OLA
OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Environmental Review and Permitting

MARCH 2011

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OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

March 2011

Members of the Legislative Audit Commission:

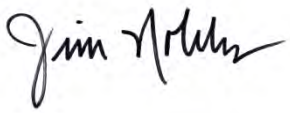
Minnesota's environmental review and permitting processes have been controversial for many years. Current criticisms have focused primarily on the time and costs the two separate processes can impose on businesses that propose projects.

We found that delays in environmental reviews have occurred for a variety of reasons, including a project's complexity, incomplete data from the proposers, and high levels of public controversy. We also found that the environmental review process has not always fully met its objectives and that previous reform efforts have achieved only limited results.

We make recommendations to the Legislature and state agencies. For example, we recommend that the Legislature authorize the Environmental Quality Board to examine the feasibility of allowing certain low-risk, noncontroversial projects to bypass the environmental assessment worksheet process. We also recommend that the Pollution Control Agency and Department of Natural Resources improve the data used to track the timeliness of environmental reviews and priority permits.

Our evaluation was conducted by Jody Hauer (evaluation manager) and Carrie Meyerhoff, with assistance from student intern Andy Finken. Minnesota's Environmental Quality Board, Pollution Control Agency, and Department of Natural Resources cooperated fully with our evaluation, as did numerous local governments also involved with environmental reviews.

Sincerely,



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For some projects, Minnesota's environmental review and permitting processes can be highly complex and time consuming.

Major Findings:

- Minnesota's environmental review process provides the public with information about important environmental concerns. (p. 89)
- However, environmental reviews do not always achieve key objectives; they do not consistently reduce delay, uncertainty, and duplication in the process. In addition, the structure for providing public access to decision makers has flaws. (pp. 90, 97)
- There is wide variation in the expertise and experience among the government units charged with managing environmental assessment worksheets (EAWs) and environmental impact statements (EISs). (p. 103)
- Attempts by the Environmental Quality Board (EQB) and others to reform the environmental review process have had limited success. (p. 108)
- Minnesota's Pollution Control Agency (PCA) and Department of Natural Resources (DNR) lack adequate data to measure the timeliness of their environmental review and permitting processes, monitor timeliness, and identify needed improvements. (p. 48)
- Based on data we could obtain, the time taken to complete environmental reviews by PCA, DNR, and a sample of local governments varied greatly and for different reasons depending on the project. (p. 50)

Key Recommendations:

- The Legislature should authorize and fund EQB to examine on a trial basis the feasibility of allowing certain low-risk proposals to bypass the EAW process. (p. 101)
- EQB should identify best practices of the environmental review process and encourage their widespread use where appropriate. (p. 110)
- EQB should modify the process for redesignating agencies responsible for environmental reviews. It should also assist local government associations with training and other resources for the environmental review process. (p. 105)
- PCA and DNR should improve their data's value by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits, which would allow them to report on agency performance and identify needed improvements. (p. 49)
- PCA and DNR should each clearly define and communicate the data needed to complete an EAW and their expectations of project proposers. (p. 63)
- PCA and DNR should set explicit timeliness standards for responding to proposers' EAW data and then measure performance against these standards as well as those already in state rules. (p. 63)

Report Summary

Environmental review and environmental permitting in Minnesota are two separate processes that sometimes intersect. Environmental reviews gather information on the potential for significant environmental effects of certain proposed development projects. In contrast, environmental permits, by our definition, regulate facilities and activities to control their effects on the environment.

Delays in environmental reviews have occurred for a variety of reasons, including the proposed project's complexity, incomplete EAW data from project proposers, and high levels of public controversy.

Each environmental review process is led by either a state agency or unit of local government, as determined by state rules that assign a so-called "responsible governmental unit." The process produces environmental documents, consisting at a minimum of an environmental assessment worksheet (EAW) and/or an environmental impact statement (EIS). Although both can be lengthy documents, the EIS comes from a more complex process that analyzes alternatives to the proposed project. Public review and comment periods are part of both processes.

Minnesota's Pollution Control Agency (PCA) and the Department of Natural Resources (DNR) issue environmental permits. As an example, PCA issues permits for animal feedlots, which include plans the permittee must follow to manage manure and control air emissions, among other things. Another example is DNR's permit to mine. Local governments also issue certain environmental permits.

Not every development project requires environmental review, and thousands of environmental permits are issued independent of such review. When environmental review is undertaken, Minnesota prohibits project proposers from starting their projects until the process is complete. Nor may government agencies issue approvals or permits until that point.

This evaluation focused exclusively on projects proposed in the private sector. Between fiscal years 2007 and 2010, 229 notices of EAWs were published for private projects. Numbers declined over those four years, with 99 in fiscal year 2007 but only 22 in 2010. Seven EISs for private sector proposals were also started during that four-year period.

In fiscal years 2006 through 2010, PCA issued more than 9,000 environmental permits (as we defined them) to private sector applicants. Over that period, DNR issued more than 1,100 environmental permits to private sector applicants.

The environmental review process does not always meet key objectives set in state rules.

In general, environmental reviews accomplish objectives of providing information to aid understanding of environmental impacts and delegating authority for the review to the government unit closest to the proposed project. However, they are inconsistent in meeting objectives on reducing delay and uncertainty and eliminating duplication.

Among projects we reviewed, delays occurred for some projects that were complex or proposed new technologies. Delay emanated from proposers submitting incomplete data in some cases and from numerous public comments in others. Our surveys of proposers and people who had recently commented on EAWs or EISs showed inconsistent ratings of how the process reduced uncertainty

about projects' potential environmental effects. Opinions also diverged on the role of environmental review in eliminating duplication.

In addition, environmental reviews do not fully meet the objective on providing access to decision makers. The process is structured to provide such access, but it has flaws, such as that the methods for notifying people about EAWs' availability do not reach everyone they should.

The Environmental Quality Board (EQB) should on a trial basis examine the feasibility of allowing certain low-risk projects to bypass the EAW process. Such projects would still be required to conduct all tests and plans for permit compliance. The trial would need evaluation and a measured approach to understand its outcomes and decide whether to continue it.

Oversight of EAWs and EISs is limited, and experience and expertise with environmental review among government units vary widely.

The Environmental Quality Board should work with local government associations to strengthen the ability of local governments to conduct environmental reviews.

EQB has authority to monitor effectiveness of environmental review rules. Despite the need for ongoing evaluation of the process, EQB and others that have attempted reforms have had limited success. Individual government units have made improvements, but their successes have not been evaluated or shared. EQB should identify best practices of the environmental review process and encourage their widespread use where appropriate. This is a necessary first step to a continuous improvement process for environmental review. Making the public comment period more meaningful is one area to review.

In most cases, counties or cities are responsible for managing EAWs or EISs, yet some have little experience or expertise with the processes. EQB should modify its process for redesignating which agency is responsible for an environmental review and approve criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to serve. It should also work with government associations on identifying resources, such as cooperative arrangements for conducting environmental reviews.

PCA and DNR lack adequate data to track timeliness and identify needed improvements for their environmental reviews and priority permits.

Both PCA and DNR had only partial information on the time required for different phases of environmental review or priority permitting. They did not record dates for all of the phases of these processes. For instance, DNR's database for water permits did not record dates either for applications received or permits issued.

Further, certain available data were difficult to retrieve. At DNR, even the most basic information was in narrative documents rather than electronic databases. PCA's archaic databases made it difficult or impossible to consistently produce accurate and timely data.

Improving environmental review and permitting requires measuring and reporting against timeliness standards on a continuous basis. Without ongoing monitoring of timeliness, the agencies hinder their ability to respond to questions or improve their processes. PCA and DNR should

routinely compile complete and accurate information on environmental reviews and priority permits so they can report on agency performance, identify opportunities for improvement, and make changes.

For projects we reviewed, the time taken to complete environmental reviews or issue permits varied greatly and for different reasons.

PCA and DNR could provide us with only partial information on the timing of different phases of environmental review or priority environmental permitting.

Due to the agencies' data limitations, we could not analyze timeliness of environmental reviews in the detail we had intended. Instead, we focused on broad periods, such as the number of days between when an agency received EAW data and when it made its decision on the need for an EIS. Among PCA's 52 EAWs for private sector projects in fiscal years 2007-10, this period ranged from 76 to nearly 800 days. DNR had four EAWs for privately proposed projects and required between 70 and 400 days to complete each. For eight cases where local governments managed EAWs, this phase ranged from 39 to 195 days.

Even before beginning the official EAW process outlined in state rules, the preapplication phase (defined as the time a proposer met with government staff on a proposed project but before submitting EAW data) was sometimes long. Proposers needed this time, for example, to collect information or set the project's scope.

No single reason explained the difference in time needed to prepare the EAWs. Sometimes, delay occurred after proposers submitted initial project data. For EAWs managed by PCA or DNR, this was often the longest phase, lasting more than 180 days for 20 out of 56 projects. Reasons for the length of this phase varied. As examples, proposers' data were incomplete, or time was needed to resolve differences on technical issues, such as methodologies for measuring discharges to water.

The next phase of the EAW process is the public comment period. The minimum and standard length is 30 days. This phase added at least a month but did not substantially delay projects we reviewed. However, comments made during it may lengthen the time needed to complete the process.

The final phase for an EAW is deciding on the need for an EIS. PCA completed this in a median 35 days, DNR in 38; however, some projects took over 100 days. One reason was that PCA's Citizen Board made some decisions, which adds time to the process. Another reason was that certain highly controversial projects generated thousands of comments that required responses prior to an EIS need decision.

PCA and DNR should each clearly define the information they need for a complete EAW and systematically communicate this to project proposers, along with the agency's expectations of proposers. Each should set explicit standards for timely EAW data submissions and then measure its performance against these standards as well as state rules.

The time PCA or DNR took to issue environmental permits varied considerably—PCA took less than a day to issue some water permits but more than a year for hazardous waste permits. Timeliness varied by permit area and type but also due to factors such as the projects' complexity and the completeness of proposers' initial applications and data.

Introduction

An environmental review is a process to collect information on potential environmental effects of certain construction or expansion projects. Environmental permits represent separate processes; permits are intended to regulate actions or facilities to control pollution and other impacts on the environment.

During the 2010 legislative session, legislators heard concerns about the time it takes for projects to go through environmental review and the effect that has on businesses. Certain companies also expressed concerns to legislators about the timing and costs of obtaining environmental permits. Legislators indicated they needed more comprehensive data on the timeliness of environmental review and permits. In late March 2010, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate environmental review and permitting. We focused the evaluation on answering these questions:

- **What are the key elements in the environmental review and permitting processes?**

- **How timely are the processes for undergoing environmental reviews and obtaining permits?**

- **How well does the environmental review process meet its objectives?**

The focus of our evaluation was on environmental reviews and permits exclusively for private sector projects. Information for projects that were proposed by public agencies, including roads or municipal wastewater treatment systems, is excluded. We limited the study to environmental reviews governed by *Minnesota Rules* 2009, chapter 4410, which covers most environmental reviews in the state. We focused on permits issued by state agencies that also conduct environmental reviews under this chapter. As a result, the report excludes information on environmental reviews or permits for siting power plants or transmission lines, which a different chapter of state rules covers. Furthermore, we did not research the extent to which information contained in the environmental reviews was put into practice. Enforcement actions or compliance requirements for permitting were beyond the scope of this evaluation. The report contains no data on the effect that either environmental reviews or permits have on controlling pollution. Nor did we examine whether the subject matter covered in EAWs and EISs or the environmental standards embodied in permits are reasonable or how they were established. Finally, we did not separately analyze the role of the federal government in environmental review or permitting.

To answer the research questions listed above, we reviewed state rules and laws pertaining to environmental review and environmental permitting. We examined literature on Minnesota's process for environmental review as well as how it

compares with other states. We also reviewed literature on the role that state environmental regulation plays in location decisions made by businesses.

Because we were primarily interested at the state level in agencies involved with *both* environmental permitting and environmental review, we focused on the Minnesota Pollution Control Agency (PCA) and the Department of Natural Resources (DNR). Other agencies, such as the departments of Agriculture and Health, are involved with environmental regulations and may issue permits, but they were outside the scope of our evaluation because they do not conduct environmental reviews.

For data on the numbers of environmental reviews done in Minnesota for privately proposed projects, we collected information from four fiscal years worth of documents published by the state's Environmental Quality Board (EQB). We also used EQB files to review the environmental assessment worksheets (EAWs) and environmental impact statements (EISs) completed for each proposed project. We interviewed EQB staff and a board member on their roles and activities over time.

To understand the environmental review and permitting processes followed by PCA and DNR, we interviewed numerous staff within each agency. We analyzed data from multiple PCA and DNR divisions. For environmental reviews, we collected what data were available on the time the agencies needed to complete the reviews in each of the last four fiscal years. In some cases, we supplemented those data by collecting information from paper files on individual cases. For permits, we analyzed numbers of applications and permits issued, and we examined trends over five years. We also analyzed what data were available on the agencies' timeliness in issuing permits. From both PCA and DNR, we obtained data to report staff resources and costs of writing environmental reviews and permits.

We met with various groups that had concerns about environmental review and permitting. These included representatives of business organizations and trade associations, as well as public interest groups and environmental advocacy organizations. We interviewed consultants who work on environmental reviews and spoke with environmental law attorneys. We also contacted a small number of businesses we were told had negative experiences with either environmental review or permitting. Some declined to speak with us, but a few agreed to discuss their experiences, and we agreed, at their request, not to disclose their identities.

To gain a broader perspective on the environmental review process, we conducted two surveys. The surveys were designed to capture participants' views on how well the environmental review process had worked for them and what they thought was needed to improve it. In both surveys, we included only environmental reviews for which a public comment period had occurred between January 1, 2009, and June 30, 2010. This amounted to a total of 41 projects.

For one of the surveys, we focused on people who had proposed projects that had undergone environmental review. We asked all 41 project proposers to complete the questionnaire; 26 of them responded, which is the equivalent of a 63 percent

response rate. For the second survey, our focus was on people who had commented on either an EAW or EIS document. We sent the questionnaire to 307 individuals, including citizens, staff from public agencies, and representatives of nonprofit organizations or public interest groups. Seven survey requests were returned because of incorrect mailing addresses, and updated addresses could not be found. Of the remaining 300, 196 responded, for a 65 percent response rate.

We conducted more in-depth case studies for 14 projects that went through environmental review. For the case studies, we selected a mix of projects based on the following characteristics: geographic location, type of project, degree of controversy, and level of government responsible for managing the environmental review. At the same time, we avoided cases for which a record of decision had not been made or the case was in court. We selected the cases from among those for which a record of decision had been issued between January 1, 2009, and June 30, 2010. Our case studies consisted of interviews with some of the principal people involved and analysis of documents, including preliminary and final versions of the EAW or EIS (where both were available), technical studies or analyses compiled as part of the environmental review, and permits issued for the project.

In addition to the report, we have supplementary materials and methodologies available on our Web site. The address is: http://www.auditor.leg.mn.us/ped/2011/envir.htm.

1 Background

Environmental review and environmental permitting in Minnesota are two separate processes that sometimes intersect. Environmental reviews gather information on the potential for significant environmental effects of certain proposed development projects. In contrast, environmental permits regulate facilities and activities to control their effects on the environment.

This chapter further defines environmental review and environmental permitting. For each of the two processes, we describe the process and who is involved, and we present numbers and trends. We explain the costs and staffing of environmental review and environmental permitting within Minnesota's Pollution Control Agency (PCA) and the Department of Natural Resources (DNR). The chapter concludes with basic information on environmental review in other states.

ENVIRONMENTAL REVIEWS

In 1973, the Minnesota Legislature passed the Environmental Policy Act, which declared as part of its purpose to prevent or eliminate damage to the environment.[1] The act required the preparation of a statement detailing the environmental impact of major public or private actions when those actions had the potential for significant environmental effects. Minnesota's Environmental Policy Act also mandated the state's environmental quality council (later replaced by the Environmental Quality Board) to promulgate rules for determining when environmental impact statements would be required. Currently, Minnesota's Environmental Quality Board (EQB) is a 14-member board consisting of commissioners of nine state agencies, five citizens appointed by the Governor, and a representative of the Governor's Office.[2] The board is authorized to both promulgate rules regarding environmental reviews in Minnesota and monitor the rules' effectiveness, among other responsibilities. Staff from the state agencies represented on the board serve as "technical representatives," offering staff support and operating as liaisons between the board and their respective agencies.

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[1] *Laws of Minnesota* 1973, chapter 412, sec. 1. In 1969, the U.S. Congress passed the National Environmental Policy Act, which requires an environmental impact statement on major federal actions significantly affecting the environment.

[2] *Minnesota Statutes* 2010, 116C.03, subd. 2. The nine agencies are: the departments of Agriculture, Commerce, Employment and Economic Development, Health, Natural Resources, and Transportation, as well as PCA, the Board of Water and Soil Resources, and the Office of Strategic and Long-Range Planning. Most recently, the commissioner of the Department of Agriculture has also served as the Governor's representative and chair of the board.

Definition of Environmental Review

Environmental review is a process intended to maintain the quality of the environment by encouraging the understanding of the environmental impact a proposed project will have. Part of the purpose of environmental reviews is to prepare environmental documents and allow the public to review them.[3] The environmental review process applies to proposed projects that involve direct or indirect physical manipulation of the environment and at least one governmental approval (such as a permit or license) or governmental financial assistance. Examples of projects are commercial and industrial facilities, metallic and nonmetallic mining, campgrounds and RV parks, animal feedlots, and communication towers.[4]

While environmental review is underway, project proposers may not start their projects, and government agencies may not issue permits for those projects.

While the environmental review process is ongoing, the proposer may not start the proposed project.[5] Nor may government approvals or permits be granted for the project during that time. Projects are not required to undergo environmental review if they are already constructed or they have already received all required government permits and approvals. Specific exemptions to environmental review are explained in a subsequent section of this chapter.

State statutes and rules describe two main documents of environmental review and the steps for developing them. One is an environmental assessment worksheet (EAW), and the second is an environmental impact statement (EIS). Statutes define the EAW as a brief document used to determine whether an EIS is needed, as Table 1.1 explains. The EIS is defined as an analytical document designed to, among other things, discuss appropriate alternatives to the proposal and their impacts.

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[3] *Minnesota Rules* 2009, 4410.0300, subp. 3.

[4] Among the examples listed here, not every project has to undergo environmental review. *Minnesota Rules* specify minimum sizes or thresholds of projects that qualify.

[5] The state's EQB, however, has authority to approve a variance, which would allow a proposer to begin construction prior to completing an environmental assessment worksheet process under certain conditions. The conditions include: the construction will not have a serious adverse environmental effect, the responsible governmental unit consents to the variance, and there is a need to avoid excessive and unusual economic hardship or protect public health. See *Minnesota Rules* 2009, 4410.3100, subps. 4-6.

Table 1.1: Statutory Definitions of Environmental Assessment Worksheet and Environmental Impact Statement

Environmental Assessment Worksheet

- A brief document
- Sets out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action

Environmental Impact Statement

- An analytical rather than encyclopedic document
- Describes the proposed action in detail
- Analyzes significant environmental impacts
- Discusses appropriate alternatives to the proposed action
- Explores methods to mitigate adverse environmental impacts of the action
- Analyzes economic, employment, and sociological effects that cannot be avoided if the action is implemented

SOURCE: *Minnesota Statutes* 2010, 116D.04, subd. 1(c) and subd. 2a.

State rules also specify which state agency or unit of local government shall be responsible to prepare and review the EAW or EIS. This is the so-called responsible governmental unit, often referred to as the RGU. The responsible governmental unit has responsibilities for verifying the accuracy of the EAW and EIS. But data needed for the documents come from proposers of the projects.[6] Next we briefly describe the EAW, followed by the EIS.

Environmental Assessment Worksheet

The EAW is developed to determine whether a proposed project has potential for significant environmental effects.[7] State rules prescribe the EAW's contents, which are listed in Table 1.2. For example, the EAW is to describe measures incorporated into the project's design to protect natural resources. An EAW form developed by EQB contains 31 questions to be answered about the proposal. One question, for instance, requires identifying fish and wildlife habitats at or near the site, how the proposed project would affect them, and measures to minimize the impacts.

[6] *Minnesota Rules* 2009, 4410.0400, subp. 3, requires project proposers to supply for the environmental review any data reasonably requested or to which proposers have reasonable access.

[7] *Minnesota Rules* 2009, 4410.0200, subp. 24.

Table 1.2: Required Content of Environmental Assessment Worksheets, 2010

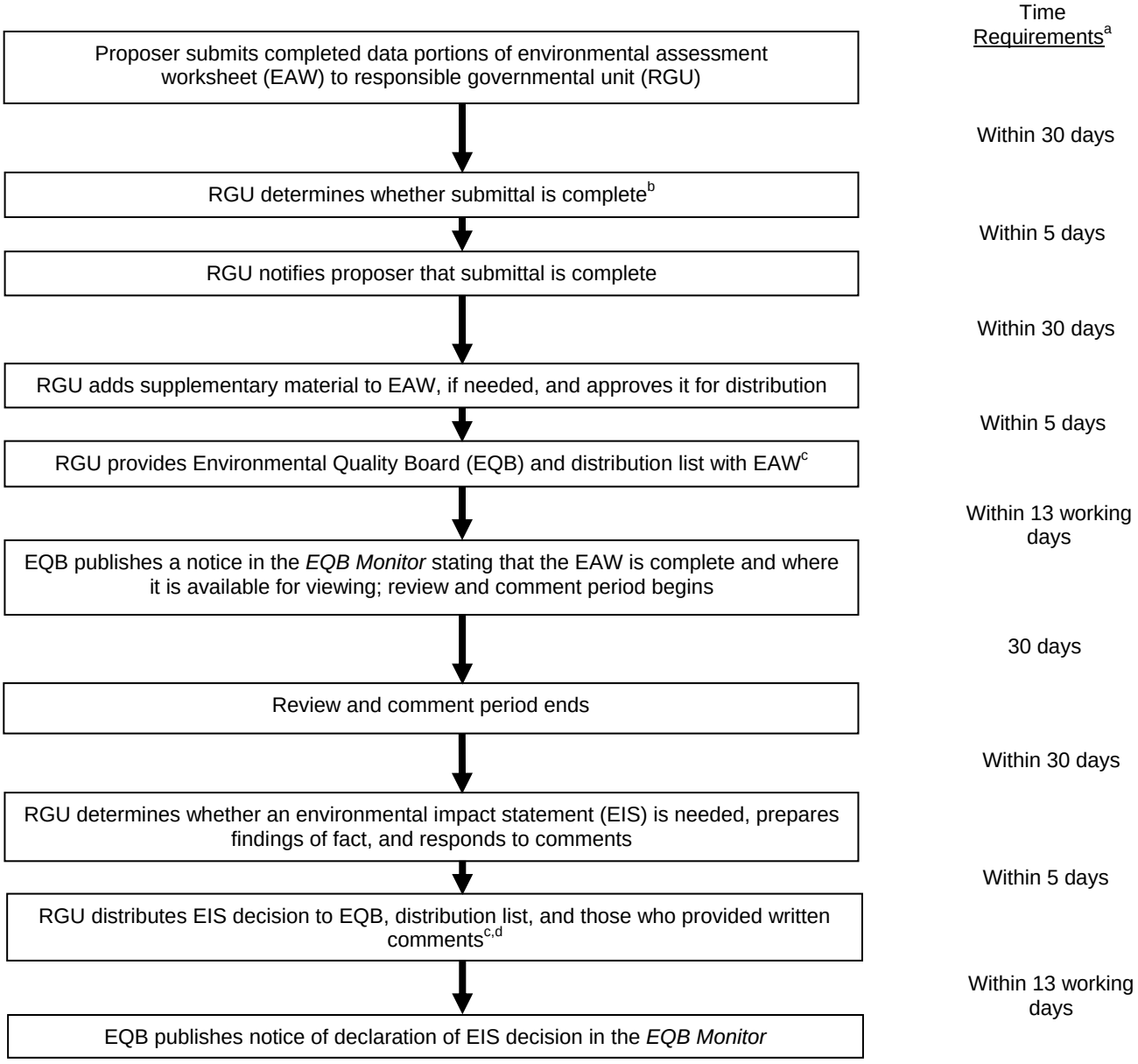
- Identification of project's name, proposer, and location
- Procedural details including identification of responsible governmental unit, a contact person, and instructions for submitting comments
- Project description and purpose; methods of construction; quantities of physical characteristics and impacts; and description of project site, land use, and surrounding physical features
- Resource protection measures incorporated into the project design
- Identification of potential environmental impacts and issues for further investigation before commencing project
- List of governmental approvals, permits and permit conditions, and financing
- Brief explanation of the need for the project, if it is to be carried out by a governmental unit
- Compatibility of the project with approved local government plans

SOURCE: *Minnesota Rules* 2009, 4410.1200 A.–H.

