory category threshold levels to conduct environmental review. Most of these will necessitate rule changes, but the EQB may yet recommend statutory changes in the overall environmental review process sometime this year or next year.

The six chosen mandatory categories for change follow.

- **Nonmetallic Mineral Mining**

Lower the mandatory threshold for an EAW from 40 acres to 20 acres, retaining the ten-foot minimum depth requirement.

- **Air Pollution**

Because the common view is that benefits do not outweigh the costs, change the mandatory threshold for air emission sources from 100 tons emitted per year to 250 tons per year.

- **Wastewater and Sewage Systems**

Again, because benefits may not outweigh costs, there are three possible proposals: (1) New wastewater treatment facilities would have a mandatory threshold for environmental review of 200,000 gallons per day (now 50,000 gpd) released; (2) Expansions of existing wastewater treatment facilities would have the same threshold as new ones, plus retain an EAW requirement if the expansion is a 50 percent capacity increase; and (3) for sewer extensions, a two-tier threshold of 1,000,000 gallons per day discharge for smaller facilities, and for larger facilities that have a capacity of 20 million to 50 million gallons per day, a higher threshold of 2 million to 5 million gpd.

- **Historical Places**

Exclude a project from a mandatory EAW requirement if there is adequate review by a certified local heritage preservation commission.

- **Lakeshore Development**

Ensure that modern lakeshore developments, condos, marinas, etc., are properly addressed in EAW and EIS mandatory categories, including a higher level of “responsible governmental unit” when the affected water body lies in multiple counties.

- **Animal Feedlots**

Raise the 1,000-animal-unit threshold in both environmentally sensitive and nonsensitive areas, but only in cases where a sufficient level of local planning and controls is in place to address issues like land use and odor problems. The common view is that, in some

places, there is already duplicate coverage, between Pollution Control Agency (PCA) rules and county ordinances, so environmental review only is needed in large feedlots.

Chronology of Recent Environmental Review Proposals

1990 - EQB had a retreat to discuss environmental review. The primary topic of discussion was the perception that there was an over-reliance on the EAW, leading to exclusions of EISs and a consequent failure to consider alternatives. The board asked its technical representatives committee to study this and other issues and prepare a report.

1991 - The technical representatives report was presented to the EQB, with 12 specific recommendations, major ones being: (a) replace EAW and EIS with a single review document and process; and (b) re-establish EQB oversight of responsible governmental unit (RGU) decisions.

1993 - The board, which largely consisted of new members because of a change of administration, formed a subcommittee to analyze the recommendations of the technical representatives committee. The subcommittee report included recommendations of three different options for changing the nature of EAWs, with a renewed oversight role of the EQB.

1994 - A Minnesota Center for Environmental Advocacy report, called "Unfulfilled Promise," made 33 specific recommendations, including the following:

- An independent agency should run the environmental review program
- EAWs should include alternatives
- There should be authority to reverse RGU decisions and provide for their administrative appeal

1995 - Statutory Amendments. The board, utilizing the previous work of the subcommittee and its own work, developed a package of reforms introduced in the 1995 session as H.F. 1015. The proposed amendments included the following:

- A "gatekeeper" review of EAW content, with EQB oversight and a remand authority for the Chair of RGU decisions
- An explicit requirement that mitigation relied on in the EAW process must be implemented
- Increasing from 25 to 150 signatures for citizens to petition for environmental review

Although H.F. 1015 unanimously passed the House, it did not get a Senate committee hearing and was not enacted.

1995 - Rule Amendments. The EQB proposed rule amendments for certain revisions that did not require statutory changes. Certain opposition by various concerns caused the amendments to be withdrawn the summer after the legislative session concluded.

1995 - Advisory Work Group. Because of the level of opposition from the statutory and rulemaking initiatives, the EQB held a public forum to try and find a way to proceed with changes. Afterwards, an Advisory Work Group of knowledgeable people and stakeholders met to try and find some common ground. They met several times over a three-month period, reaching tentative agreement on a number of issues; however, final agreement was based on agreement with the entire package of recommendations, which was never completed. This effort marked the end of the EQB's attempt in the 1990s to implement any major reforms requiring statutory changes.

1996 - In June 1996, the EQB re-initiated rulemaking on a modified set of amendments that were adopted in March 1997.

1998 - In response to legislative directives in 1998 and 1999, the EQB conducted rulemaking that revised the mandatory EAW and exemption thresholds for animal feedlots.

1999 - At another EQB retreat, the board decided to consider reforming the environmental review process, and they formed a subcommittee to address it. The subcommittee concluded that reform was feasible only if a consensus of key stakeholders could be reached before proposing any statutory changes.

2001 - A one-day session was held with approximately two dozen stakeholders to see if adequate support was possible to try to develop a package of environmental review reforms. A positive reaction by the stakeholders led to the EQB appointing a 13-member Special Advisory Committee on the process.

2002 - The Special Advisory Committee met 13 times from January to July on a "consensus minus one" decision-making process, meaning that all but one member had to agree in order for the committee to make a recommendation. The committee's report listed out priority problems and issues to be addressed, but, in the end, they were unable to agree on any recommendations.

2003 - Legislation was enacted that exempted new or expanded animal feedlots of less than 1,000 animal units in nonsensitive environmental areas from getting environmental reviews, as long as the feedlot met PCA rules and a local public meeting is held. The legislature also required the EQB to study smaller feedlots for environmental review information and asked it to review the threshold impacts for modern lakeshore developments.

For more information about environmental issues, visit the environment and natural resources area of our web site, www.house.leg.state.mn.us/hrd/issinfo/environ.htm.