State rules specify steps to complete an EAW. After a project has been proposed, the steps include answering questions in an EAW document and, once the document is complete, notifying the public and submitting the EAW for public distribution, as displayed in Figure 1.1. Some steps are required to be done within specific timelines, which are also reflected in Figure 1.1. Based on the information in the EAW and the comments received, the responsible governmental unit makes a decision on whether the project has the potential for significant environmental effects.

If a proposal has potential for significant environmental effects, then an EIS is required. In these cases, the EAW forms the basis for a scoping process to identify issues that the EIS will subsequently address. Only a small portion of projects requiring EAWs also require EISs in Minnesota, as described more fully later in this chapter.

Figure 1.1: Steps and Timing Required in Preparing an Environmental Assessment Worksheet, 2010



[a] Time requirements are set in state rules. However, it is difficult to estimate a total number of days for the process because the first two steps may need to be repeated.

[b] If an RGU determines the data are incomplete, it returns the EAW to be completed by the proposer.

[c] The distribution list includes the EQB, the proposer, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the State Historical Society, the state archaeologist, the Indian Affairs Council, the Environmental Conservation Library, the regional development commission, and any local government jurisdiction within which the project will take place. The RGU must also issue a press release to at least one newspaper in circulation in the project's area within five days of EQB receiving the EAW. The press release notifies the public that the EAW is available for public viewing.

[d] Judicial review may take place within 30 days after the RGU makes the decision on the need for an EIS.

SOURCES: *Minnesota Rules* 2009, 4400.0400, subp. 4; 44410.1400; 4410.1500, A.-B.; 4410.1600; 4410.1700, subps. 2-5; and 4410.5500.

Environmental Impact Statement

An EIS analyzes a proposed project's environmental impacts, discusses alternatives to the proposal, and explores ways to mitigate adverse effects.[8] The EIS also must analyze economic, employment, and sociological effects that could not be avoided if the project were to be implemented. The contents of an EIS are specified in rule and summarized in Table 1.3. For example, EISs must compare the potentially significant impacts of the proposal with impacts of other reasonable alternatives, such as alternative sites or technologies or a modified design or scale of the project. They must also compare the proposal's impacts against the alternative of taking no action.

Table 1.3: Required Content of Environmental Impact Statements, 2010

- Cover sheet, including project title, contact information for project proposer and for further information, contact information for responsible governmental unit, one-paragraph abstract, dates of required meetings, designation as a draft or final document
- Summary of major findings and issues to be resolved
- Table of contents and list of those who prepared the documents
- Project description to identify the project's purpose, size, scope, location, environmental setting, and anticipated phases of development
- Governmental approvals and permits required for the project
- Comparison of potentially significant impacts of the proposal with impacts of other reasonable alternatives, such as alternative sites or technologies and including the alternative of no action
- Environmental, economic, employment, and sociological impacts of the project and each major alternative
- Mitigation measures that could reasonably eliminate or minimize adverse effects
- Appendix, if applicable, including permit information gathered concurrently with the environmental impact statement preparation

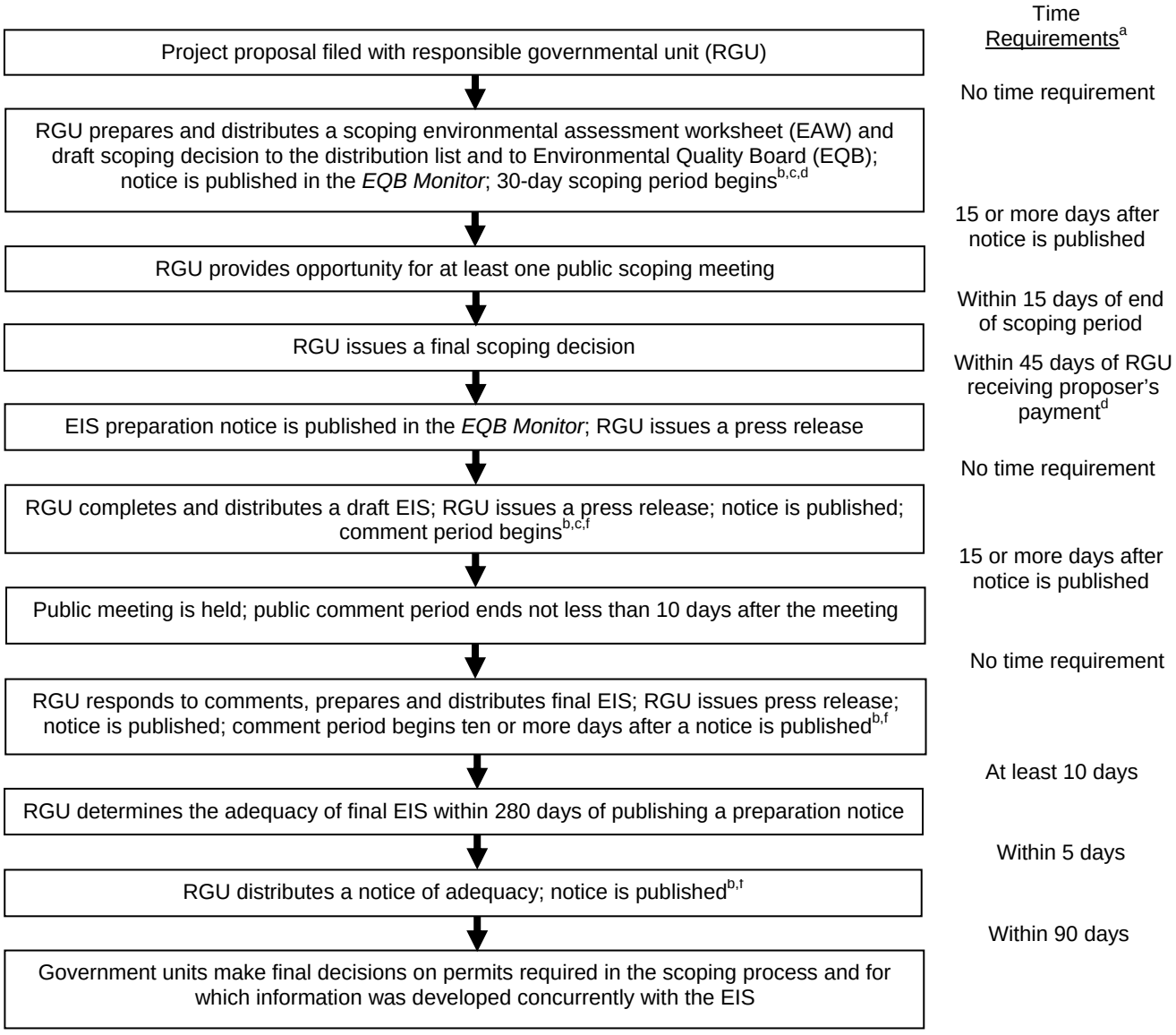
SOURCE: *Minnesota Rules* 2009, 4410.2300 A.–J.

State rules require more steps for an EIS than for an EAW.

State rules spell out a series of steps to be followed for an EIS and require more steps than are required for an EAW. Basically, steps include: (1) a scoping process to identify relevant issues for study followed by a public meeting and comment period to review the resulting documents, (2) preparation of a draft EIS accompanied by a public review period and meeting, and (3) preparation of the final EIS, again followed by a public comment period. Figure 1.2 describes the steps in greater detail and lists time requirements for the steps when state rules prescribe them. All projects required to undertake EISs also have EAWs prepared, with the EAW used as the scoping document. Notices of the

[8] *Minnesota Statutes* 2010, 116D.04, subd. 2a, refers to preparing EISs when there is potential for significant environmental effects from any major governmental action, defined in section 116D.04, subd. 1a.(d), as projects conducted, permitted, assisted, financed, regulated, or approved by government units.

Figure 1.2: Steps and Timing Required in Preparing an Environmental Impact Statement (EIS), 2010



[a] Time requirements are set in state law or rule. Some time periods may be extended upon agreement of the participants.

[b] Material properly submitted to EQB must be published in the *EQB Monitor* within 13 working days.

[c] Comment and scoping periods begin upon publication of notice in the *EQB Monitor.*

[d] The scoping EAW and draft scoping decision are distributed to the EQB, the proposer, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the State Historical Society, the state archaeologist, the Indian Affairs Council, the Environmental Conservation Library, the regional development commission, and affected local governments.

[e] Proposer must pay the RGU one-half of the estimated cost of the EIS within ten days after the RGU and the proposer agree on costs.

[f] Documents are sent to government units with authority to permit or approve the project, the proposer, EQB, select libraries, and the nearby regional development commission; they are also available upon request.

SOURCES: *Minnesota Rules* 2009, 4410.2100, subps. 2, 3.A.-C., 9; 4410.5500; 4410.2600, subp. 3; 4410.2600, subps. 4-6, 8, 9; 4410.2700, subp. 3; 4410.2800, subps. 2, 3, 6; 4410.2900; and *Minnesota Statutes* 2010, 116D.04, subds. 2a.(h), 3a., and 10.

availability of documents and start of public comment periods are published in the *EQB Monitor*, a biweekly electronic document maintained by EQB. Rules also prescribe other publication requirements, such as press releases to newspapers near the proposed project.[9]

State law allows responsible governmental units to determine "reasonable" costs for preparing and distributing an EIS and assess the proposer for these costs.[10] State rules describe which costs may be included in the assessment. For instance, staff time, consultant costs, and indirect costs not to exceed normal operating overhead rates may be included. On the other hand, capital costs of equipment for collecting data, among other things, are to be excluded. No similar provisions in law pertain to assessing proposers for EAW costs. However, state rules allow PCA to charge a fee for EAWs when the project is required to have an EAW and obtain an air or water permit.[11] Plus, guidance issued by EQB for local governments includes sample ordinances on procedures for documenting and collecting fees as a way to recoup costs from project proposers.[12]

Alternate Forms of Environmental Review

Besides EAWs and EISs, state rules allow certain alternate forms of environmental review under specific conditions. For instance, alternative urban areawide reviews, referred to as AUARs, are available to local governments with comprehensive plans. Cities may use an AUAR to review anticipated residential or commercial development covering a particular geographic area within a community (as opposed to a single project site). The content of an AUAR is similar to that of an EAW, but the level of analysis for certain components is comparable to an EIS. We did not include AUARs or other alternate forms within the scope of this evaluation.

Mandatory and Discretionary Environmental Review

State rules determine which projects must undergo an environmental review.

State rules specify mandatory environmental review of proposals for certain categories of projects based on their nature, size, or location.[13] Construction of a new petroleum refinery, for example, automatically requires an EIS. Expansion of an existing refinery requires only an EAW, and only if the expansion would increase capacity by 10,000 or more barrels per day.

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[9] For instance, to announce a public meeting to review the scope of an EIS, *Minnesota Rules* 2009, 4410.2100, subp. 4.A, requires sending a press release to a general circulation newspaper in the area where the project is proposed.

[10] *Minnesota Statutes* 2010, 116D. 045, subd. 1.

[11] *Minnesota Rules* 2010, 7002.0019, subp. 2.N. PCA must be the responsible governmental unit.

[12] Environmental Quality Board, *Establishing Local Government Policies and Ordinances for EAWs* (St. Paul, December 2005), 4-5.

[13] *Minnesota Rules* 2009, 4410.4300, lists the thresholds that trigger mandatory EAWs. *Minnesota Rules* 2009, 4410.4400, lists the thresholds for EISs.

For many categories, a project's size determines whether and what type of environmental review is mandatory. For instance, construction of a campground or RV park with 50 or more sites requires an EAW; projects with fewer sites, however, may not. Location also matters. If the proposal were for 100 or more campground or RV sites in a sensitive shoreland area, an EIS would be mandatory.

For each category of mandatory EAW or EIS, the responsible governmental unit is specified in state rules. For instance, PCA serves as the responsible governmental unit for petroleum refineries; the local city or county is the responsible governmental unit for campgrounds or RV parks.

Some environmental reviews are not required but are still prepared at the discretion of the project proposer or the government unit with jurisdiction over the project.

Not all environmental reviews are mandatory—some are prepared at the discretion of the proposer or the government unit with jurisdiction over the project. State rules describe the conditions for discretionary EAWs and EISs; for instance, government units with approval authority may undertake an EAW, or EQB may require one, if they believe a project has the potential for significant environmental effects due to its nature or location.[14]

Petitions for EAWs

In addition, state law allows citizens to file a petition requesting an EAW for a proposed project.[15] At least 25 individuals must sign the petition and submit it to EQB. Upon determining that the petition is complete, EQB forwards it to the appropriate responsible governmental unit. Table 1.4 lists the requirements for petitions. Ultimately, the responsible governmental unit determines whether to approve or deny the petition.

Table 1.4: Requirements of Petitioners for Environmental Assessment Worksheets, 2010

Requirements
• File with the Environmental Quality Board a petition containing at least 25 signatures and mailing addresses
• Include in the petition: ✓ The project's description ✓ The project's proposer ✓ Contact information for the person representing the petitioners ✓ Brief description of potential environmental effects of the project ✓ Material evidence of the potential for significant environmental effects due to the nature or location of the project
• Notify the proposer in writing about the petition

SOURCE: *Minnesota Rules* 2009, 4410.1100, subp. 1-4.

[14] *Minnesota Rules* 2009, 4410.1000, subp. 3.A. and C. However, a discretionary EAW is not allowed for certain projects that are specifically exempt from environmental review.

[15] *Minnesota Statutes* 2010, 116D.04, subd. 2a.(c).

Exemptions from Environmental Review

Some projects are completely exempt from environmental review. For instance, as Table 1.5 describes, projects are exempt when no governmental decisions are required or when a government agency has already denied an approval the project needed. A recent case for an asphalt plant proposed in Roseville illustrates this; although PCA and the proposer were well into the EAW process, when the city changed its zoning, the proposed plant was no longer permittable. As a result, PCA stopped the EAW process.

Table 1.5: Projects Exempt from Environmental Review, 2010

Exempt

- Legislative proposals
- Rules or orders of governmental units
- Comprehensive plans, zoning ordinances, or other official controls of local governments
- Rezoning actions of a local government, unless they would primarily benefit the specific project being proposed
- State agency plans
- Gubernatorial executive orders or judicial orders
- Proposals put to a vote of the state's citizens
- Projects for which:
  - ✓ No governmental decisions are required
  - ✓ All governmental decisions have been made
  - ✓ A governmental unit has denied a required approval
  - ✓ A substantial portion of the project is complete and an EIS would not influence the remaining construction
  - ✓ Environmental review is complete or being conducted

SOURCE: *Minnesota Rules* 2009, 4410.4600, subps. 2.A.–E. and 26.

State rules also exempt certain types of projects unless the proposed project has characteristics that exceed the mandatory thresholds for EAWs and EISs.[16] These exemptions range from construction of single-family residences to private residential docks for use by four or fewer boats on less than 1,500 square feet of water surface. Some of the exemptions exist only for proposed projects that meet specific location criteria. As an example, construction of a sewered residential development with fewer than ten units is exempt if located in an unincorporated area of the state. Furthermore, statutes exempt animal feedlots with fewer than 1,000 animal units if they are not located within a shoreland area, flood plain, or other protected waterway areas or specific land areas.[17]

[16] *Minnesota Rules* 2009, 4410.4600, subps. 3-25 and 27.

[17] *Minnesota Statutes* 2010, 116D.04, subd. 2a.(d). Applications for such feedlot proposals must include a commitment to comply with PCA feedlot rules for facility construction and operation. Plus, the county board must hold a public meeting prior to issuance of the feedlot permit. Section 116D.04, subd. 2a, also exempts from EISs any ethanol plant outside the Twin Cities metropolitan area that produces fewer than 125 million gallons of ethanol annually.

Numbers of Environmental Reviews

The number of notices announcing the availability of EAWs declined each year between fiscal years 2007 and 2010.

Trends over the last four fiscal years show declining numbers of environmental reviews for private sector projects in Minnesota. Regardless of how many environmental reviews are begun, not all are completed. Proposers sometimes withdraw their proposals. For instance, we learned of projects where the original company was bought out, and the purchasing company was uninterested in pursuing the proposed project. As another example, a company withdrew its proposal after the EAW process ended with a decision that an EIS was necessary.

Environmental Assessment Worksheets and Environmental Impact Statements

In fiscal year 2010, the *EQB Monitor* published 22 notices that EAWs were available for private sector projects, the fewest notices of the last four fiscal years.[18] Over the four years between fiscal years 2007 and 2010, 229 notices of EAW availability were published, as Table 1.6 shows, with declining numbers in each successive fiscal year. The decline was especially marked between fiscal years 2008 and 2009, dropping from 71 down to 39. Project proposers and others involved with environmental reviews told us that the numbers of projects proposed each year can vary based on the state of the economy, with fewer proposed during economic downturns. Among the different categories of EAWs, the greatest numbers over the four years were for residential developments and animal feedlots.

Table 1.6: Notifications in *EQB Monitor* of Environmental Assessment Worksheets, by Category of Private Sector Project, Fiscal Years 2007-10

	Environmental Assessment Worksheet Notifications Published				
Project Category	FY 2007	FY 2008	FY 2009	FY 2010	Total
Animal feedlots	13	14	10	3	40
Mining of sand, gravel, and aggregate	12	14	3	2	31
Mining of other rocks and minerals	2	2	1	4	9
Commercial developments	21	8	3	6	38
Industrial developments	3	4	5	1	13
Residential developments	28	13	6	1	48
Mixed-use developments	7	7	4	1	19
Resorts, campgrounds, other recreational areas	6	5	7	3	21
Ethanol facilities	6	4	0	0	10
Total	98	71	39	21	229

NOTE: Notices of all environmental assessment worksheets are required to be published in the *EQB Monitor,* an online publication of the Environmental Quality Board.

SOURCE: Office of the Legislature Auditor, analysis of Environmental Quality Board, *EQB Monitor*, July 3, 2006, through July 12, 2010.

[18] Because the scope of our evaluation was limited to privately proposed projects, the counts of environmental reviews in this section exclude those for public projects, such as roads. They also exclude alternate forms of environmental review, such as the alternative urban area reviews.

Between fiscal years 2007 and 2010, EQB published notices announcing the start of seven EIS processes for private sector projects; only one notice occurred in fiscal year 2010. Six of the seven EISs were for proposed mining operations; four of the mining projects were for excavating sand, gravel, or aggregate, and the remaining two were for taconite mining. The final EIS was for a proposed industrial project involving an ash disposal facility.

Petitions

In fiscal year 2010, six petitions were successfully submitted requesting environmental review of private sector projects. Like the trend in EAWs, the number of petitions declined each fiscal year of our study period from 38 in 2007 to 18 and then 8 in 2008 and 2009, respectively.

We looked more closely at recent petitions (submitted in fiscal years 2009 and 2010). In each of those years, 11 petitions for environmental review of private sector projects, including an asphalt plant and lakeshore residential development, were submitted to EQB, as shown in Table 1.7. Of the 22 petitions, however, only 14 (64 percent) were deemed complete and forwarded to a responsible governmental unit.[19] Among the 14 complete petitions, responsible governmental units denied 6, while 4 petitions resulted in the development of EAWs, and 4 had other outcomes. Petitions found incomplete by EQB are returned to the petitioners, along with an explanation of what was deficient.

Table 1.7: Petitions Submitted for Environmental Assessment Worksheets (EAWs), Private Sector Projects, Fiscal Years 2009-10

	FY 2009	FY 2010	Total
Petitions received by Environmental Quality Board (EQB)	11	11	22
Petitions deemed insufficient by EQB[a]	3	5	8
Petitions assigned to responsible governmental units (RGUs)	8	6	14
RGU denied petition	3	3	6
RGU prepared EAW	2	2	4
Petitioners withdrew petition	1	0	1
No information available on outcome	3	0	3

NOTE: Data include only those petitions submitted for privately proposed projects.

[a] EQB reviews petitions for compliance with state rules. Required content is: signatures and addresses of at least 25 people; a project description; the proposer; contact information for a representative of the petitioners; a description of potential environmental effects; and material evidence of the potential for significant environmental effects due to the location or nature of the project. Two petitions deemed out of compliance were resubmitted and subsequently assigned to a responsible governmental unit.

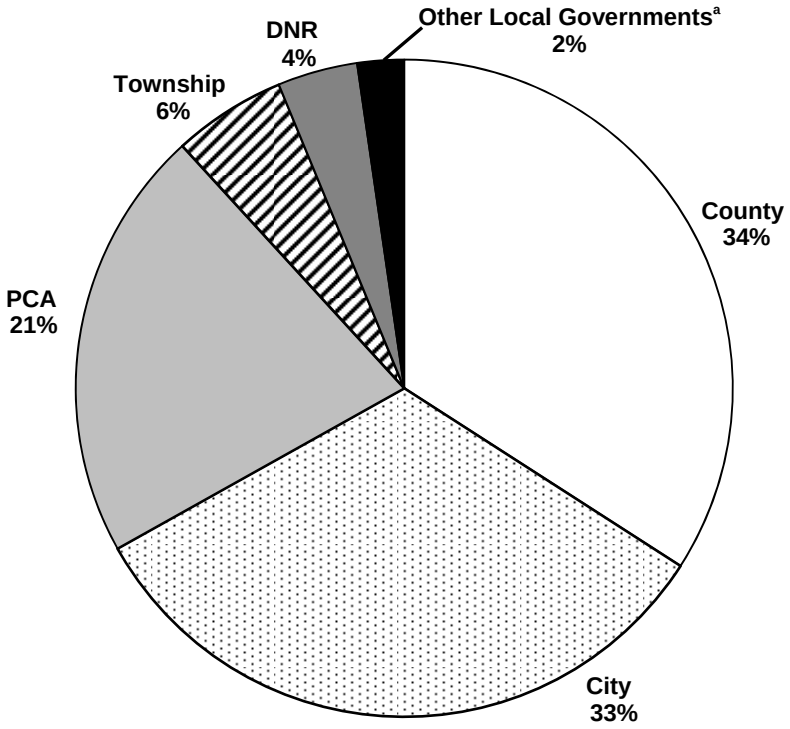
SOURCE: Office of the Legislature Auditor, analysis of Environmental Quality Board's petition files, fiscal years 2009 and 2010.

[19] Two petitions deemed incomplete were resubmitted and subsequently assigned to a responsible governmental unit.

Responsible Governmental Units

Over the period of fiscal years 2007 through 2010, local governments were assigned as responsible governmental units for 75 percent of the private sector EAWs, EISs, and petitions. Figure 1.3 shows that PCA served as the responsible governmental unit for 21 percent of environmental reviews, and DNR 4 percent, during that time.

Figure 1.3: Responsible Governmental Units for Environmental Reviews of Private Sector Projects, Fiscal Years 2007-10



NOTE: Data include responsible governmental units assigned for environmental assessment worksheets, environmental impact statements, and petitions related to privately proposed projects.

[a] Other local governments include conservation districts and joint planning boards.

SOURCE: Office of the Legislative Auditor, analysis of Environmental Quality Board, *EQB Monitor*, July 3, 2006, through July 12, 2010.

To gain a clear picture of the types of environmental documents developed by each type of responsible governmental unit, we grouped proposed projects into nine categories. Then we analyzed the categories of environmental reviews by type of governmental unit. About two-thirds of environmental review projects with a local government serving as the responsible governmental unit were related to commercial, industrial, or residential development, as Table 1.8 shows.

Most environmental reviews where PCA served as responsible governmental unit were for proposed animal feedlots, and most where DNR was the responsible governmental unit were for proposed mining projects. This reflects the assignment of responsible governmental units prescribed in state rules for mandatory environmental reviews.

Table 1.8: Responsible Governmental Unit, by Category of Private Sector Environmental Review Project, Fiscal Years 2007-10

	Type of Responsible Governmental Unit				
Project Category	City	County	PCA	DNR	Total
Animal feedlots	0	2	44	0	46
Mining of sand, gravel, and aggregate	9	21	0	1	31
Mining of other rocks and minerals	1	5	0	7	13
Commercial developments	35	10	1	0	46
Industrial developments	4	3	10	2	19
Residential developments	30	39	0	0	69
Mixed-use developments	18	3	0	0	21
Resorts, campgrounds, other recreational areas	3	21	0	2	26
Ethanol facilities	0	0	10	0	10
Total	100	104	65	12	281

NOTE: Projects include only those proposed by private sector proposers. Data exclude 24 proposed projects for which other types of local government units served as the responsible governmental unit.

SOURCE: Office of the Legislature Auditor, analysis of Environmental Quality Board, *EQB Monitors*, July 3, 2006, through July 12, 2010.

ENVIRONMENTAL PERMITTING

Whereas environmental review provides information about projects' potential environmental impacts, environmental permits—as we have defined them—regulate private sector business facilities, activities, discharges, and emissions to control their potential environmental effects. For example, industrial storm water permits require facilities to implement best management practices that reduce exposure of "significant materials" to storm water to lessen the amount of pollution that storm water runoff contributes to surface water and groundwater.[20] As another example, water appropriation permits regulate users of large quantities of water to manage water resources to meet the needs of various water users.

[20] Significant materials include, for example, arsenic, chromium, and zinc.

PCA, DNR, and local governments issue environmental permits.

Two state agencies issue environmental permits as we have defined them: PCA and DNR.[21] PCA issues permits to regulate water, air, and land pollution. DNR's environmental permits regulate use or alteration of the state's natural resources to manage environmental impacts. Local units of government issue permits that we considered environmental, too. For example, cities may require conditional use permits for certain activities, such as gravel mining, in part to control noise, dust, pollution, and other environmental effects.[22]

State agencies and local governments issue other permits that we excluded from our evaluation after concluding the permits were not primarily environmental. For example, cities may require potential builders to apply for a zoning permit. While building activity has environmental impacts, the purpose of a zoning permit is to enforce compliance with a city's zoning and land use standards. We also excluded recreational use permits, such as state park permits, and other permits that we concluded were less likely to be relevant to private sector businesses than those we included.[23]

Permitting Process

In its essentials, the process for obtaining a permit is the same regardless of the type of permit. A person in need of the permit submits an application to the relevant government agency. Potentially, several rounds of exchange between the applicant and government staff may occur as staff work with the applicant to complete all necessary information, confirm project details, and resolve technical issues. After drafting the permit, government staff may issue a public notice of the draft permit and accept and respond to public comments.[24] The draft permit may be modified based on comments from the public and input from the applicant. Finally, the permit is issued provided the applicant has paid any required fees and the project meets all permit requirements.

The process has additional steps for some projects. For example, as discussed earlier in this chapter, if a project required environmental review, that process must be completed before government units can issue permits for the project.[25] As another example, legislative approval of water appropriation permits is

[21] As explained in the introduction, we focused on state agencies that conduct environmental reviews under *Minnesota Rules* 2009, chapter 4410. As a consequence, we did not review some permits that are arguably environmental. For example, we did not review permits for bulk pesticide- or fertilizer-storage facilities issued by the Department of Agriculture because the department does not serve as a responsible governmental unit for environmental reviews.

[22] Local governments can regulate land use by allowing certain uses subject to conditions. For example, if a local government is concerned about the level of traffic a commercial use might generate in a primarily residential neighborhood, the use might be allowed only under certain conditions. The use and conditions would be contained in a conditional use permit.

[23] For example, we excluded DNR's lake aeration system permits from our review.

[24] Some permits, such as federal air quality permits issued by PCA, require a public comment period. See *Minnesota Rules* 2009, 7007.0850, subp. 2.

[25] *Minnesota Rules* 2009, 4410.3100, subd. 1.

required for some projects proposing to consume over two million gallons of water per day.[26]

In some cases, state law establishes expectations for timeliness of the permitting process. For example, state and local agencies must approve or deny permit applications for septic systems or feedlots within 60 days of a written request containing all required information.[27] Water appropriations permits are another example. Provided that fees have been paid, DNR must act on most water appropriation permit applications within 30 days after receiving the application "and the required data."[28] However, DNR Waters Division staff said that rarely are initial applications complete.

Permits Issued by the Pollution Control Agency

Permits issued by PCA cover water quality, air quality, feedlots, hazardous waste, solid waste, and aboveground storage tanks. PCA issues state and federal permits. For example, the storm water general permits that PCA issues are National Pollutant Discharge Elimination System permits issued on behalf of the U.S. Environmental Protection Agency (EPA). Additional federal permits cover air quality, wastewater, and large animal feedlots. When PCA issues federal permits, the process it follows and standards embodied in the permit reflect federal requirements and regulations.

With "general" permits, PCA issues a single permit, and businesses whose practices meet certain standards can apply and receive coverage.

Table 1.9 lists the permits PCA issues, what the permits regulate, and different types of permits available in each area. For example, among air quality permit types are general, individual, capped, and registration permits. In general, businesses qualify for different types of permits depending on how much air pollution the business facility could potentially cause. Those with a potential to emit large quantities of pollutants typically require a federal air quality permit.

As the table shows, two types of permits are more common among permit areas than others: general and individual permits. General permits cover categories of applicants whose business practices meet specific standards and criteria. The state issues a single permit and businesses apply for coverage under it; if the business qualifies, it is covered.[29] For example, PCA issued a general permit to cover all minor mechanical wastewater treatment facilities that meet certain

[26] *Minnesota Statutes* 2010, 103G.265, subd. 3.

[27] *Minnesota Statutes* 2010, 15.99, subds. 2 and 3, and 116.07, subd. 7. *Minnesota Statutes* 2010, 15.99, identifies when the 60-day clock starts, some circumstances under which it can be restarted, and provisions for extending the 60-day period. For example, if a project is subject to environmental review, the 60-day clock starts after the environmental review process is complete.

[28] *Minnesota Statutes* 2010, 103G.305, subds. 1 and 2, and 103G.315, subd. 12.

[29] According to PCA, first time applicants often must apply for an individual permit even if they could be covered by a general permit. General permits for feedlots and municipal separate storm sewer systems (MS4) work differently. Permits for MS4s are outside the scope of our evaluation.

Table 1.9: Environmental Permits Issued by the Pollution Control Agency

	What They Regulate	Types
Storm water permits	Storm water runoff from construction or industrial sites and municipal storm sewer systems.	General[a] Individual[b]
Wastewater permits	Discharges of wastewater to the surface (e.g., lakes, streams, or ground), and certain discharges of wastewater or waste material below ground.	General Individual
Air quality permits	The construction, modification, or operation of an emissions unit, emissions facility, or stationary source that omits any air pollutant. Several permits are available depending largely on the types and amounts of pollutants a facility could potentially emit.	General Individual Capped[c] Registration[d]
Feedlot permits	The construction and operation of animal feedlots. One of four feedlot permits is required depending on characteristics of the feedlot, such as size and technologies employed.	General Individual Interim[e] Construction Short Form[f]
Aboveground storage tank permits	Assemblages of one or more aboveground storage tanks where the total regulated-substance design storage capacity of all such tanks at the site is one million gallons or greater.	Individual
Solid waste permits	Facilities that treat, store, process, transfer, or dispose of solid waste.	Individual
Hazardous waste permits	Facilities that treat, store, or dispose of hazardous waste.	Individual

NOTE: This table focuses on the permits and permit types we included in our evaluation. It does not reflect the full range of regulatory options administered by the agency units that issue these permits.

[a] General permits cover categories of applicants whose business practices meet specific standards and criteria. The state issues a single permit and businesses apply for coverage under it; if the business qualifies, it is covered.

[b] An individual permit is written specifically for the activities at an individual facility and includes only those requirements applicable to the facility.

[c] Capped permits are state permits designed for certain noncomplex facilities for which site-specific permit conditions are unnecessary. In general, a facility's actual emissions must be less than 75 to 90 percent of federal thresholds.

[d] Air quality registration permits are for facilities with low actual pollutant emissions. In general, a facility's actual emissions must be less than 50 percent of federal thresholds.

[e] Feedlot interim permits are for animal feedlots or manure storage areas that are not required to obtain a state or federal permit for large feedlots, but that have been identified as a pollution hazard *or* that have a capacity of 300 or more animal units and are located in areas with particular soil types or water issues.

[f] Feedlot construction short-form permits, the least regulatory of the feedlot permit types, are for animal feedlots or manure storage areas with capacity of 300 or more animal units that are not required to get one of the more restrictive permits.

SOURCE: Office of the Legislative Auditor, analysis of *Minnesota Rules* 2009, and Pollution Control Agency documents.

conditions and comply with the discharge limits and monitoring requirements contained in the permit.[30] PCA cited two advantages to general permits. First, coverage by general permits can be granted more quickly than individual permits can be issued, and most have one public notice period when the permit is issued instead of a separate notice each time a facility is granted coverage by it.

[30] See *National Pollutant Discharge Elimination System (NPDES) and State Disposal System (SDS) Permit MNG550000: Minor Mechanical Wastewater Treatment Facility General Permit*, effective May 15, 2007, to April 30, 2012.

Second, to qualify for the general permit, businesses may modify their operations to use practices covered by the permit that pose low risk to the environment relative to other practices.

In contrast, PCA issues individual permits to single facilities. If businesses cannot meet the requirements of a general permit, or a general permit is not available for the type of business or the technologies it uses, an individual permit is required. Individual permit applications require more staff processing and each new permit requires a public notice period.

Although the number of private sector applications for coverage under PCA's construction storm water permit declined from fiscal years 2006 to 2010, a consistent trend is not discernable in other permit areas.

Fewer private sector applications were submitted to PCA in fiscal year 2010 than in 2006, as shown in Table 1.10. A downward trend is very clear for applications for coverage under the construction storm water permit.[31] Applications for coverage have declined each year since 2006, and the decline is likely due, in part, to the overall downturn in the economy. A consistent trend is not discernable in other permit areas. This may be because the table reflects applications for modifications and reissuances, not just new permits. In addition, most general permits are reissued every five years and all facilities covered by them are reissued coverage at one time. For example, the table shows a sharp decline between 2006 and 2010 in the number of applications for coverage under the feedlot general permit. But, 2006 reflects reissuance of the permit and coverage of all qualifying feedlots. The number of applications for the general permit reissued in fiscal year 2011 will likely be at or above the 2006 number.

Table 1.10 also shows that most permit applications submitted to PCA by private sector applicants in fiscal years 2006 through 2010 resulted in permits. Percentages of applications that led to issued permits ranged from 47 percent for air quality individual permit applications to 100 percent for applications for coverage under the industrial storm water general permits. Unissued permits include those that are still pending or for which applications have been withdrawn or denied. Information on the status of air quality permit applications suggested that at least 10 percent of applications for those permits are ultimately withdrawn.[32]

[31] Coverage under this general permit is required for construction projects that disturb one acre or more of soil, or less than one acre of soil if that activity is part of a "larger common plan of development or sale" that is greater than one acre. Coverage is also required for projects that disturb less than one acre of soil if PCA determines that the activity poses a risk to water resources.

[32] Data on application status were not available for all PCA permit areas.

Table 1.10: Applications for Environmental Permits Issued by the Pollution Control Agency (PCA) and Percentage Issued, Private Sector Applicants, Fiscal Years 2006-10

	Applications						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	Total	Percentage Issued[a]
Storm water permits	**1,694**	**1,334**	**1,034**	**706**	**1,057**	**5,825**	**99.8%**
Construction storm water	1,694	1,334	1,034	706	545	5,313	99.8
Industrial storm water[b]	n/a	n/a	n/a	n/a	512	512	100.0
Wastewater permits[c]	**246**	**162**	**172**	**334**	**146**	**1,060**	**86.8**
Individual	81	94	109	77	82	443	70.7
General	165	68	63	257	64	617	98.4
Air quality permits	**282**	**209**	**218**	**261**	**183**	**1,153**	**69.4**
Individual[d]	122	106	103	75	108	514	46.5
General	24	5	4	90	20	143	86.7
Capped/registration	136	98	111	96	55	496	88.1
Feedlot permits[e]	**848**	**208**	**153**	**124**	**77**	**1,410**	**97.3**
Individual	7	3	3	6	7	26	65.4
General[f]	786	172	119	87	58	1,222	98.4
Interim	11	5	13	15	6	50	98.0
Construction short form	25	24	16	11	2	78	97.4
Aboveground storage tank permits	**31**	**21**	**13**	**16**	**17**	**98**	**78.6**
Solid waste permits[g]	**23**	**15**	**14**	**16**	**7**	**75**	**88.0**
Hazardous waste permits	**1**	**0**	**4**	**0**	**5**	**10**	**50.0**

NOTES: Applications include those for permit issuance, reissuance, or modification. The table reflects permit applications submitted by private sector applicants for nonpersonal use.

[a] Application status (i.e., issued or not) is as of June 30, 2010. Applications for permits that have not been issued may be denied, pending, or withdrawn. Only air quality permit data indicated reliably the status of permit applications; those data suggest that at least 10 percent of air quality permit applications were ultimately withdrawn.

[b] The state's industrial storm water general permit expired in 2002 and a new permit was not effective until April 5, 2010. Therefore, the state did not have an active permit under which it could grant applicants coverage until FY 2010. Individual industrial storm water permits are administered by PCA's wastewater unit and are reflected in those numbers.

[c] Our efforts and those of PCA to eliminate duplicate and erroneous records may have resulted in some records being incorrectly excluded from the data. Numbers exclude minor modifications. Individual industrial storm water permits are administered by PCA's wastewater unit and are reflected in these numbers.

[d] Numbers for individual air quality permits reflect applications for primary permit actions, but not subordinate actions. When there is an opportunity to do so and the applicant agrees, PCA processes applications for minor permit actions as part of a larger permit action. For example, PCA might process an application for a minor modification along with an application for a permit reissuance. The numbers in the table would reflect the application for the reissuance only.

[e] The total numbers of feedlot permits on this line exceeds the sum of the different permit types because a number of records each year did not indicate the permit type.

[f] The decline in the number of applications for coverage under the feedlot general permit reflects the cycle of the general permit reissuance. Issuance of the permit and coverage of all new and existing feedlots that qualified occurred in 2006. The number of applications for the general permit reissued in fiscal year 2011 will likely be at or above the 2006 number.

[g] Numbers exclude minor modifications.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

Permits Issued by the Department of Natural Resources

The DNR permits we deemed environmental are listed in Table 1.11. They include permits for alterations to public waters, water appropriations, taking of endangered or threatened species, and metallic mineral and peat mining. The table shows that DNR has issued general permits only for public waters work and water appropriation permits. For example, the department has issued a general permit for temporary water appropriations for certain projects, such as landscaping. DNR issues general permits on a statewide, county, soil-and-water-conservation-district, or watershed-district basis to cover projects that meet the requirements of the permit.

Table 1.11: Environmental Permits Issued by the Department of Natural Resources

	What They Regulate	Types
Public waters work permits	Changes made to public waters including construction, reconstruction, or changes made to a reservoir, dam, or waterway obstruction. Permits also regulate changes to the course, current, or cross section of public waters (by any means including filling, excavating, or placing materials in beds).	General[a] Individual[b]
Water appropriation permits	The appropriation of large quantities of water (ten thousand gallons per day or one million gallons per year).	General Individual
Metallic mineral mining permits	The process of removing, stockpiling, processing, storing, transporting (excluding use of common carriers and public transportation systems), and reclaiming any material in connection with the commercial production of metallic minerals. This includes exploration activities such as the taking of large bulk samples.	Individual
Peat mining permits	Removal of peat for commercial purposes, including draining, stockpiling, processing, storing, transporting, and reclaiming any material in connection with the commercial development of peat. No peat mining permit is required for a peat mining operation of 40 or fewer acres, unless the commissioner determines that there is potential for significant environmental effects which may result from the peat mining operation.	Individual
Endangered or threatened species permits	Taking threatened or endangered species of plants or animals when the commissioner has determined that the social and economic benefits of the permitted act outweigh the harm caused by it, provided that the killing of a specimen for these purposes will be permitted only after all other alternatives have been evaluated and rejected.	Individual

NOTE: This table focuses on the permits and permit types we included in our evaluation. It does not reflect the full range of regulatory options administered by the agency units that issue these permits.

[a] General permits cover public waters work or water appropriations that have minimal impact on the waters of the state.

[b] An individual permit is written specifically for the activities of an individual applicant and includes only those requirements applicable to the particular application.

SOURCE: Office of the Legislative Auditor, analysis of *Minnesota Rules* 2009, *Minnesota Statutes* 2010, and Department of Natural Resources documents.

Numbers of private sector applications submitted to DNR for individual permits have fluctuated over the past five years, as shown in Table 1.12.[33] Overall, they show a decline since 2008. Like their counterparts at PCA, DNR staff suggested that the more recent declines in water permit applications are due in part to the overall downturn in the economy.

Table 1.12: Applications for Environmental Permits Issued by the Department of Natural Resources (DNR) and Percentage Issued, Private Sector Applicants, Fiscal Years 2006-10

	Applications						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	Total	Percentage Issued[a]
Waters[b]	**198**	**237**	**348**	**301**	**217**	**1,301**	**86.2%**
Public waters work	86	80	77	60	70	373	85.3
Water appropriation	112	157	271	241	147	928	86.6
Mining	**6**	**5**	**8**	**7**	**3**	**29**	**93.1**
New permit	1	0	1	0	1	3	66.7
Substantial amendment	1	3	0	1	0	5	80.0
Unsubstantial amendment	4	2	7	6	2	21	100.0
Taking of endangered or threatened species[c]	**2**	**1**	**0**	**2**	**4**	**9**	**55.6**

NOTES: Applications include those for new individual permits. The table reflects permit applications submitted by private sector applicants for nonpersonal use.

[a] Application status (i.e., issued or not) is as of June 30, 2010. Applications for permits that have not been issued may be denied, pending, or withdrawn.

[b] Water permit fiscal years are based on the date DNR entered the permit application into the permit database. Fields in the water permit database indicating whether an applicant was a private sector business were not reliable. Thus, we may be missing some private sector business applicants, and we may have inadvertently included public sector or individual applicants.

[c] Numbers of permits for taking endangered or threatened species do not include permits for preproject survey work.

SOURCE: Office of the Legislative Auditor, analysis of Department of Natural Resources data.

Similar to PCA permit applications, Table 1.12 shows that most applications submitted to DNR by private sector applicants in fiscal years 2006 through 2010 resulted in permits. Unissued permits reflect applications that are still pending or have been withdrawn or denied. Staff who work in the mining permit area could not recall a single instance of withdrawal of an application for a permit to mine. Two of the nine permit applications for taking endangered or threatened species were ultimately withdrawn. The project proposer behind one of the withdrawn applications developed an avoidance plan that eliminated the need for a permit. In the second case, the proposer entered into an agreement with other parties that released the proposer from responsibility for the endangered or threatened species.

[33] DNR's Waters Division does not have data available centrally on individual projects covered by its general permits.

STAFF AND COSTS

The three state agencies—EQB, PCA, and DNR—most closely involved with the environmental reviews and permits covered in this evaluation have different roles and levels of resources. EQB has a primary role in structuring the environmental review process through its rulemaking authority, but it does not actually draft environmental reviews or permits. In fiscal year 2010, EQB had operating expenditures of $520,000 and 4.8 full-time equivalent staff, however, only about 2 of those staff were employed directly on environmental review work.

By contrast, PCA and DNR write environmental reviews and permits. While they both have other extensive regulatory functions, we asked PCA and DNR to provide us with their best data available on staffing and other costs specifically related to writing environmental reviews and permits.[34] Staff other than those actually writing the documents are also involved in the processes, but they are not reflected in the data reported in the following sections.

Pollution Control Agency

Table 1.13 shows PCA's fiscal year 2006 through 2010 budgeted staff and staff costs for writing environmental permits and environmental reviews. The table reflects the budgeted staff effort throughout each fiscal year, as of July 1 of the year.[35] The table shows that, overall, the full-time equivalent staff budgeted for writing environmental permits and reviews was relatively constant at 72 to 75 between 2006 and 2009, and jumped in 2010 to just over 88 full-time equivalent staff.[36]

It is important to avoid drawing the wrong conclusion from these data. The data do not show the number of staff involved in the activities, but rather they reflect the level of effort budgeted for writing permits and environmental reviews in terms of staff equivalents.[37] For example, between 2009 and 2010, the effort budgeted for staff to write feedlot permits increased from around 4 to 10 full-time equivalents. At the same time, the actual number of staff writing feedlot permits decreased from 15 to 13. The increase of full-time equivalents budgeted to write feedlot permits reflects the reallocation of staff time from compliance, enforcement, and other activities to permit writing in preparation for the fall 2010 reissuance of the feedlot general permit.

Furthermore, Table 1.13 does not reflect the time other staff contributed to writing permits. For example, the agency's effluent standards staff and air modelers/risk assessors contribute to wastewater and air quality permits,

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[34] Table A.1 in the Appendix includes counts of staff who contributed to recent EAWs and related permits under PCA's purview.

[35] Time staff actually spent writing environmental reviews and permits may have differed from the level of effort budgeted for these tasks at the start of the year.

[36] The full-time equivalents for environmental review reflect both the environmental review staff who guide projects through the process and the technical staff who contribute to and review technical portions of environmental reviews.

[37] One full-time equivalent is equal to 2,088 hours.

Table 1.13: Budgeted Full-Time Equivalent (FTE) Staff Effort and Costs for Writing Environmental Reviews and Permits, Pollution Control Agency (PCA), Fiscal Years 2006-10

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Staff Effort (in FTEs)					
Environmental review	13.75	13.25	11.50	10.70	7.10
Wastewater permits[a]	29.25	27.55	34.66	31.04	24.37
Air quality permits	11.79	14.41	12.25	13.84	25.86
Solid waste permits	7.48	8.28	6.93	7.18	7.19
Feedlot permits[a]	5.70	5.70	3.90	4.20	10.07
Storm water permits	3.20	0.80	2.60	4.55	8.45
Hazardous waste and aboveground storage waste permits	2.45	2.45	2.95	3.55	5.11
Total	73.62	72.44	74.79	75.06	88.15
Compensation (salary and benefits, in 1,000s)					
Environmental Review	$1,160	$ 890	$ 871	$ 887	$ 573
Wastewater permits[a]	2,015	1,846	2,324	2,232	1,783
Air quality permits	869	1,082	798	920	1,959
Solid waste permits	574	652	573	600	609
Feedlot permits[a]	331	358	271	309	771
Storm water permits	246	68	165	354	726
Hazardous waste and aboveground storage waste permits	181	216	240	309	435
Total[b]	$5,376	$5,112	$5,242	$5,612	$6,855

NOTES: To maintain consistency in the numbers reported from year to year, this table reflects the level of effort budgeted for permit writers to write permits, and environmental review staff and technical staff to write environmental reviews. However, other staff contribute to producing these documents. PCA budgeted the level of effort of all staff associated with writing environmental reviews and permits, including those who contributed to permit and environmental review efforts in other ways—such as through data management, air dispersion modeling, and evaluating standards—in fiscal year 2010. In this more holistic assessment of resources devoted to environmental review and permitting, the agency calculated 141 FTE staff contributed to these tasks in fiscal year 2010 with compensation of $11,443,177. One full-time equivalent is equal to 2,088 hours.

[a] Numbers are less precise than those reported for environmental review and other permit types. Staff who write these permits do other permit-related work as well, such as compliance and enforcement. PCA estimated the staff equivalents spent on permit writing for these permit types.

[b] Columns may not sum to total due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

respectively, but their time is not reflected in the table. As noted in the table, when PCA budgeted all staff who contributed to writing environmental reviews and permits in fiscal year 2010, full-time equivalents numbered 141.

According to PCA officials, environmental permitting is funded largely by fees and have been relatively insulated from General Fund budget cuts. Furthermore, a legislative directive to better align air quality and water permit fees with the costs of writing the permits and associated environmental reviews led PCA to amend its fee rules. Among other things, the amended rules allow PCA to collect

fees for permit and environmental review applications and retain the fees if the applications are discontinued.[38]

Department of Natural Resources

Table 1.14 shows DNR's fiscal years 2006 through 2010 staff, staff costs, and nonstaff costs writing environmental permits and environmental review. As the table shows, the number of full-time equivalent staff has remained relatively stable except for in the Environmental Review Unit, which shows an apparent increase. According to the supervisor of the Environmental Review Unit, the number of positions in the unit has not increased. He suggested unfilled positions and internal reassignment of staff in earlier years as possible explanations for the increase in full-time equivalents.

Comparing total expenditures shown in Table 1.14 to those for compensation only, it is evident that nonsalary expenditures associated with environmental review overwhelm the other expenditures for environmental permitting and environmental review. The bulk of these expenditures—and also some of the environmental review full-time equivalents—reflect EIS costs funded by project proposers.

As with the PCA data shown above, Table 1.14 does not reflect the time other staff contributed to writing permits. For example, the deputy director of the Waters Division estimated that field staff and area hydrologists spend approximately 30 percent of their time on permits, amounting to an additional 8.4 full-time equivalents each year. Similarly, botanists, ornithologists, malacologists, and entomologists are among the technical specialists who contribute to permits for taking endangered or threatened species.[39]

Funding sources insulate some DNR units from General Fund budget cuts. For example, the Reclamation Unit, which issues mining permits, is increasingly funded by permit fees, and the 2009 Legislature amended statutes to allow the Waters Division to collect fees for proposed projects.[40] At the same time, funding sources can limit flexibility. Focusing on environmental review staff, the unit supervisor noted that although positions have remained constant, he has less flexibility to assign staff than in the past because fewer positions are funded by the General Fund. Some positions are funded by the proposer of the EIS project to which they are assigned. Other staff are funded by the Game and Fish Fund or Off-Highway Vehicle account and can work only on projects relevant to those funds.

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[38] *Minnesota Rules* 2010, 7002.0016, subp. 1, and 7002.0250, subp. 1. Fee changes arose out of *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 3, directing the agency to "amend agency rules and, where legislative action is necessary, provide recommendations…on water and air fee changes that will result in revenue…to pay for regulatory services to the ethanol, mining, and other developing economic sectors."

[39] Hydrologists study the movement, distribution, and quality of water. Botanists study plants; ornithologists, birds; malacologists, mollusks; and entomologists, insects.

[40] *Laws of Minnesota* 2009, chapter 37, art. 1, sec 35.

Table 1.14: Staff and Costs Related to Environmental Review and Permits, Department of Natural Resources (DNR), Fiscal Years 2006-10

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Staff (full-time equivalent)					
Environmental review[a]	6.2	6.1	6.5	8.9	8.9
Water permits	8.0	8.3	7.7	8.8	7.8
Mining permits[b]	2.5	2.3	2.5	n/a[b]	3.5
Taking of endangered or threatened species permits	<.1	<.1	<.1	.1	.2
Compensation (salaries and benefits, in 1,000s)					
Environmental review	$ 436	$ 437	$ 474	$ 711	$ 720
Water permits	586	670	580	676	648
Mining permits[b]	182	186	197	n/a[b]	266
Taking of endangered or threatened species permits	7	4	5	10	17
Total Expenditures (in 1,000s)[c]					
Environmental review[d]	$1,838	$3,106	$2,453	$4,152	$4,519
Water permits	639	727	649	760	736
Mining permits[b]	202	210	231	n/a[b]	420
Taking of endangered or threatened species permits	8	5	6	11	18

[a] Figures reflect total work hours of staff who prepared environmental assessment worksheets (EAWs) or environmental impact statements (EISs) during the year. Those staff have other responsibilities, such as reviewing and commenting on EAWs prepared by other responsible governmental units. DNR has calculated actual time environmental review staff spent on EAW preparation each year, which ranged from 0.5 to 2.0 full-time equivalent staff.

[b] Obtaining data on staff and costs associated with permits to mine was complicated by a shift in accounting for the efforts and costs associated with these projects. For fiscal years 2006 through 2008, DNR provided estimates based on managers' financial reports and summary payroll reports. Fiscal year 2010 figures are based on a cost-coding system that the division created in response to a legislative directive and are more precise. Reliable data for fiscal year 2009, the year the division was transitioning to cost-coding, were not available.

[c] Total expenditures include compensation, benefits, and nonsalary expenditures. Nonsalary expenditures include items such as the unit's share of agency and division shared services (e.g., accounting, human resources, and support staff), publications, postage, supplies, travel expenses, and miscellaneous items. For the most part, units estimated nonsalary expenditures.

[d] Total expenditures for environmental review include contract and interagency expenditures related to preparation of EISs. These expenditures, which can be sizable, are paid by project proposers.

SOURCE: Office of the Legislative Auditor, analysis of Department of Natural Resources data.

ENVIRONMENTAL REVIEW IN OTHER STATES

The National Environmental Policy Act (NEPA), passed in 1969, requires environmental impact statements on major projects for which actions are taken by federal agencies or which are subject to federal permits or funded by federal dollars. State laws and rules, though, govern projects without federal actions.

Literature on states' environmental policies is not in complete agreement, but it suggests that 18 states including Minnesota (plus the District of Columbia) have environmental policy acts with provisions similar to those in NEPA. Table 1.15 lists the states. Of Minnesota's neighboring states, only Wisconsin and South Dakota are in this group, but South Dakota is less similar in that it does not mandate environmental review. Another 19 states have state-level environmental review policies and procedures that are less comprehensive, and they are in the

second tier of Table 1.15. These states typically have few requirements on the content or format of environmental reviews, and the reviews are usually required for only certain types of projects, for instance, those proposed in critical habitats. The final 13 states do not have formal environmental review requirements. Iowa and North Dakota are among them.

Table 1.15: State Environmental Review Practices

18 States with Provisions Similar to the National Environmental Policy Act (NEPA)[a]			
Arkansas[b]	Georgia[b]	***Minnesota***	South Dakota[e]
California	Hawaii	Montana	Virginia[d]
Connecticut	Indiana	New Jersey[c d]	Washington
District of Columbia	Maryland	New York	Wisconsin
Florida[b]	Massachusetts	North Carolina	
19 States with Environmental Review Provisions Less Comprehensive Than NEPA			
Alaska	Louisiana	Nebraska	Rhode Island
Delaware	Maine	Nevada	Texas
Illinois	Michigan	New Mexico	Utah
Kansas	Mississippi	Oregon	Vermont
Kentucky	Missouri	Pennsylvania	
13 States without Formal Environmental Review Requirements			
Alabama	Iowa	Oklahoma	Wyoming
Arizona	New Hampshire	South Carolina	
Colorado	North Dakota	Tennessee	
Idaho	Ohio	West Virginia	

[a] Among these states, the following do *not* have provisions that apply to proposals for private developments: Georgia, Indiana, Maryland, North Carolina, New Jersey, and Virginia. In North Carolina, local governments are authorized by state law to pass ordinances that subject certain private developments to environmental impact statements.

[b] Sources differ on whether Arkansas, Georgia, and Florida should be categorized in the top tier as having provisions similar to NEPA. For example, one source notes that Georgia "does not have a designated responsible [state] entity and its [act] has not been implemented since its adoption."

[c] Unlike the other states with provisions similar to NEPA, New Jersey's environmental review provisions were established primarily by executive order, not in state laws.

[d] According to one source, Virginia and New Jersey do not require public involvement in their environmental review processes, unlike other states in this tier.

[e] South Dakota does not mandate environmental review; for a given project, it is up to the responsible governmental unit to determine whether to conduct a review.

SOURCES: Zhao Ma, Dennis R. Becker, and Michael A. Kilgore, *The Integration of Cumulative Environmental Impact Assessments and State Environmental Review Frameworks* (St. Paul, MN: University of Minnesota, January 2009); Ma, Becker, and Kilgore, "Characterising the Landscape of State Environmental Review Policies and Procedures in the United States: A National Assessment," *Journal of Environmental Planning and Management*, 52, n. 8 (December 2009), 1035-1051; Daniel R. Mandelker, *NEPA Law and Litigation*, 2nd ed., release 8 (Thomson Reuters/West, July 2010); David Sive and Mark A. Certok, *"Little NEPAs" and Their Environmental Impact Processes* (American Law Institute/American Bar Association, June 2005); Nicholas Yost, *NEPA Deskbook*, 3rd ed. (Washington, DC: Environmental Law Institute, 2003), 44-46; State Environmental Resource Center, Issue: *State Environmental Quality Acts*, http://serconline.org/SEQA/stateactivity.html, accessed January 4, 2011; American Planning Association, *Planning and Urban Design Standards* (Hoboken, NJ: John Wiley & Sons, 2006), 590-591; and Diori L. Kreske, *Environmental Impact Statements: A Practical Guide for Agencies, Citizens, and Consultants* (New York: John Wiley & Sons, 1996).

Many states in the group of 18 that includes Minnesota have acts that share the following features. They have a single state entity to coordinate or oversee environmental reviews and issue guidelines.[41] A combination of statutes and administrative rules establish environmental review requirements, and the requirements pertain to actions proposed, funded, or approved by the state. Most have procedures for involving the public in the review, and about half have a mechanism for judicial review of environmental review decisions.[42] Plus, environmental reviews are required for certain state government actions, although the type of action varies considerably. For instance, in California, state actions refer not only to projects like housing developments but also to nonphysical actions, such as legislative proposals.

Minnesota is one of a handful of states where environmental review provisions apply to certain local decisions, not just state actions.

Minnesota is one of a handful of states with environmental review provisions that apply to certain *local* decisions, not just state actions. California, Hawaii, New York, and Washington are similar to Minnesota in this regard, although there is some disagreement in the literature on this point.[43] Regarding thresholds that trigger mandatory environmental review, Minnesota is also in the minority of the 18 states. California, Connecticut, Hawaii, Massachusetts, New Jersey, New York, and Wisconsin also have mandatory thresholds. In some of these states, the thresholds trigger environmental assessments; in others, they trigger EISs. Among neighboring states, Wisconsin is most like Minnesota, except that Wisconsin does not have 1) an oversight entity equivalent to EQB, 2) a mechanism for judicial review, or 3) environmental review requirements pertaining to local government actions.

In sum, Minnesota is among the states with the most extensive environmental review requirements. Minnesota's environmental review requirements apply to both state- and local-level actions, and they affect privately proposed projects, not just publicly initiated ones. Minnesota law and rules require responsible governmental units to undertake environmental review, unlike some states where the decision is discretionary. Certain types of proposed projects in Minnesota are required to undergo an EIS, whereas in other states, the EIS is done only for projects with the potential for significant environmental effects. Minnesota has explicit requirements for public review of environmental documents, and it is one of only a small number of states allowing environmental review via citizen petition. Finally, Minnesota's EQB provides a level of statewide rulemaking and coordination that many other states lack.

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[41] In Minnesota, this is the Environmental Quality Board, which maintains the rules governing the environmental review process and provides guidance to understand and use those rules.

[42] However, only a few other states have a petition process. For example, the Massachusetts Executive Office of Environmental Affairs may order an environmental review with a written petition from ten or more citizens.

[43] North Carolina authorizes but does not require environmental reviews by local governments, and its law applies only to local projects with state financial support. New Jersey's executive order is limited to state agency projects or those with at least 20 percent state financial assistance. Georgia excludes local actions unless half of the total cost (or more than $250,000) is government funded. See: Zhao Ma, Dennis R. Becker, and Michael A. Kilgore, "Characterising the Landscape of State Environmental Review Policies and Procedures in the United States: A National Assessment," *Journal of Environmental Planning and Management*, 52, n. 8 (December 2009), 1035-1051; and Noah D. Hall, "Political Externalities, Federalism, and a Proposal for an Interstate Environmental Impact Assessment Policy," *Harvard Environmental Law Review*, 32 (2008), 49-94.

On the other hand, in Minnesota an EAW is mandatory for only certain projects specified in rule, whereas other states require the equivalent to an EAW for all projects unless otherwise specifically exempted by state law. Plus, Minnesota's requirements apply exclusively to physical actions, such as housing developments, and do not apply to nonphysical actions, such as adopting regulations.

2 Complexity

The processes for environmental reviews and environmental permitting are often multilayered and can result in exceedingly technical and lengthy documents. Even though a single agency oversees an environmental review or issues a permit, the act of writing one can involve multiple government agencies and/or numerous staff. We found:

- **The processes for completing environmental reviews and issuing environmental permits can be highly complex.**

Complexity results from multiple factors, and in this chapter, we discuss two groups of them. The first is the content of the environmental review documents and permits and the processes used to produce them. The second group concentrates on complexity resulting from multiple interests, such as local, state, and federal levels of government, involved in an environmental review or permit. The following sections explore in turn each group of factors.

We limit this chapter to describing the processes' complexity. Subsequent chapters examine the timeliness of these complex processes and how well the environmental review process meets its objectives.

CONTENT AND PROCESS

The first factor that contributes to the complexity of the environmental review and permitting processes is the content of the documents and the many steps needed to produce them. Content includes the final written product and the tests, standards, modeling, and protocols followed to prepare the environmental documents and permits. State and federal rules detail the processes for completing environmental reviews and obtaining permits. In the following sections, we summarize just some of these complexities. We look first at environmental reviews, second at permits, and third at interactions between them.

Environmental Review

The environmental impact statement (EIS) process includes more steps than the environmental assessment worksheet (EAW) process, as Chapter 1 described, but both processes can be quite involved. In this section, we mainly discuss the EAW because it is required in all environmental reviews. We summarize the EAW process and identify some of its complexities, focusing first on the initial stages when the project proposers play the primary role and then on the latter stages when responsible governmental units manage the process. The EIS process is often even more complex. This is because an EIS must go through additional stages of analysis and review. EISs must consider alternatives to the proposed project and analyze environmental, economic, employment, and sociological impacts; income agreements must be reached between the proposer

and responsible governmental unit to pay for the analysis; and the presumption that a project entails potentially significant environmental effects requires the EIS to identify mitigation measures.

Initial Stages of the Process

The people proposing a project typically start the environmental review process when they approach their city or county officials or a state agency to discuss their project or apply for permits. At that time, the proposer may offer basic information on the project, and the government agency may provide a preliminary list of possible permits that will be needed. They may also discuss environmental review requirements, including whether the proposed project meets the criteria requiring a mandatory EAW or EIS or the pros and cons of a voluntary environmental review.

Once it has been determined that an environmental review is necessary, the proposer of the project is responsible for providing data to answer the 31 questions on the standard EAW form.[1] While this may sound straightforward, the data collection can be quite complex, and some proposers hire environmental consultants to develop the document and interact with the responsible governmental unit. For example, an EAW may include the need for several engineering tests, such as soil boring analyses, traffic impact analyses, noise impact modeling, and air quality impact modeling. Data collection may require the proposer to conduct technical studies. For instance, the proposer of a mining project may need to develop a work plan describing a pumping test required to evaluate groundwater flow and quality. The EIS developed for the expansion of U.S. Steel's Keetac facility noted a total of 41 technical studies, including studies of mercury emissions and wetland hydrology monitoring.

EAWs may need technical information, such as soil boring analyses and modeling for noise and air quality impacts.

Collecting data for the EAW may also require the proposer to contact various state or local agencies. As an example, one question on the EAW form asks whether the proposed site contains any endangered or threatened species, rare plant communities, or other sensitive ecological resources. Answering this question may require the proposer to contact Minnesota's Department of Natural Resources (DNR) to query its Natural Heritage and Nongame Research Program database of endangered and threatened species.

Minnesota's Pollution Control Agency (PCA) developed a 15-page set of instructions to guide proposers through the EAW form and help them understand what to do to collect appropriate information.[2] For example, answering a question on whether the project will generate odors, noise, or dust may require, among other things, determining expected quantities of particulate matter in sizes

[1] *Minnesota Rules* 2009, 4410.0400, subp. 3, says the proposer shall "supply any data reasonably requested by the [responsible governmental unit] which the proposer has in his or her possession or to which the proposer has reasonable access."

[2] Minnesota Pollution Control Agency, *How to Prepare an Environmental Assessment Worksheet for the MPCA* (St. Paul, May 2007). The Environmental Quality Board also has guidance on the environmental review process. See Environmental Quality Board, *EAW Guidelines: Preparing Environmental Assessment Worksheets*, (St. Paul, February 2000); and Environmental Quality Board, *April 2010 Errata & Updates for: EAW Guidelines* (St. Paul, April 2010).

of 10 microns or less and 2.5 microns or less. Table 2.1 lists several additional questions from the EAW form along with some of the corresponding PCA and the Environmental Quality Board (EQB) guidance that reveals the technical nature and depth of the responses that are needed from proposers.

Table 2.1: Select Questions and Corresponding Guidance from Environmental Assessment Worksheet Form, 2010

Question from Environmental Assessment Worksheet Form	Partial Guidance
• Are any endangered, threatened, or special concern species, rare plant communities, or other sensitive ecological resources on or near the site?	• The DNR Natural Heritage and Nongame Research Program survey should be completed. List the species present, discuss if they are sensitive to the type of impact caused by the proposed project, and potential mitigation.
• Will the project involve the physical or hydrologic alteration — dredging, filling, stream diversion, outfall structure, diking, and impoundment — of any surface waters?	• Discuss in detail any work undertaken for the Wetlands Conservation Act, or Section 404/401 of the Clean Water Act. Modifications of all wetlands should be discussed, not only "protected wetlands." The public waters inventory number and information on permits required in aquatic areas may be obtained from DNR.
• Discuss soil texture and potential for groundwater contamination from wastes or chemicals spread or spilled onto the soils.	• Describe the types of soils present using the Natural Resources Conservation Service classification system. Hydrologic atlases are published by the U.S. Geological Survey, while county geologic atlases and drinking water well logs are available from the Minnesota Geological Survey.
• Describe the type, sources, quantities, and compositions of any emissions from stationary sources of air emissions such as boilers, exhaust stacks, or fugitive dust sources.	• Include any modeling results such as for national and Minnesota ambient air quality standards, federal Prevention of Significant Deterioration requirements, or an air toxics review. Facilities that emit Hazardous Air Pollutants may also need to conduct an air emissions risk analysis.

SOURCES: Minnesota Pollution Control Agency, *How to Prepare an Environmental Assessment Worksheet for the MPCA* (St. Paul, May 2007); Environmental Quality Board, *EAW Guidelines* (St. Paul, February 2000); and Environmental Quality Board, *April 2010 Errata & Updates for: EAW Guidelines* (St. Paul, April 2010).

Latter Stages of the Process

After proposers collect the necessary EAW data, they submit the data to the responsible governmental unit, which is required to verify the accuracy of EAWs

and EISs.[3] This starts what is often an iterative cycle in which the responsible governmental unit reviews the submitted data, identifies deficiencies, and requests additional data from the proposer, followed by another review cycle.

Part of the responsible governmental unit's work may be analyzing a project's potential "cumulative effects" or working with other public agencies. State rules require an assessment of cumulative effects to understand whether the proposed project would, along with other related projects or anticipated future projects, cumulatively have the potential for significant environmental effects.[4] Before finalizing the EAW, some responsible governmental units submit draft documents to other agencies that are likely to have an interest. For instance, in one case we examined, prior to completing an EAW for an animal feedlot, PCA staff contacted DNR to discuss issues related to groundwater in the area.

After the responsible governmental unit deems the data for the EAW complete, it signs the EAW and submits the document to EQB, which publishes the availability of all EAWs. The responsible governmental unit also submits about two dozen copies of the EAW to a preset list of agencies and people, including the U.S. Environmental Protection Agency (EPA), DNR, PCA, and local government units where the project will take place.

The responsible governmental unit oversees the public review of the EAW and other steps through to the end of the EAW process. State rules require that all substantive and timely comments on the EAW must receive a response from the responsible governmental unit.[5] In practice, the proposer provides responses, especially when the questions deal with how the project will operate. One of the unknowns that may add complexity is the number and nature of comments and when they will arrive. Projects can generate comments that require collecting additional data or working with other agencies to respond. As an example from one of our case studies (which are described in Chapter 4), in response to a comment letter, the proposer of a project to expand an aggregate mine had to obtain and analyze updated information from DNR regarding a fen about which information had been omitted from a draft document. When numerous comments come in at the very end of the period, some responsible governmental units have found it difficult to research and write adequate yet timely responses.

Responding to comments submitted for an EAW may require the project proposer to collect additional data.

After writing responses to comments, the responsible governmental unit makes a decision on the need for an EIS. If it makes a negative declaration, an EIS is not required, and government agencies may then legally issue permits and approvals for the project. Conversely, if the responsible governmental unit declares an EIS is needed, the proposer must wait for completion of the EIS before receiving the permits needed to begin constructing the project. We next turn to the process for issuing state permits.

[3] *Minnesota Rules* 2009, 4410.0400, subp. 2.

[4] *Minnesota Rules* 2009, 4410.1700, subp 7.B.

[5] *Minnesota Rules* 2009, 4410.1700, subp. 4.

Permitting

Several aspects of environmental permitting contribute to a complex process. First, project proposers may have to obtain numerous permits prior to beginning a project. Second, the process that proposers must complete for each permit may be complex. Third, proposers may want to achieve environmental standards in nonstandard ways, requiring negotiations with the permitting agency. We discuss each of these elements below.

Required Permits

The number of permits that a project requires can add complexity to the environmental review and permitting processes. Minnesota rules determine which state permits a project will need. For instance, PCA rules on animal feedlots specify project conditions that will determine the need for one of four types of permits; they also specify when no permit is required.[6] Permits may also be required by the federal government or various local governments, including the city, county, and watershed district. For large projects, and those subject to both federal and state regulations, the number of permits adds up quickly. For instance, the draft EIS for the PolyMet Mining project in northeastern Minnesota listed 4 permits or approvals required from the federal government, 16 from the state, and 7 from local governments, for a total of 27.

For large projects, or those subject to both federal and state regulations, the number of required permits adds up quickly.

The number of permits required varies by type of project. We looked at the permits and other governmental approvals commonly required for projects with an EAW comment period during 2009 or the first half of 2010.[7] We grouped these EAW projects into one of nine categories, such as feedlots or industrial development. Table 2.2 lists the categories and shows that nearly all categories of projects needed at least eight different permits or other approvals. The table also shows that the number of common approvals and permits ranged from 18 for ethanol facilities to 4 for animal feedlots.[8] Permits required for industrial projects included at least the following: city or county building permits and grading permits; road access permits from a city or the Minnesota Department of Transportation; DNR permits on public waters work; PCA-issued permits on industrial storm water, construction storm water, and aboveground storage tanks; and a "Section 404" permit related to the federal Clean Water Act and covering discharges into U.S. waters.

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[6] *Minnesota Rules* 2009, 7020.0405, subps. 1 and 3. Chapter 3 briefly describes the four types of permits for animal feedlots in Minnesota.

[7] Examples of "other governmental approvals" are licenses, zoning approvals, approval of compliance with the Wetland Conservation Act, and approvals of plans, such as construction plans or planned-unit development plans. No ethanol projects had a public comment period during the time frame we reviewed so we identified four ethanol projects that had public comment periods prior to January 2009.

[8] To be counted in this analysis, an approval or permit had to be listed for at least two projects in the category. If a project required a unique permit or approval that other projects in the category did not, such as a youth camp permit for a proposal in the recreational category, that approval or permit was not counted. Thus, the number of permits or approvals for an individual project may exceed the numbers shown in Table 2.2.

Table 2.2: Permits and Approvals Commonly Required of Private Sector Projects Undergoing Environmental Review, 2009-10

Category of Project	Number of Projects Reviewed	Number of Permits or Approvals Commonly Required[a]
Ethanol	4	18
Mining (nongravel)	5	15
Commercial development	8	10
Residential development	3	10
Mixed commercial, industrial, and residential development	3	10
Resort/camping/outdoor recreation	7	9
Industrial development	4	8
Mining (gravel and aggregate)	5	8
Feedlots	7	4

NOTES: Except for ethanol facilities, projects are private sector projects for which the environmental review process included a public comment period between January 1, 2009, and June 30, 2010. Ethanol projects in this analysis went through environmental review prior to the time period of the other projects because no ethanol projects fell within the time frame used for other categories of projects. We grouped projects into categories based upon descriptions in the *EQB Monitor*.

[a] To be included in the count of required permits and approvals, the permit or approval had to be required for at least two projects in a given category. Thus, the actual number of required permits for any given project may exceed the numbers shown here.

SOURCE: Office of the Legislative Auditor, analysis of environmental review documents.

Permit Processes

The process for obtaining each permit a proposer needs might itself be complex. Each permit has its own process, and the processes vary in terms of what is required of applicants and government staff. For example, proposers for most projects that require a construction storm water permit can submit the application to PCA online and coverage is effective in a matter of days. In contrast, proposers of complex or controversial projects that need an air quality permit are told to allow at least 9 to 14 months from submission of a complete application to issuance of the permit. For complicated projects, state rules recommend that applicants meet with Air Quality Unit staff prior to submitting an application.[9]

To further illustrate the complexity, we describe the permit process for two water-related permits: wastewater permits issued by PCA and water appropriation permits issued by DNR.

Wastewater Permit Process

In contrast to the fairly simple process for many construction storm water permit applicants, the application process for federal industrial wastewater permits

[9] *Minnesota Rules* 2009, 7007.0500, subp. 1.B.

issued by PCA can be quite complex. The complexity reflects in part the size and scope of the projects that need these permits and federal requirements and regulations. PCA endeavors to issue these permits as comprehensive water quality management permits and, as such, they may cover several different wastewater types and activities. State rules require that applicants submit permit applications at least 180 days before the planned start of their proposed project or activity.[10]

The federal application for an industrial wastewater permit not only must include general descriptive information about the location and nature of the proposed project, but also requires the applicant to: (1) describe the pollutants discharged, which for major industrial facilities can number in the hundreds; (2) identify the receiving waters and water quality impacts; and (3) design wastewater treatment plans. Among other materials, applicants must include line drawings of water flow through their facility and describe each process, operation, or production area that does or will contribute to the discharge.

Upon receiving an application, a PCA water quality permit writer reviews it for completeness. Several iterations between PCA staff and the applicant may be needed to achieve a complete and accurate application. Once the application is complete and accurate, for each pollutant a permit writer develops a "technology-based effluent limitation," while effluent-limit staff determine a "water-quality based effluent limit."[11] Water-quality-based effluent limitations are based on (1) the water quality standards for the water receiving the discharge and (2) a determination of the discharge that would allow the receiving water to remain in compliance with water quality standards in state rules. The more stringent of the technology-based or water-quality based limits becomes the applicable limit for the pollutant.

Applications for wastewater permits may require hydrogeologists to set certain effluent limits if the project includes potential for groundwater impacts.

Some wastewater permit applications involve additional staff. For example, if the project includes potential for groundwater impacts, such as through spray irrigation using treated wastewater, a PCA hydrogeologist will be involved with setting water-quality based effluent limits. As another example, if a project includes proposed wastewater treatment systems, a staff engineer will review the plans and specifications for compliance with construction standards. Engineers may also assist with development of the technology-based effluent limit standards.

According to the U.S. EPA, permit writers spend a majority of their time deriving the appropriate effluent limits to include in the permit, and according to staff in

[10] *Minnesota Rules* 2009, 7001.1040, A.

[11] An effluent limitation is a restriction on "quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the state." See *Minnesota Rules* 2009, 7001.1020, subp. 13. EPA has set effluent limitations based on "best practicable control technology" and "best available technology" for approximately 50 industry sectors. The technology-based limitations that will apply to the applicant depend on the industry sector in which the applicant operates. If the applicant does not operate in one of the 50 industries for which EPA has set limitations, then PCA must determine the technology-based limitations.

PCA's Water Quality Permits Unit, this step is the most difficult.[12] Staff said effluent limits can be derived relatively quickly, but the applicability and implementation of the effluent limits is where proposers raise legal challenges about the limits for particular pollutants or the state's policy of protecting state waters from degradation. For example, a proposer might challenge whether the data PCA used to derive the limit were sufficient and sound. This may necessitate collection of additional data.

In some cases, the water-quality based effluent limits may be very low, even below levels that can be achieved with current technology. In those cases, PCA works with the proposer to create a compliance schedule that will allow the proposer to evaluate various technologies that might be able to achieve the effluent limit. The goal of the schedule is to achieve compliance with the effluent limit as quickly as possible.

After drafting the permit and conferring with the project proposer, agency staff prepare a public notice, which starts a public comment period. During this period, interested parties may challenge PCA on, for example, the effluent limits or the compliance schedule specified in the draft permit. New information that comes to light during the public comment period may require recalculation of some limits. PCA either issues or denies the permit after reviewing and responding to public comments.

Water Appropriation Permit Process

According to staff from DNR's Waters Division, even a "simple" water appropriation permit may be complicated, requiring numerous discussions with an applicant. The division has created an eight-page letter outlining what project proposers need to submit for the division to evaluate a proposal for water appropriation. In addition, a separate document outlines the process for obtaining a water appropriation permit and urges proposers to contact the DNR hydrologist in their area for help identifying potential areas of concern and discussing application requirements.

For water appropriation permits, DNR staff evaluate the projects' potential impacts on aquifers, surrounding wells, and surface waters.

The process begins when a proposer submits a permit application. The application is more than a simple form. For example, an application for use of wells to appropriate water for nonirrigation purposes requires, among other things, a map or aerial photo of the project site that identifies and provides information on all wells within 1.5 miles of the proposed wells.

DNR staff must evaluate the potential impacts of the proposed water appropriation on the source aquifer, surrounding wells, and surface waters. Depending on the location of the project, the department may have to evaluate the impact on particular natural resources, such as trout streams or calcareous fens.[13] Before DNR can take final action on a permit, an applicant must construct production wells, and an aquifer test lasting up to 30 days may be

[12] U.S. Environmental Protection Agency, *Water Permitting 101*, 7; www.epa.gov/npdes/pubs/101pape.pdf; accessed January 16, 2011.

[13] Calcareous fens are wetlands with conditions supportive of rare plants, according to www.dnr.state.mn.us/snapshots/ecosystems/bogs_fens.html.

required.[14] During the aquifer test, the project proposer needs to monitor the impact of the test on any of the surrounding wells specified by DNR. If DNR staff note that the proposed appropriation interferes with surrounding wells, they determine the cause, and the applicant may need to change the project requirements. Local governments have 30 days to review and make a recommendation on the permit application and, for certain large water appropriations, legislative approval is required.

Permit Negotiations

Finally, complexities can arise when the permitting agency negotiates with applicants on how the project will comply with environmental standards. A permit contains standard requirements that permit holders must meet. For example, state rules require applicants for certain animal feedlot permits to provide to PCA several plans, including an air emissions plan and a manure management plan, with details on activities for compliance with permit standards. While the plans are not discretionary, how the standards are met can vary by project. The negotiated provisions can produce complexities that require additional work and time to ensure compliance. As an example, state rules specify numerous permitted activities for ferrous mining operations, such as the design and construction of stockpiles of extracted material. But staff in DNR's Mining Reclamation Unit told us that companies can propose alternatives to the rules' requirements, and DNR will research or test the acceptability of the alternative.

In an example from our case studies, Kandiyohi County worked with the proposer of the Concrete Products of New London aggregate mining operation before issuing a conditional use permit. The EIS for the project included criteria to direct reclamation of the mined areas, including a criterion on the timing and sequence of future on-site reclamation. The conditional use permit stated that, at any given time, no more than 80 acres could be open for extraction, processing, and stockpiling, and no more than an additional 80 acres could be open for mining. County staff said they arrived at the acreage after deliberating over what amount would allow the proposer to conduct his operations while still keeping on pressure to continue reclamation of the mined land.

Interaction between Environmental Reviews and Permits

The interaction between environmental review and permitting processes can also create complexities. Even though environmental review and environmental permitting are separate processes, the two are linked in part because state law prohibits public agencies from issuing permits until environmental review is

[14] An aquifer test draws water from the aquifer—or groundwater source—to determine the impact of the proposed water use on the aquifer.

completed.[15] Tied to this, state rules say that one purpose of environmental documents is to guide the issuance or denial of permits, as Table 2.3 shows.[16]

Table 2.3: Purposes of Environmental Review

The purpose of environmental review is to aid in providing an understanding of the impact that a proposed project will have on the environment through the preparation and public review of environmental documents.

The environmental documents shall:

- contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process;
- be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality; and
- not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved.

SOURCE: *Minnesota Rules* 2009, 4410.0300, subp. 3.

EAW information is supposed to inform the writing of the permits. From speaking with responsible governmental units, we learned that work needed to write permits is often done concurrently with that for the EAW, especially when EAW staff and permit writers are from a single agency. As the EAW is being prepared, permit writers may be involved to ensure that technical issues are properly addressed. For an EAW on an animal feedlot, for instance, PCA staff developing the EAW joined the PCA permit writer on a site visit to discuss with the project proposer issues related to overland flooding. Staff preparing EAWs and permit writers acknowledged that their work must proceed hand-in-hand to ensure that project plans meet existing regulations. This coordination occurs less, however, when one agency serves as the responsible governmental unit and other agencies write permits.

Complexity arises in timing the environmental reviews so that they are completed before government agencies issue any permits.

Complexity comes from the need to coordinate the timing of the environmental review so that it is completed before any permits are issued. Often projects require permits from public agencies at a level of government different from the responsible governmental unit, which can introduce difficulties. Among the 14 case studies we reviewed, we learned of two instances where a local unit of government issued a permit before the EAW process concluded. The issuing agency was unaware of the timing requirement prescribed in law.

Completing environmental review—of whatever complexity—does not guarantee that a project receives all permits or is built. In one of our case studies, for instance, an EAW was completed for Marathon Petroleum's proposed rail yard expansion, but the proposal was stopped when it could not obtain a local conditional use permit. Another example is an Xcel Energy ash disposal facility

[15] *Minnesota Statutes* 2010, 116D.04, subd. 2b.(1)-(4).

[16] *Minnesota Rules* 2009, 4410.0300, subp. 3.

that went through an EIS process. After the responsible governmental unit determined that the EIS was adequate, the Legislature passed legislation imposing a two-year moratorium on siting landfills, which included the Xcel Energy facility.

MULTIPLE INTERESTS

A second factor that can add complexity to environmental review and permitting is coordinating and communicating with various parties and interested groups. Many agencies and levels of government may be involved with projects undergoing environmental review. Their involvement reflects their respective decision-making and regulatory responsibilities. For instance, because Minnesota law gives authority for land-use decisions to local governments, these agencies issue conditional use permits for projects. Projects involving water may require permits from or review by PCA, DNR, a local watershed district, a soil and water conservation district, a city, a county, and the U.S. Army Corps of Engineers.

In one example of a proposed asphalt storage project, at least 18 PCA staff contributed to the environmental review and permitting activity.

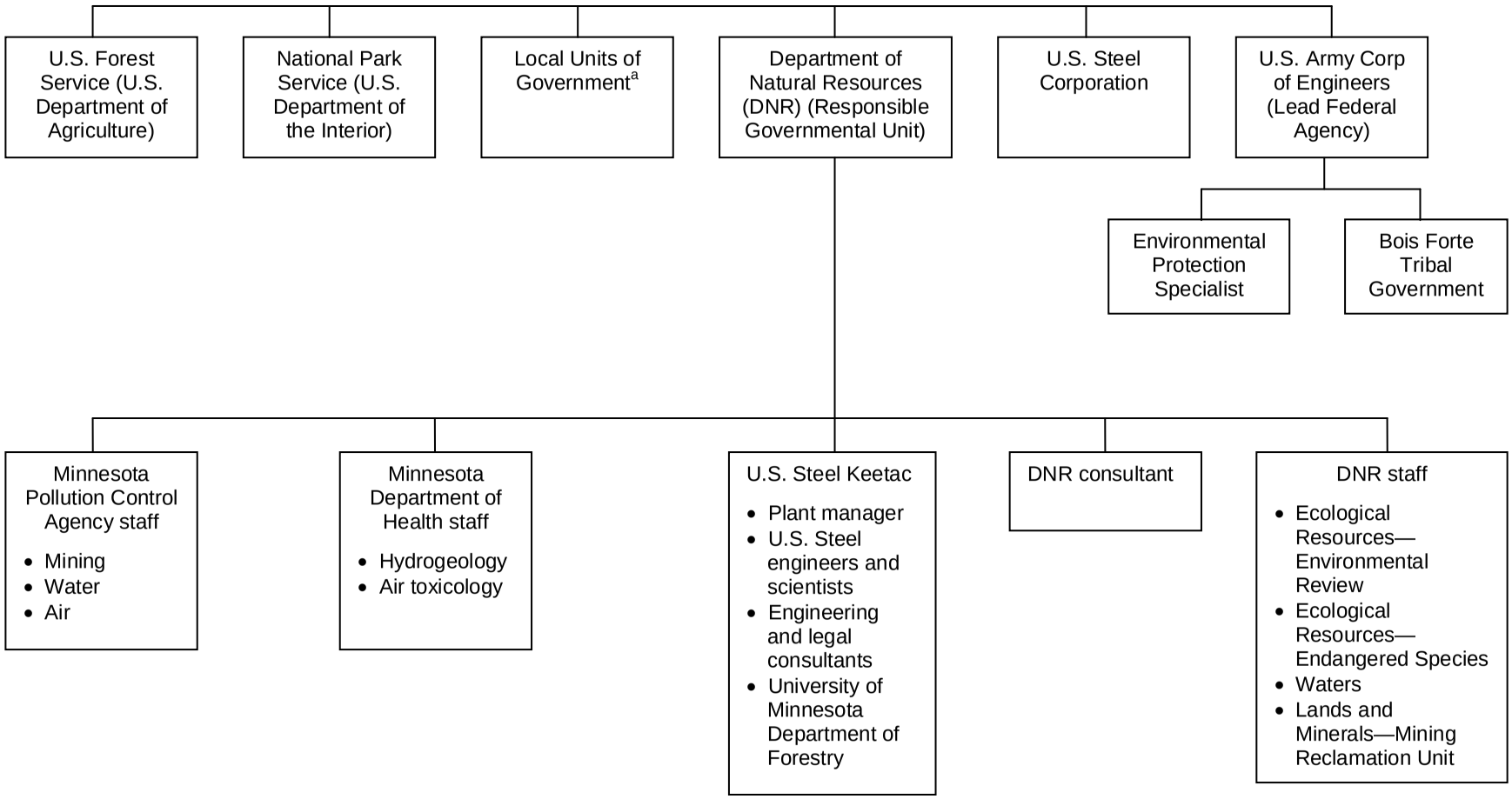
A chart from one of the EISs we reviewed illustrates the more extreme end of complexity and is pictured in Figure 2.1. This particular project involved three federal agencies (the U.S. Department of the Interior, U.S. Department of Agriculture, and U.S. Army Corps of Engineers), three state agencies (PCA, the Department of Health, and DNR), the Bois Forte Tribal Government, and several local governments.[17] In addition, multiple units within agencies were represented. For example, DNR staff included those from the Waters, Lands and Minerals, and Ecological Resources divisions.

Although EAWs are generally less complex than EISs, even EAWs can be complicated by multiple government agencies or units within agencies. The EAW and permitting for the Asbury Asphalt Bulk Storage project is one example. Within PCA, at least 18 staff contributed to the environmental review and permitting activity for this proposal. Staff included a project manager from the Environmental Review Unit and engineers and other technical specialists from the areas of air quality, water quality, and aboveground storage tanks.

In addition, depending on the project, environmental groups and members of the public may have an interest. As was shown in Table 2.3, state rules specify that part of the purpose of environmental review is to prepare and publicly review environmental documents. Public comment periods are built into the EAW and EIS processes. For instance, three separate public review periods are prescribed for the EIS process. Only some permits require a public comment period; DNR's water appropriation permit, as an example, is issued without one.

[17] The scoping EAW for the project listed Itasca and St. Louis counties and the cities of Hibbing, Keewatin, and Nashwauk as the known local governments with permits or approvals required.

Figure 2.1: Entities Involved in Keetac Mine Expansion Environmental Impact Statement



NOTE: As the responsible governmental unit, DNR was the lead agency on the Keetac environmental impact statement.

[a] According to the scoping environmental assessment worksheet, local governments with an interest in the project included Itasca and St. Louis counties and the cities of Hibbing, Keewatin, and Nashwauk.

SOURCE: Office of the Legislative Auditor, abridged version of chart in Department of Natural Resources project files and other documents.

By itself, public involvement may not add much complexity to a proposal; however, it can when proposals generate heightened interest. For these cases, additional steps may be necessary. For instance, early and intense public interest in the proposed MinnErgy ethanol facility led to two public meetings that would not typically have been held. One meeting occurred before the proposer had submitted data for the EAW and a second after the data were submitted but prior to publishing the EAW document. In addition, draft versions of the EAW were circulated at the request of citizens, and public comments came to the responsible governmental unit even before it released the official EAW.

3 Timeliness

Processes that allow for the timely completion of environmental review and permitting while protecting the environment are critical to Minnesota's environment and business climate. In fact, a key impetus for this evaluation was concern that these processes delay businesses' plans. Especially for new businesses and those proposing changes to their operations, successfully completing environmental review and obtaining permits may be required before they can implement their plans. This chapter focuses on the time involved in these processes. First, though, we discuss an impediment to in-depth analysis of the timeliness and efficiency of these processes.

INFORMATION GAPS

We undertook an analysis of environmental review and permitting in part to document the time involved in these processes and explore what contributes to it. As we described in Chapter 1, local governments completed most of the environmental reviews for the period we evaluated. However, since most local governments are involved in environmental reviews only sporadically, we limited our review of their timeliness to the several local governments that managed an environmental review process among those selected for our case studies.[1] Local governments also issued environmental permits. We concluded that obtaining data on permits from all local governments would be unmanageable. Thus, we focused primarily on the Pollution Control Agency (PCA) and the Department of Natural Resources (DNR) for this analysis, and sought data that would show dates of milestones in the environmental review and permitting processes.[2] Such data are critical to an objective assessment of the amount of time these processes take and identification of systemic issues that may need improvement.

Even though we limited our evaluation to private sector businesses, it encompassed dozens of environmental reviews and thousands of permit applications.

Even though we focused our evaluation on private sector businesses, our review encompassed dozens of environmental reviews and thousands of permit applications. As we showed in Chapter 1, PCA received over 9,600 applications from private sector businesses between fiscal years 2006 and 2010, and applications to DNR numbered over 1,300.[3] Although PCA and DNR made concerted efforts to provide us with information that would allow us to evaluate the timeliness of environmental review and permitting, we found:

[1] We completed 14 case studies of environmental review with a record of decision between January 1, 2009, and June 30, 2010. Nine of the case studies involved EAWs or EISs managed by local governments. The case studies and criteria we used to select them are described in Chapter 4.

[2] For example, we wanted data showing dates when the agency (1) received an application; (2) began working on the application; (3) provided substantive comments to the proposer, perhaps seeking additional information; (4) received responses from the proposer; (5) deemed the application complete; (6) began and ended the public comment period, as applicable; and (7) took final action on the permit application or environmental review.

[3] In addition to excluding public sector applicants and applications from individuals for personal use, we excluded applications for some minor changes to permits.

- **PCA and DNR lack adequate data needed to measure the timeliness of the processes for environmental reviews and priority permits, monitor compliance with timeliness requirements in state statutes and rules, and identify areas for improvement.**

Neither PCA nor DNR routinely compiles detailed information on the time required to complete environmental reviews or issue priority permits. By priority permits we mean permits for which timeliness is important to the applicants and the time taken to issue the permits presents opportunities for improvement. Both agencies had partial information on these processes. However, the content and format of available information made detailed, systematic, and timely assessment of performance impossible.

These information gaps hindered our evaluation, but they also hinder the ability of the agencies to respond to questions and identify opportunities to improve their processes. For example, as permitting has come under greater scrutiny, PCA staff have received numerous requests for information on their processes. Staff have compiled the data necessary to answer questions, diverting them from other tasks. In one case, PCA needed six to eight weeks to fulfill only part of a request from a nonprofit business association seeking information on pending permit applications. In the following sections, we highlight the key content and format issues we encountered.

Content

Neither DNR nor PCA records dates for all the various phases of environmental reviews they conduct or priority permit applications they process.

DNR and PCA do not record dates delineating all of the various phases of environmental reviews they conduct or priority permit applications they process. For instance, neither agency consistently records when it deems a permit application complete, in spite of timeliness requirements in state statutes and rules tied to complete applications.[4] DNR's database for water permits did not include the date the agency received an application or the date it issued a permit. PCA data included permit application and issuance dates, but did not consistently include other timeliness information. The information PCA provided about its air quality permits was an exception. Those data included additional dates, some of which we used in our analysis.

Format

A compounding factor was that much of the information DNR and PCA had was in formats that made it difficult to compile or retrieve. At DNR, even the most basic information, such as the date the agency received an application, was in narrative documents rather than summarized in electronic databases. We

[4] For example, state statutes require that PCA take final action on feedlot permits within 60 days of receiving a complete application. See *Minnesota Statutes* 2010, 116.07, subd. 7 (b). For air quality permit applications for new construction or a major modification, *Minnesota Rules* require PCA to have completed the public comment period within 12 months of receiving a complete application. See *Minnesota Rules* 2009, 7007.0750, subp. 2.A. State statutes require DNR to act on a water appropriation permit within 30 days of receiving the application and required data, as long as the appropriate fee has been paid. See *Minnesota Statutes* 2010, 103G.305, subd. 1, and 103G.315, subd. 12.

compiled data on DNR's timeliness issuing water permits by reviewing hundreds of individual permits. We also reviewed dozens of environmental review files at DNR and PCA to try to extract the information needed to construct data on timeliness of different phases of the process. DNR needed months to review its paper files to provide us with basic information on the time it took to issue mining permits.

Most PCA permitting data were stored in electronic databases. This enabled the agency to give us permit application and issuance dates for thousands of permits. However, the electronic data were also problematic. Archaic databases used by most of the agency's permitting sections made it difficult or impossible for PCA to produce accurate data in a timely manner. For example, the initial data PCA extracted for its wastewater permits erroneously indicated that the agency issued some permits prior to the date proposers applied for them.[5]

RECOMMENDATION

PCA and DNR should improve the value of their data by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits. Doing so will enable them to report on agency performance, identify opportunities for improvement, and change their processes when necessary.

Assessment and improvement of environmental review and permitting require the ability to measure, monitor, and report on a continuous basis. This would allow for thoughtful consideration of all contributing factors to timeliness and a reasoned and responsible approach to implementing change. Ideally, it would prevent mistaking isolated events as systemic failures and provide opportunities for constructive problem solving.

PCA and DNR should compile timeliness data for those permits that offer the potential for meaningful improvement—not those that are already issued in a matter of days.

As we described above, each agency has some timeliness data—DNR chiefly in narrative documents and PCA primarily in electronic databases. The information would be more valuable if the agencies compiled dates of key milestones for environmental reviews and priority permits; an electronic database would allow for timely access and analysis. As we discussed in Chapter 2, the environmental review and permitting processes can be complex, with many iterations required before completion. Based on their experience with their own processes, it would be important for each agency to determine the key dates that would assist them in monitoring their performance and compliance and identifying opportunities for improvement. In addition to providing valuable information for assessing performance, compiling thorough and consistent information may lessen the staff time needed to respond to ad hoc requests.

We think implementation of this recommendation should focus on environmental reviews and priority permits for which additional data would meaningfully contribute to reporting on performance and identifying areas for improvement.

[5] These errors did not necessarily reflect errors in the underlying data, but rather the way information is stored in the database and the difficulty retrieving it to respond to our data request.

PCA already identifies certain permit applications as "high priority" and is developing a database to compile information on them. The high priority applications typically are related to new construction or expansion for which the applicant needs a permit before moving forward with the project. By this definition, high priority applications are a small fraction of the applications the agency receives. For example, we applied criteria suggested by PCA to identify these permit applications in the air quality permit data and found 68 high priority applications among the 1,153 air quality permit applications the agency received from private sector businesses between fiscal years 2006 through 2010. For this relatively small number of time-sensitive permits, which can take a long time to issue, additional information on timeliness could help identify opportunities for process improvements. In contrast, PCA processes other types of permit applications quickly, with a large number of applications processed in a matter of days. For these permits, compiling additional data for reporting and to look for opportunities to improve timeliness would not be a wise use of resources.

Collecting and compiling information have costs, both in terms of staff resources and information technology. Given the resource constraints of state government, PCA and DNR should focus their efforts in areas that have recently been and are likely to remain under scrutiny, including environmental review, priority air and water quality permitting, and mining permitting.

PROCESS TIME LINES

The following sections present information on overall time lines of the environmental review and permitting processes when implemented by PCA or DNR. We also include information for a limited number of EAWs in which local governments completed the environmental review. Due to the data limitations described in the previous section, we were unable to analyze the time lines in as fine a detail as we had intended. Instead, we have focused on broad phases, as described below. We also discuss and provide examples of some of the circumstances that affect the time lines of the environmental review and permitting processes.

Environmental Review Process

As described in Chapter 2, environmental review can be an involved and complicated undertaking. In fiscal years 2007 through 2010, PCA published 52 EAWs for private sector projects and rendered decisions on them. During the same period, DNR completed four private sector EAWs and worked on six environmental impact statements (EISs) for private projects. We focused on the more common EAW document and found:

- **The days taken by DNR, PCA, or our small sample of local governments to complete environmental reviews varied greatly, and variations seemed to reflect individual project circumstances.**

The number of days between an agency's receipt of data for an EAW to its decision on the need for an EIS ranged from 39 to nearly 800 days.

Table 3.1, which includes eight local government EAWs from our case studies, shows that the number of calendar days between an agency's receipt of data for an EAW to the agency's decision on the need for an environmental impact statement (EIS) ranged from 39 days to nearly 800 days.[6] For example, the calendar days required for PCA to complete EAWs for ethanol projects ranged from 177 days to more than 500 days, while days needed for feedlot EAWs ranged from fewer than 80 calendar days to almost 550 days. Over all project types, PCA completed half of the EAWs it managed in fewer than 181 days, or about six months. DNR required over 400 days to complete its most time-consuming EAW, but only 70 days to complete the EAW of shortest duration. The eight local government EAWs from our case studies took between 39 and 195 calendar days to complete.

Table 3.1: Days to Complete Environmental Review for Private Sector Projects Needing Environmental Assessment Worksheets, Fiscal Years 2007-10

		Days to Complete[a]		
	Environmental Assessment Worksheets	Minimum	Median	Maximum
Pollution Control Agency	52	76	181.0	785
Ethanol projects	10	177	292.0	511
Feedlot projects	35	76	148.0	546
Industrial projects	7	125	199.0	785
Department of Natural Resources[b]	4	70	333.5	406
Local government units[c]	8	39	119.5	195

NOTES: Except as noted, the table reflects environmental assessment worksheets (EAWs) published in fiscal years 2007 through 2010 for which the responsible governmental unit made a decision on the need for an environmental impact statement (EIS) by the end of fiscal year 2010. Only EAWs for private sector projects are included.

[a] Days reflect the calendar days between the date the government agency received initial data for an EAW from the project proposer and the date of the agency's decision on the need for an EIS. Contact may have occurred between the proposer and agency prior to the proposer submitting the initial data. Initial data provided by a project proposer may not be complete. Incomplete data submittals likely prolong the EAW process.

[b] Two of the EAWs completed by DNR were for metallic mining projects; one was for a gravel mining project, and one was for a scenic trail.

[c] The local government unit EAWs are from our case studies. We selected case study EAWs from those completed in 2009 or the first half of 2010. They cannot be generalized as representative of all local government EAWs. The eight EAWs included four commercial projects, two recreational projects, one mining project, and one residential project.

SOURCE: Office of the Legislative Auditor, review of Pollution Control Agency, Department of Natural Resources, and case study environmental review documents.

[6] This time range reflects the official process outlined in Chapter 1. It may understate a project proposer's perspective of the full length of the EAW process because a project proposer often has contact with the state agency prior to submitting initial data for an EAW.

We reviewed EAW documents and interviewed agency staff and participants from our case studies to understand why the EAW process is more time consuming for some projects than for others. Our review identified no single explanation for the differences in days needed to complete the EAW process. Instead, the time required for the process seemed to depend on project circumstances. In the following sections, we discuss environmental review time lines in the context of four phases: (1) preapplication phase, (2) preparing the EAW for publication, (3) allowing for public comment, and (4) rendering a decision on the need for an EIS. We conclude the discussion of environmental review with information on the time involved with the EIS process and our recommendations.

Preapplication Phase

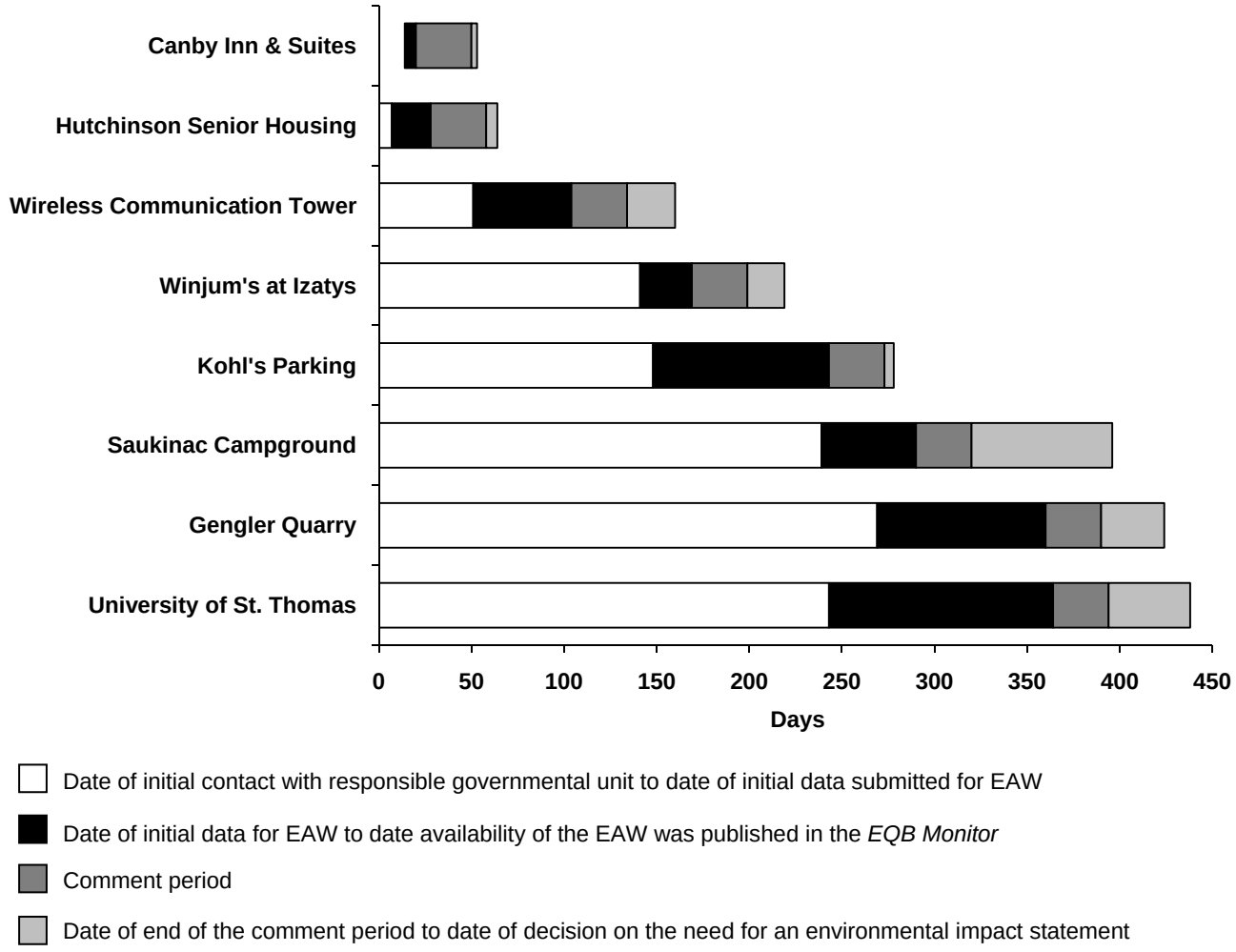
As we described in Chapter 1, the official environmental review process outlined in Minnesota's statutes and rules begins when a project proposer submits data for an EAW to the responsible governmental unit. However, prior to submitting EAW data, a proposer and government staff may meet to discuss the proposed project, the EAW process, and issues that the EAW should address. Additional conversations may ensue before the proposer finally submits data to the responsible governmental unit. Because project proposers might perceive these meetings and discussions as part of the EAW process, we were interested in measuring how long this "preapplication phase" takes.

Although not part of the formal EAW process in state rules, the preapplication phase for the EAWs managed by local governments in our case studies took from a few weeks to nine months.

Figure 3.1 shows the EAW phases for the eight local government EAWs from our case studies, and Figure 3.2 shows the same information for DNR's recent EAWs for private sector projects.[7] The preapplication phase, which is represented by the white portion of the time lines in Figures 3.1 and 3.2, can be lengthy. For example, as illustrated in Figure 3.1, about eight months elapsed during this phase for the proposed University of St. Thomas student center and athletic complex. In that time, the city met with representatives of concerned neighbors, arranged financing for a consultant to oversee EAW development, and worked with neighbors and the proposer to select and hire the consultant. During the nine-month preapplication phase for the Gengler Quarry expansion, the county waited while the project proposer had the property surveyed and gathered information for both the EAW and the conditional use permit. For the project with the longest timeline in Figure 3.2, DNR received initial data from the proposer in March 2006, but an introductory e-mail from DNR to the proposer dates from over a year earlier.

[7] Information on preapplication time periods was not consistently available for EAWs for which PCA was the responsible governmental unit so we do not have a similar figure for those projects.

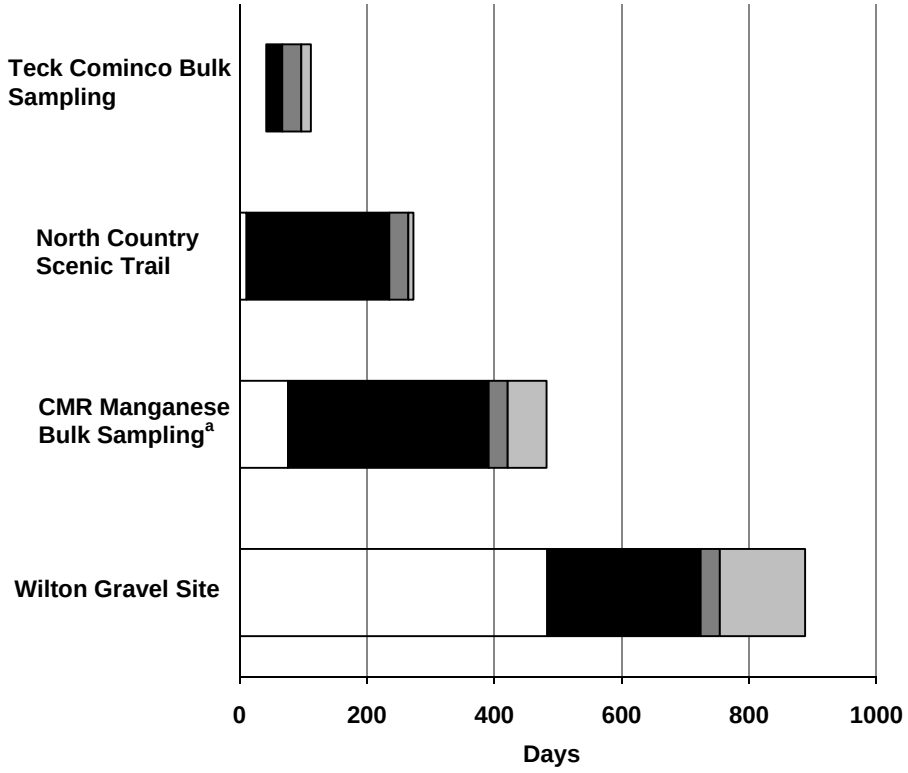
Figure 3.1: Case Study Environmental Assessment Worksheet (EAW) Phases, Private Sector Projects, Fiscal Years 2009-10



NOTES: Each bar of the figure represents the time line of an EAW managed by a local government from one of our case studies. We selected case study EAWs from those completed in 2009 or the first half of 2010. They cannot be generalized as representative of all local government EAWs.

SOURCE: Office of the Legislative Auditor, case study analysis, October through December 2010.

Figure 3.2: Phases of Department of Natural Resources Environmental Assessment Worksheets (EAWs), Private Sector Projects, Fiscal Years 2007-10



- Date of initial contact with responsible governmental unit to date of initial data submitted for an EAW
- Date of initial data for EAW to date availability of the EAW was published in the *EQB Monitor*
- Comment period
- Date of end of the comment period to date of decision on the need for an environmental impact statement (EIS)

NOTES: Each bar of the figure represents the time line of an EAW published by the Department of Natural Resources in fiscal years 2007 through 2010 for which a decision on the need for an EIS was made during the time period. Only EAWs for private sector projects are included.

[a] We identified the initial data submittal for this project as preliminary data provided by the proposer in April 2009. The proposer considered its first "official" submittal to have occurred in November 2009. Using that date instead would make the depicted preapplication phase longer and the EAW preparation phase shorter.

SOURCE: Office of the Legislative Auditor, analysis of data from Department of Natural Resources environmental review project files and interviews.

As the University of St. Thomas and Gengler Quarry examples illustrate, valuable work can occur during the preapplication phase. Staff from PCA and DNR also told us that this phase can be valuable. PCA staff said these early meetings can save time in the long run by helping proposers understand the process and issues they need to consider. DNR staff commented on the value of preapplication meetings for setting project scope and expectations and noted that a long preapplication phase may indicate that the department alerted a project proposer to issues that needed to be addressed before the project would be ready for the environmental review and permitting processes.

Preparing the EAW

This phase begins the official EAW process outlined in statutes and rules. It begins when a project proposer submits required data to the governmental unit responsible for preparing the EAW. The phase ends when the agency publishes the worksheet. As we described in Chapter 2, during this phase, the agency may need to work with the project proposer for clarifications or to obtain information and analysis missing from the original data submission. According to state rules, the responsible governmental unit has 35 days after it receives a complete data submittal to publish the EAW.[8] Since neither PCA nor DNR keeps track of the date staff deem information to be complete, we were unable to determine compliance with this requirement.

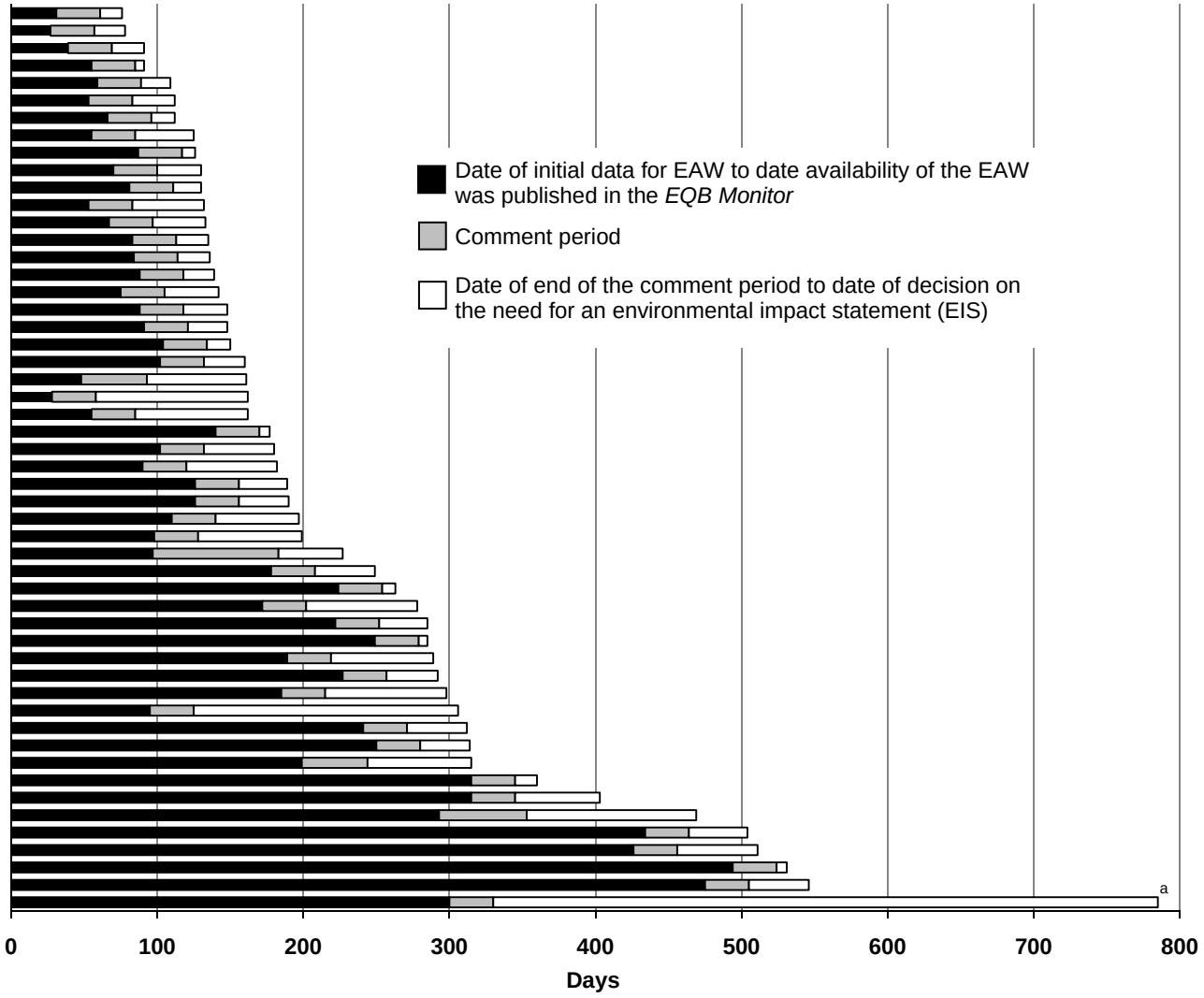
EAW preparation was usually the longest of the three phases in the official process for the private sector EAWs managed by PCA or DNR between fiscal years 2007 and 2010.

Figures 3.2 and 3.3 show that the EAW preparation phase was usually the longest phase in the official process for the private sector EAWs managed by PCA or DNR between fiscal years 2007 and 2010. In almost three-quarters of these EAWs, this phase of the EAW process accounted for over half of the total time from an agency's receipt of the initial data to its decision on the need for an EIS. Since it was usually the longest, this phase is the one most likely to offer opportunities for improved timeliness for these agencies. Figures 3.2 and 3.3 also show that the calendar days needed to complete this phase varied greatly.

Table 3.2 shows the variation in calendar days spent on this phase. As the table shows, government agencies and project proposers were able to complete this phase in 60 days or less for 17 of 64 EAWs we reviewed. Over half of the EAWs were published within four months of receiving an initial data submittal. However, this phase lasted more than six months for several projects, and a handful took longer than a year.

[8] *Minnesota Rules* 2009, 4410.1400.

Figure 3.3: Days for Pollution Control Agency to Complete Environmental Assessment Worksheets (EAWs), Private Sector Projects, Fiscal Years 2007-10



NOTES: Each bar of the figure represents the time line of an EAW published by the Pollution Control Agency in fiscal years 2007 through 2010 for which the agency made a decision on the need for an EIS during the time period. Only EAWs for private sector projects are included.

[a] This project was modified after the first public comment period, requiring preparation of a revised EAW. The phases reflect the first comment period start and end dates. The revised EAW was prepared and published during the final phase.

SOURCE: Office of the Legislative Auditor, analysis of data retrieved from Pollution Control Agency files of environmental reviews.

Table 3.2: Days to Publish Environmental Assessment Worksheets (EAWs) for Private Sector Projects, Fiscal Years 2007-10

Days to Publish EAWs[a]	EAWs	Percentage	Cumulative Percentage
60 days or fewer	17	26.6%	26.6%
61 to 90 days	11	17.2	43.8
91 to 120 days	10	15.6	59.4
121 to 180 days	6	9.4	68.8
181 to 270 days	11	17.2	85.9
271 to 365 days	5	7.8	93.8
More than 365 days	4	6.3	100.0
Total	64	100.0%	

NOTES: Table reflects EAWs published by the Pollution Control Agency or the Department of Natural Resources in fiscal years 2007 through 2010 for which the agency made a decision on the need for an environmental impact statement by the end of fiscal year 2010. It also includes eight case study EAWs completed by local government units in 2009 or the first half of 2010. Only EAWs for private sector projects are included.

[a] Days reflect the calendar days between 1) the agency's initial receipt from a project proposer of data for an EAW and 2) the publication of availability of the EAW in the Environmental Quality Board's *EQB Monitor*. Contact may have occurred between the agency and proposer prior to the proposer submitting the initial data. Initial data provided by a project proposer may not be complete. Incomplete data submittals likely prolong the EAW process.

SOURCE: Office of the Legislative Auditor, review of Pollution Control Agency, Department of Natural Resources, and case study environmental review documents.

We looked for ways to improve timeliness by reviewing more closely the projects that seemed to take a long time in the EAW preparation phase. Our review was limited by the documentation in agency files, and some files provided no insight into project timing. Still, some reasons this phase took long included: (1) incomplete initial data submittals, (2) technical issues, and (3) project controversy. We explain these reasons in the following sections.

Incomplete Data Submittals or Project Definitions

Since we have defined this phase as beginning with the initial data submittal, the completeness of the submittal and the certainty of project details will affect the time it takes to complete the phase. For example, we looked at three feedlot EAWs that each required just over 30 days of PCA staff *hours* to complete.[9] However, the calendar *days* required to complete the first phase of the EAW process ranged from 53 days to 315 days. Documents for the project that took the fewest days during this phase indicated that the initial data submittal was fairly complete and well done, with initial agency comments seeking only clarifications, corrections, and documentation. In contrast, the submissions for the other two projects were missing substantive pieces of information. For

[9] Staff time ranged from 268 to 286 hours (or 33.5 to 36 work days) to complete the EAW process from initial data to the agency's decision on the need for an EIS.

example, neither submission included necessary air modeling information, and one also lacked information on manure management.

Similarly, the EAW for an ethanol project that took over one year to complete this phase began with a data submittal that was missing "significant pieces of information," according to a PCA staff person. PCA records indicated that the project proposer required a lot of time to respond to requests for additional information, in one case taking over four months to provide additional air modeling data. There were also indications that the project had not been completely defined by the proposer; over three months after its initial submittal, the proposer was considering four different options for water discharges.

Insufficient early data submittals and project definitions were not restricted to PCA projects. For one of the projects for which DNR was the responsible governmental unit, DNR staff commented that the project's preliminary EAW information was "almost completely unusable." In addition, DNR staff told us that proposers are not always responsive to agency requests for information.

Technical Issues

Incomplete data, disagreements over technical issues, or high levels of public controversy explained why certain projects had lengthy EAW preparation phases.

Disagreements between agency staff and project proposers (or their consultants) also appeared to contribute to longer EAW preparation periods. As we described in Chapter 2, projects that require environmental review tend to be large, complex undertakings. Some of the issues explored by an EAW—such as air emissions and water discharges—involve complicated and technical issues. Determining reasonable assumptions and appropriate methods and data to use can be sources of disagreement. In addition, as noted in an earlier PCA report, "[Responsible governmental units] and proposers can disagree on interpretation of rules, standards, or the level of information that needs to be included in the EAW. This disagreement can suspend the process until an agreed-upon solution is reached."[10]

Project Controversy

Finally, we saw indications that PCA staff took longer to write an EAW for controversial projects than for other projects. For example, a controversial feedlot proposal required 189 days to complete the EAW-preparation phase of environmental review. According to PCA, this project proposal was similar to two prior proposals that had been withdrawn. Agency staff said they took considerable effort to address in the EAW changes from the two prior proposals and public comments the earlier proposals generated. Another EAW completed by PCA, this for an ethanol facility, took 293 days during the EAW-preparation phase. According to staff, "a substantial amount of public input occurred during the EAW-preparation phase." For this project, PCA staff took time to address public concerns before publishing the EAW.

[10] Minnesota Pollution Control Agency, *Environmental Review Streamlining: A Summary of Past Efforts, Current Ideas, and Stakeholder Input* (St. Paul, December 2009), 11.

Allowing for Public Comment

We defined the public comment period as the third phase in the EAW process. After the responsible governmental unit has completed an EAW, notice of its availability is published in the Environmental Quality Board's biweekly *EQB Monitor*, and a 30-day public comment period begins. There are two possible causes for delay in this period. First, if the notice of availability misses publication in one issue of the *EQB Monitor*, the start of the public comment period will be delayed until the next issue is published two weeks later. Second, in some cases public notice periods may be extended beyond the standard 30 days. For example, PCA received a request to extend the public comment period for an ethanol project and did so, increasing it from 30 to 60 days. In this particular case, the PCA Citizen Board provided additional opportunities for public comment before making its decision on the need for an EIS.

For none of the EAWs published by DNR or PCA that we reviewed did this phase comprise the majority of the days in the EAW process. In addition, most project proposers and those commenting on EAWs who responded to our survey said that the time for providing comments on EAWs was about right.[11] Still, we found:

- **The public comment period alone does not substantially delay proposed projects, but comments made during it may lengthen the time required to complete the EAW process.**

Although the public comment period does not consume much time in the context of the entire process for most projects we reviewed, both the quantity and nature of comments received during this period can affect the time it takes to complete the EAW process. For example, as described above, we saw indications that past or anticipated comments have led PCA to take additional time to prepare some EAWs. And as we discuss below, comments can also affect the time needed to make a decision on the need for an EIS.

Deciding on the Need for an EIS

The final phase of the EAW process begins after the end of the public comment period. At that point, the responsible governmental unit responds to comments and issues a decision on the need for an EIS. According to state rules, a decision should be made between 3 and 30 days after the close of the comment period, although a governmental unit may request an extension or postpone a decision.[12]

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[11] Primarily to evaluate how well the environmental review process meets its objectives, we conducted surveys of project proposers and individuals who had commented on recent EAWs and EISs. Information on the surveys and their results is in Chapter 4.

[12] *Minnesota Rules* 2009, 4410.1700, subp. 2. According to rules, if an entity that meets only periodically is making the decision, the decision shall be made between 3 and 30 days after the close of the public comment period. In other cases, the decision is to be made within 15 days, with an additional 15 days available upon request to the Environmental Quality Board. Rules specify that when a period of time allowed is 15 days or fewer, weekends and holidays within the timeframe are not counted. See *Minnesota Rules* 2009, 4410.0200, subp. 12. Also, according to *Minnesota Rules* 2009, 4410.1700, subp. 2a, the decision can be postponed for up to 30 days or a longer time agreed to by the proposer.

PCA took a median 35 days to complete the final phase of the EAW process, while DNR took a median 38 days, but for both agencies some projects took over 100 days.

The median calendar days PCA took to complete this phase was 35 days, while DNR took 38. The local governments from our case studies made a decision in a median 23 days. However, for some projects this phase took over 100 days. We identified three factors that can contribute to the time it takes for this phase: (1) who makes the decision, (2) the decision maker's satisfaction with the information contained in the EAW, and (3) the number and nature of public comments. We discuss each of these factors below.

Decision Maker

The entity rendering the decision on the need for an EIS can affect the time required to do so. For most EAWs we reviewed where PCA or DNR was the responsible governmental unit, the agency commissioner or a designee determined the need for an EIS. However, under some circumstances the PCA Citizen Board makes the decision for EAWs authored by PCA. First, if PCA receives a request for an EIS or the commissioner recommends an EIS, the board makes the decision. Or, if a member of the board requests that the board make the decision, the board does so. This phase takes longer when the board makes the decision because staff must prepare documents for the board and place the item on the board agenda. In addition, the board meets only once a month. Also, when the board makes the determination, there are additional opportunities for public comment.

EAW Contents

Another factor that can extend the length of this phase is that the responsible governmental unit may postpone the decision on the need for an EIS if the responsible governmental unit determines that additional information is needed and can be reasonably obtained. For example, after postponing the decision on the need for an EIS, DNR issued a decision over four months after the end of the public comment period. For an EAW managed by PCA, over six months elapsed between the end of the comment period and the decision. The half-year period reflected both the postponement of the decision by the PCA Citizen Board and the board's meeting schedule.

Public Comments

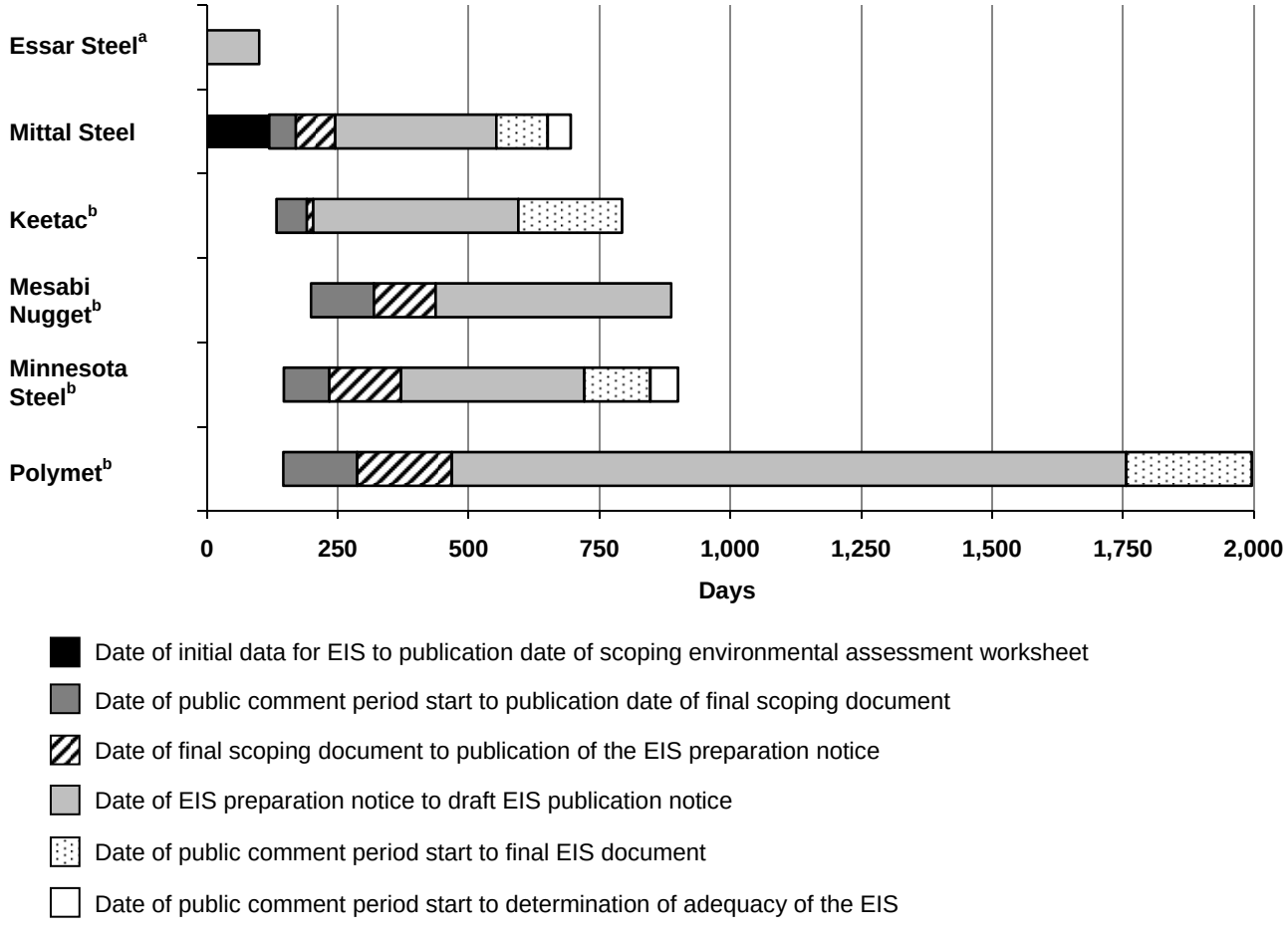
Lastly, some cases generate a large number of public comments and responsible governmental units must respond to them. For example, an EAW for an ethanol facility received 184 comment letters containing thousands of comments. Responding to the comments required not only PCA staff time, but staff had to work with experts from the departments of Health and Natural Resources, as well as the University of Minnesota.

In addition, some public comments stray from the directive in administrative rules to focus on the accuracy and completeness of the EAW or the need for an EIS. For example, one person's only comment on a feedlot project likened the project to a puppy mill. Responsible governmental units may feel compelled to address comments that are not on point, even if only to explain they are not relevant to environmental review.

Environmental Impact Statements

Environmental impact statements are not as common as EAWs, but they comprised a large portion of the work of DNR's Environmental Review Unit during the time period we reviewed. For example, DNR reported that Ecological Resources staff spent 2,295 hours in fiscal year 2009 working on private sector EAWs for which DNR was the responsible governmental unit. That same year, Ecological Resources staff worked over 5,800 hours on private sector EISs. Figure 3.4 shows the time lines of the six EISs for which DNR was the responsible governmental unit during fiscal years 2005 through 2010.

Figure 3.4: Days for Environmental Impact Statement (EIS) Phases, Department of Natural Resources, Fiscal Years 2005-10



NOTES: Each bar of the figure represents the time line and status of an EIS on which the Department of Natural Resources worked in fiscal years 2005 through 2010, as of June 30, 2010. Only EISs for private sector projects are reflected.

[a] This EIS process began with a notice of preparation of a supplemental EIS and was not complete as of June 30, 2010.

[b] EIS process was not complete as of June 30, 2010.

SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources and the Environmental Quality Board's *EQB Monitor*.

All six projects reflected in Figure 3.4 are mining projects. The figure is different from the previous figures showing EAW timelines. First, the figure covers a slightly longer time frame, beginning in fiscal year 2005. Second, the figure includes EISs that are not yet complete. Had we restricted the EISs to those with a scoping EAW published between fiscal years 2006 and 2010 and for which DNR had made an adequacy determination—criteria more parallel to the EAWs we reviewed—only the projects of Mittal Steel and Minnesota Steel would be reflected in the figure. Finally, although the figure shows that the EIS process has more phases than the EAW process, it does not distinguish the comment periods from the action or decision that follows them.[13]

For the EISs that DNR conducts for mining projects, the role of the federal government can add complexity and time.

For the two completed EISs in Figure 3.4, the calendar days elapsed between the initial data submittal and the adequacy decision were 695 days for Mittal Steel and 900 days for Minnesota Steel.[14] It is clear from Figure 3.4 that the timeline for one pending EIS—Polymet—will be much longer, already exceeding 2,000 calendar days.

Factors we identified previously as contributing to long EAW timelines—such as unclear project definitions and disagreement about technical issues—also contributed to long timelines for EISs. An additional factor was clear for some of these mining EISs: the role of the federal government. As we discussed in Chapter 2, adding another layer of review can complicate and lengthen the environmental review process. For example, one project proposer expressed frustration at a federal agency's lack of responsiveness to environmental review documents related to his project.

Additional Observations

As we showed above, the time lines of environmental reviews were wide ranging, and government agency records we reviewed did not always reveal the reasons for these variations. Sometimes it appeared that proposers bore responsibility for delays in the environmental review process, especially when the initial data submissions were inadequate. However, from our file reviews and cases studies, there were also instances in which proposers indicated frustration with what they perceived to be a state agency's delay in raising issues, unclear expectations, or slow responsiveness.

To the extent that lengthy EAW timelines reflect proposers' actions or public comments, the ability of a responsible governmental unit to affect the time line may be limited. But we think responsible governmental units need to make sure they are not contributing unnecessarily to the length of the process. State rules prescribe time limits for responsible governmental units to publish EAWs (after complete information has been submitted) and to decide on the need for EISs (after public input has been solicited). However, PCA and DNR do not regularly track their own compliance with these limits. In addition, with a process so

[13] The EIS process includes three public comment periods: one after publication of the scoping EAW and draft EIS scoping document, one after publication of the draft EIS, and one after publication of the final EIS. For the EISs in Figure 3.4, they ranged from 16 days to 93 days.

[14] DNR determined the Keetac EIS to be adequate December 30, 2010. Full time elapsed for that EIS was 841 calendar days.

dependent on good and timely information and communication, it is critical that the agencies make sure they are doing all they can to make the process clear, expectations explicit, and standards understood.

RECOMMENDATIONS

PCA and DNR should establish explicit standards for the timeliness of agency responsiveness to proposers' initial and supplemental data submissions for environmental assessment worksheets (EAWs). Each agency should measure its performance against these standards and against time lines already in Minnesota Rules.

In addition, PCA and DNR should each develop clear guidance on what constitutes a complete EAW data submittal.

Finally, PCA and DNR should consistently inform project proposers of the environmental review process, information needed for a complete EAW data submittal, agency timeliness standards, and the agency's expectations of the proposers and their consultants.

In our current economic climate, the time required for environmental review is under increased scrutiny. It is important that state agencies establish and monitor their performance against timeliness standards and make the information accessible to interested parties. Establishing standards and implementing protocols for measuring performance will require initial and ongoing investment. However, we think it is important for agency standards and performance to be measured and transparent. This information may lead to greater and shared understanding among the agency and other interested parties of the factors that add to the time required for environmental review. It may also assist in identifying opportunities for improvement when standards are not being met.

We also think it is important for PCA and DNR to develop guidance and criteria for what constitutes a complete data submittal. Some guidance might be generally applicable to all EAW projects. For example, as we described in Chapter 2, PCA has developed instructions for how to complete an EAW when PCA is the responsible governmental unit. Other guidance and criteria are likely to be project-specific and apparent only after preapplication contacts or even an initial data submittal. Unforeseen issues may arise during the course of preparing an EAW, but the point is to be as clear and comprehensive as possible, as early in the process as possible, about the agency's needs and expectations.

Preapplication meetings are one venue for an agency and project proposer to discuss the EAW process, agency standards, guidance, and expectations. PCA and DNR already hold preapplication meetings in some cases and, as stated previously, find these meetings can be valuable. Meetings may not always be necessary or practical. For example, if a project is straightforward or the project proposer is working with an experienced consultant, clear and concise written information might suffice. Most importantly, we think providing complete information to project proposers should be part of every EAW process. A

potential benefit of clearly communicated and commonly understood standards and expectations is less time needed to complete an EAW.

We focused this recommendation on EAWs because they comprised the majority of the environmental review documents we reviewed. In addition, defining what is needed for an environmental impact statement (EIS) is already part of the EIS process. We focused these recommendations on PCA and DNR because they frequently act as responsible governmental units. As we showed in Chapter 1, local governments were the responsible governmental unit for most EAWs in the period we reviewed, but most, if not all, act in this capacity less frequently than either DNR or PCA. In Chapter 4 we offer recommendations aimed at EAWs more generally, including those managed by local government units.

Environmental Permit Processes

As described in Chapter 1, environmental permits issued by PCA and DNR cover broad ground. Permits issued by these two agencies cover water quality, water appropriations, alterations to public waters, air quality, solid waste, hazardous waste, feedlots, mining, aboveground storage tanks, and endangered or threatened species. We found:

- **The number of days needed by PCA or DNR to issue permits varied widely, from a couple of days to more than a year.**

Businesses applying for first-time coverage under "general" permits were usually granted coverage more quickly than those applying for a new "individual" permit.

As Table 3.3 shows, the range in the number of days PCA has taken to issue private sector permits in recent years was very wide. This was certainly true across the different permit areas. For example, PCA issued coverage under the construction storm water general permit—the bulk of the permits it issued—in a median seven days.[15] However, as the table shows, permits in most other PCA permitting areas took longer to issue.

Within PCA permit areas, timeliness varied by permit type. For example, as shown in Table 3.3, within the wastewater area there are two different types of permits: individual and general.[16] As the table shows, businesses applying for first-time coverage under general permits were usually granted coverage more quickly than businesses that applied for a new individual permit. Coverage under general permits can usually be granted more quickly because the general permit has already been written to apply to qualifying businesses. In the wastewater area, 75 percent of private sector applicants for first-time coverage under a general permit were covered in 63 or fewer days. In contrast, most private sector applicants for new individual wastewater permits experienced a longer process, with half waiting 245 or more days from permit application to permit issuance.

[15] For most construction activity, coverage under this general permit is effective seven days after the application postmark date.

[16] As described in Chapter 1, PCA issues general permits to cover businesses that use similar technologies and practices. The agency writes a single general permit to provide coverage to all qualifying businesses. If businesses cannot meet the requirements of a general permit or there is not a general permit available for the type of business, an individual permit is required.

Table 3.3: Pollution Control Agency Days to Issue Environmental Permits to Private Sector Applicants

Permit Area and Type	Permits Issued	Days to Issue[a] Minimum	Median	Maximum
Air quality permits[b]				
Individual				
High priority[c]	53	48	193.0	912
Low priority	174	47	306.0	1,680
General				
New	94	14	125.5	484
Reissuance	12	337	789.0	1,481
Capped/registration	401	7	55.0	457
Water quality permits				
Construction storm water[d]	5,304	0	7.0	366
Industrial storm water[e]	512	0	0.0	4
Wastewater[b,f]				
Individual				
New	59	46	245.0	1,135
Reissuance	203	56	257.0	1,602
Modification	37	41	123.0	908
General				
New	319	1	35.0	901
Reissuance	227	5	252.0	465
Feedlot permits[g]				
Individual	17	30	155.0	752
General				
New	390	1	56.0	1,025
Reissuance	638	1	88.5	1,417
Modification	174	0	53.0	889
Interim	49	3	36.0	298
Construction short form	76	2	44.0	379
Land permits				
Solid waste[b]	62	31	296.0	1,248
Hazardous waste	5	385	448.0	1,009
Aboveground storage tank[b]	66	1	123.5	1,001

NOTES: Except as noted, numbers reflect permits to private sector applicants for nonpersonal use resulting from applications received in fiscal years 2006 through 2010. We excluded 2010 applications from analysis of programs with a high percentage of 2010 applications pending.

[a] "Days to Issue" is calculated from the receipt date of an initial application. Initial applications may be incomplete. Calculating days based on receipt of a "complete" application could result in very different numbers. However, that date was not available for most permits.

[b] Reflects permits issued for applications received in fiscal years 2006 through 2009.

[c] Applications deemed "high priority" by the Pollution Control Agency are for new construction or expansions that require a permit before they can proceed.

[d] For most construction activity, coverage under this general permit is effective seven days after the application postmark date.

[e] Reflects coverage issued under this general permit in fiscal year 2010 only.

[f] Some records may have been incorrectly excluded from these data.

[g] Excludes 28 issued permits for which permit type was not available.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

PCA generally issued new permits more quickly than it reissued permits because it focused resources on high priority permit applications.

Timeliness also varied by the applicant's circumstances. For example, PCA accords higher priority to permits required for facilities being newly constructed or expanded.[17] As Table 3.3 shows, within each permit type, PCA generally issued new permits more quickly than it reissued permits. In part because PCA focuses resources on high priority permit applications, the agency sometimes takes years to reissue permits or complete work on low-risk permit actions (such as minor modifications). Waiting for minor amendments or reissued permits does not interrupt a business's operations.[18]

Table 3.4 shows DNR's timeliness issuing new individual permits.[19] Like PCA, the time DNR needed to issue permits to private sector applicants varied by permit area. For example, during the time period we reviewed, the department

Table 3.4: Department of Natural Resources Days to Issue Environmental Permits to Private Sector Applicants

	Permits Issued	Days to Issue[a] Minimum	Median	Maximum
Water permits[b]				
Public waters work	261	6	61.0	853
Water appropriation				
Major crop irrigation	496	3	104.0	1,432
Other	211	0	90.0	1,168
Mining permits				
New permit	2	144	356.5	569
Substantial amendment	4	126	182.0	310
Unsubstantial amendment	21	0	107.0	568
Permits to take endangered or threatened species	5	27	173.0	511

NOTES: Numbers reflect new individual permits (not reissuances) to private sector applicants for nonpersonal use. Water permit numbers are based on applications the Department of Natural Resources entered into its database in fiscal years 2006 through 2009. We excluded 2010 permits due to a high percentage of 2010 applications pending. For the other permits, numbers are based on applications from fiscal years 2006 through 2010.

[a] "Days to Issue" is calculated from the receipt date of an initial permit application. Initial applications may be incomplete. Calculating days to issue based on when an application was deemed "complete" could result in very different numbers. However, that date was not available for most permits.

[b] Fields in the water permit database indicating whether an applicant was a private sector business were not reliable. Thus, we may be missing some private sector business applicants, and may have inadvertently included public sector or individual applicants.

SOURCE: Office of the Legislative Auditor, analysis of Department of Natural Resources data.

[17] This priority is specified in administrative rules for air quality permits. *Minnesota Rules* 2009, 7007.0750, subp. 1, reads, "In deciding which permit applications to act on, the agency shall give priority to applications for construction or modification of a stationary source."

[18] A business must submit an application for permit reissuance 180 days before its permit expires in order to remain covered by the existing permit.

[19] DNR's Waters Division has general permits under which coverage is effective quickly for qualifying projects. However, DNR did not have information available centrally on projects covered by general permits so timeliness for these permits is not reflected in the table.

issued half of the permits for work in public waters in 61 or fewer days, but the median days between permit application and permit issuance for taking endangered or threatened species was longer.

Timeliness Goals

PCA has an internal goal to issue 90 percent of its permits within 180 days, and the agency is close to reaching that goal. As Table 3.5 shows, we found:

- **PCA issued permits within 180 days for 85 percent of private sector applications it received in fiscal years 2006 through 2010.**

We repeated the analysis using a goal of 150 days.[20] As the table shows, PCA issued permits within 150 days for 83 percent of all applications. Since PCA assigns a lower priority to applications for reissued permits, we also looked at PCA timeliness after excluding applications for permit reissuances. Overall, with applications for reissuance excluded, PCA exceeded its goal by issuing permits for 93 percent of applications within 180 days.

Table 3.5: Overall Timeliness of Pollution Control Agency Permit Issuance, Private Sector Applications, Fiscal Years 2006-10

	All Permit Applications			Applications for New or Modified Permits[a]		
		Percentage Issued Within			Percentage Issued Within	
Permit Type	*N*	180 Days	150 Days	*N*	180 Days	150 Days
General	7,794	93%	93%	6,499	98%	97%
Individual	1,104	24	18	528	35	28
Other[b]	612	90	87	601	90	87
Overall	9,510	85	83	7,628	93	92

NOTES: Table reflects applications for permits submitted by private sector applicants to the Pollution Control Agency (PCA) in fiscal years 2006 through 2010. We excluded applications that were ultimately withdrawn, but included pending applications. Percentages would increase if applications received in late fiscal year 2010 were ultimately issued within indicated time frames. For example, 86 individual permits were pending for fewer than 180 days at the end of fiscal year 2010. If all were ultimately issued within 180 days, the percentage issued would increase from the 24 percent shown in the table to 32 percent.

[a] These columns exclude applications for reissuances. PCA assigns lower priority to applications for reissued permits and so they tend to take longer to issue. However, businesses are able to continue operating under the terms of their expired permits provided the business submitted a complete application for reissuance at least 180 days prior to expiration.

[b] This category includes applications for capped and registration air quality permits, interim and construction short-form feedlot permits, and a small number of applications for which a permit type was not indicated.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

A similar analysis showed that DNR issued individual permits to approximately 70 percent of private sector business applicants within 180 days, and approximately 65 percent of applicants within 150 days.[21]

[20] The 150-day goal is contained in 2011 legislation—Senate File 1 and House File 1—and Governor Dayton's Executive Order 11-04. For both the 180-day and 150-day analyses, we excluded applications that were withdrawn. We included applications for coverage under the construction storm water general permit. For most construction activity, coverage by this permit is effective seven days from the application postmark date.

[21] We excluded applications that were withdrawn or denied and those that resulted in permits but were missing dates needed to calculate timeliness.

Thus far, we have discussed timeliness in terms of its impact on a business's ability to begin, continue, or expand its activities. However, environmental permits are intended to protect the environment. According to PCA, although it assigns higher priority to permits that businesses need to begin or expand operations, it is constantly balancing those business needs against its responsibility to protect the environment. Although a business might not object to a delay in its permit being reissued, reissuances give PCA the opportunity to update a permit's environmental standards and requirements. When the agency does not reissue permits in a timely manner, businesses may be operating under less stringent environmental regulations than would apply had their permits been reissued.

Reasons for Lengthy Permit Time Lines

Factors that added to lengthy time lines for permits included a project's size and complexity, the proposer's responsiveness to agency requests for information, and whether the project required environmental review.

Tables 3.3 and 3.4, presented earlier, showed that PCA and DNR issued permits in some areas and of certain types relatively quickly. However, knowing that many permits were issued in a relatively timely manner is no comfort to those businesses that experienced long permit processes. PCA and DNR staff identified several things that can contribute to longer timelines, including: a project's size and complexity, and whether it required environmental review; completeness of the initial application and company responsiveness to agency requests for additional information; soundness of the project proposal or whether the proposer changes it over time; the extent to which the proposer or his consultant has previous experience working with the agency; and the workloads of agency staff, the proposer, and the proposer's consultant.

We looked for explanations behind the long timelines of some permits for potential areas for improvement. We selected a nonrandom sample of permits for review and, therefore, our conclusions cannot be generalized. However, they are illustrative of factors that contribute to permit timelines. We found:

- **A variety of circumstances contributed to the lengthy permit time lines for the permits we reviewed.**

Environmental review was one factor that contributed to time lines for some permits we reviewed.[22] The three permits for taking endangered or threatened species that took long to issue were for projects that also went through environmental review; DNR issued the needed permit within a couple weeks to about four months after environmental review was completed. In another case, a business seeking a permit for an aboveground storage tank first applied to PCA for the permit in January 2008, but PCA could not issue the permit until the project completed environmental review in June 2010.[23]

[22] As we described in Chapter 1, agencies cannot issue permits for projects undergoing environmental review until the environmental review process is complete.

[23] One factor contributing to the length of this environmental review process was that the project proposer modified the project after a first EAW had been published (but before a decision had been made on the need for an EIS). PCA determined that a revised EAW was needed. PCA said the permit was issued in August 2010.

High Priority Air Quality Permits

PCA data about air quality permits allowed us to look at a larger number of those permits for additional factors that contributed to longer permit time lines. These data included some dates for events occurring between the agency receiving an application and issuing the permit. Specifically, dates reflected when PCA staff began working on the permit application, when a first draft was complete, and when public comment on the permit began. The data displayed in Table 3.6 show that the median length of each phase of the permit process was shorter than two months for high priority air quality permit applications, although the fact that several weeks typically passed before staff began working on half of the high priority applications is troubling.[24] As a possible explanation for at least some of this delay, PCA staff said that time may elapse before an application is even assigned to a staff person if the project proposer has indicated the project is not firm or imminent.

Table 3.6: Length of Phases to Issue Air Quality Permits, High Priority Private Sector Applications, Fiscal Years 2006-09

	Median Days			
	Application Date to Date Agency Staff Began Work	Date Agency Staff Began Work to Date of First Draft	Date of First Draft to Date of Public Notice	Date of Public Notice to Date Permit Issued
High-priority air quality permits (*N*=51)	54	57	23	48

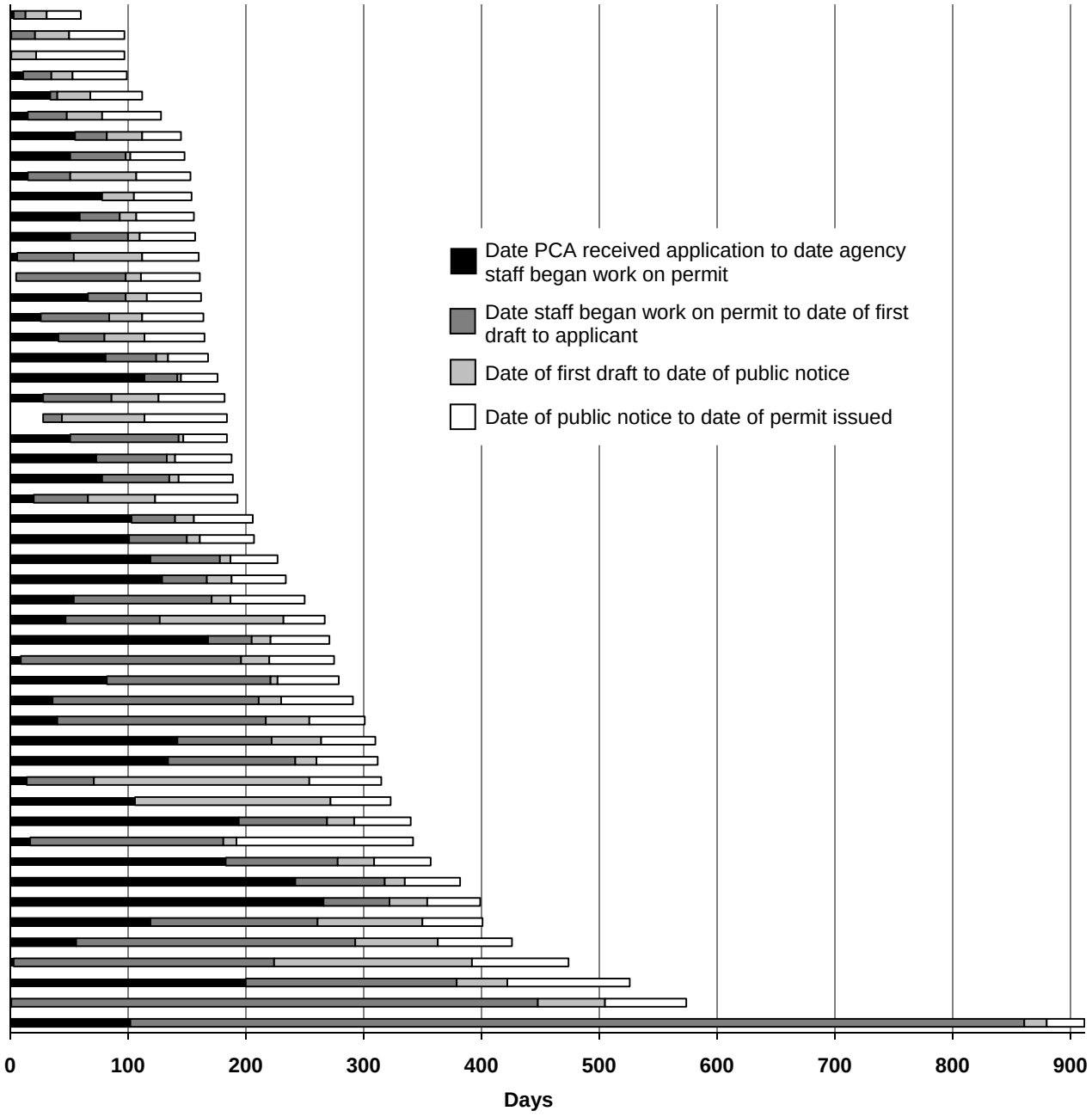
NOTES: Numbers reflect permits to private sector applicants for nonpersonal use. Initial applications may be incomplete. Incomplete applications likely prolong the permitting process. Applications deemed "high priority" by the Pollution Control Agency are for new construction or expansions that require a permit before they can proceed. The phases of the permit process were not available for two high priority permits, and they are excluded from these data. One of these permits took a total of 135 days to issue, and the second took 48 days to issue.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

Figure 3.5 further illustrates the point that no particular phase always explains lengthy permit time lines. It also shows that each phase can and has contributed to lengthy processes for individual projects. For some permits, hundreds of days elapsed before PCA staff began working on the permit application, although quicker initial attention by staff did not guarantee permits were issued more rapidly.

[24] For air quality permit applications (except applications for minor amendments), administrative rules require the agency to notify applicants—within 60 days of receiving an application—of the agency's determination of the application's completeness. See *Minnesota Rules* 2009, 7007.0700, B.

Figure 3.5: Days for the Pollution Control Agency to Issue Air Quality Permits, High Priority Private Sector Applications, Fiscal Years 2006-09



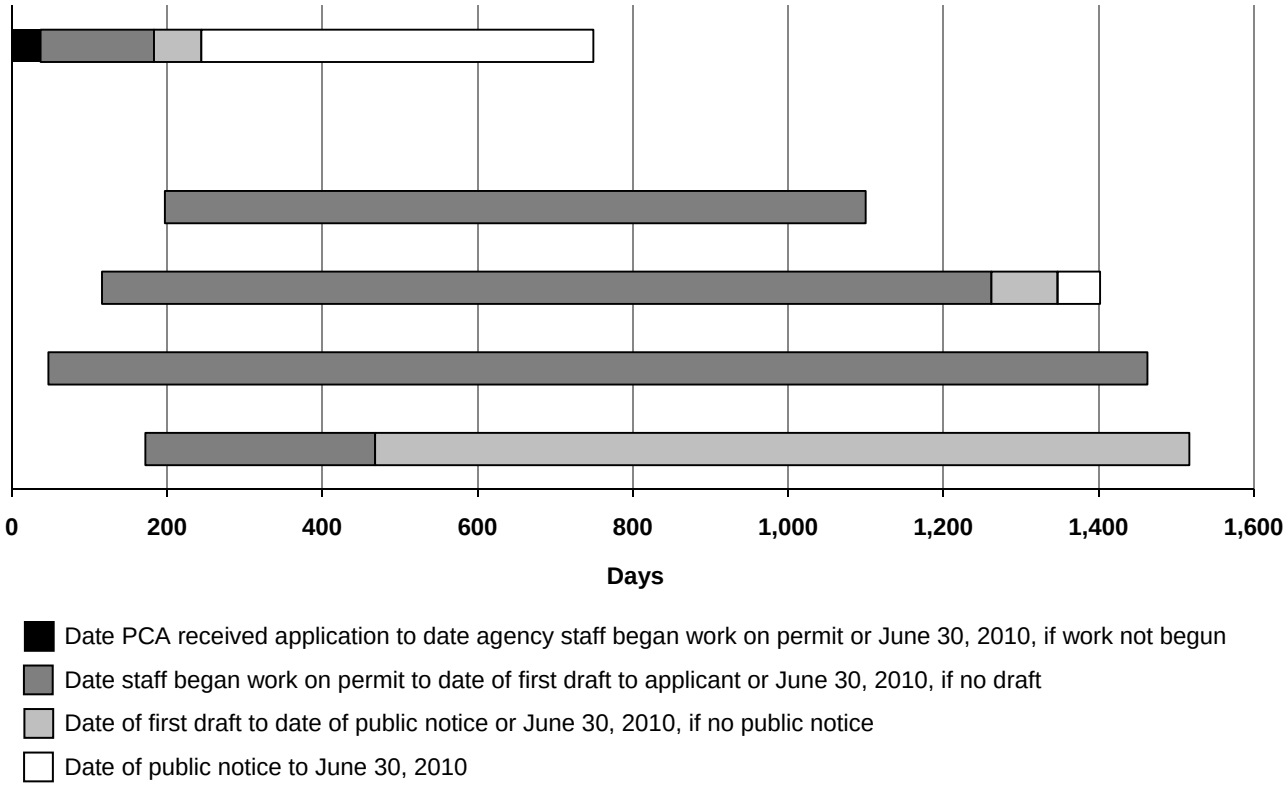
NOTES: Each bar in the figure represents the timeline of an air quality permit application received in fiscal years 2006 through 2009 and deemed "high priority" by the Pollution Control Agency. Figure includes applications resulting in an air quality permit issued by June 30, 2010. The phases of the permit process were not available for two permits, and they are excluded from the figure. One of these permits took 135 days to issue, and the second took 48 days to issue. Figure includes private sector applicants only.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

Permit writers' notes included some factors that may have contributed to long time lines and illustrate factors that staff highlighted in our interviews with them. For example, in one case, the project proposer substantially changed the project and submitted a final application almost a year after the first application. In another case, the U.S. Environmental Protection Agency took several months before indicating the permit could be issued. In a third case, the applicant submitted a revised application six months after PCA's completeness review of the initial application.

We also looked at pending high priority air quality permit applications. Figure 3.6 shows that some of these six permit applications had been pending for years. According to PCA, after a permit is assigned to staff (which is entirely in PCA's control), reasons for delays include (1) waiting for information from the applicant, (2) federal review, (3) new or changing state or federal regulations, (4) enforcement and compliance issues, and (5) public concern or controversy.

Figure 3.6: Days Pending for Air Quality Permits from Pollution Control Agency, High Priority Private Sector Applications, Fiscal Years 2006-09



NOTES: Each bar in the figure represents the timeline and status of an air quality permit application received in fiscal years 2006 through 2009 and deemed "high priority" by the Pollution Control Agency. Figure includes applications for which an air quality permit *had not* been issued by June 30, 2010. The end of each bar represents the status of the permit application as of June 30, 2010. Figure includes private sector applicants only.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

Again, permit writers' notes about these applications provided insight to factors that may have contributed to delay. In one case, PCA received the applicant's final air modeling more than two-and-a-half years after the initial application. In another case, the applicant was working through legal issues. A third case involved enforcement issues related to construction and operation without a permit. Invoicing and payment of fees further delayed issuance; PCA said it could not invoice the facility for the permit fee until new rules were final, and then the applicant contested the fee. The pending application for a fourth project was on hold until the applicant submitted an environmental assessment worksheet and water discharge permit application.

To provide balance, we interviewed two businesses that experienced long air quality permit processes. They listed several factors that contributed to long processes, among them: (1) PCA's slow response to an initial application; (2) disagreement with PCA over whether the proposed project constituted a "minor" or "major" modification; (3) time required to fulfill PCA requests for additional air modeling and tests; (4) PCA's decision to implement a new model to measure ambient air quality dispersion, leading to years of iterative communications; and (5) new U.S. Environmental Protection Agency standards. In one case, the company said PCA's intensive research was intended to counter what the agency anticipated would be substantial public concerns, but the company said that no comments were received during the public comment period. This business also related that its negative experience with permitting will "play a significant role in future decisions" regarding facility expansions, whereas in the past, it made such decisions based strictly on operational concerns, costs, and efficiency. In the second case, the company said its parent company opted to invest its capital outside of Minnesota due to the delay.

A business that went through lengthy air quality permitting processes told us that its negative experiences will play a significant role in its future decisions on where to expand its facilities.

Summary

Measures of permit timeliness do not present a consistent picture for all permits, and median timeliness of permit areas ranges widely. Some types of permits take longer to issue than others, with coverage under a general permit typically granted more quickly than an individual permit. The several graphs and examples reinforce that a variety of reasons explain long permit time lines. Some reasons suggest opportunities for agency action, such as making sure staff begin work and provide feedback on applications promptly. Other explanations for long permit time lines are important to be aware of but may not lend themselves to easy solutions. For example, it would not be easy to speed up issuance of lower priority applications without affecting the timeliness of issuing currently designated "high priority" ones. As another example, if time elapses while a project proposer compiles information PCA or DNR deems necessary to fulfill its responsibility to protect the environment, an easy solution does not present itself. Lastly, it appears that some long time lines are due to factors that are beyond agency control, such as changing federal standards and applicant delays.

As stated previously, we did not randomly select the permits we reviewed and our review relied primarily on agency documentation. While we think the examples we highlight are instructive, we hesitate to make specific recommendations based on them. Our recommendation at the beginning of the chapter—that PCA and DNR compile data that will allow them to measure their performance and look for opportunities to improve their processes—is a more responsible approach to identifying systemic issues to address.

TRENDS

In the previous sections we presented information on the overall timeliness of the environmental review and permitting processes. Also, to the extent possible, we looked at the different phases of these processes and provided some examples of factors that contributed to lengthy time lines. In this section we look at whether PCA's or DNR's timeliness issuing environmental permits changed between fiscal years 2006 and 2010.

For two reasons, we focused on a subset of environmental permits to look for changes in timeliness. First, due to small numbers of cases, we did not look at changes in timeliness for environmental reviews, hazardous waste permits, solid waste permits, aboveground storage tank permits, permits for taking endangered or threatened species, or permits to mine. When the number of cases is small, the average time to issue permits or conduct environmental reviews will be unduly influenced by individual cases of unusually short or long duration. Therefore, we focused on those permits issued by PCA and DNR for which applications were received in sufficient volume to make analysis of trends meaningful.

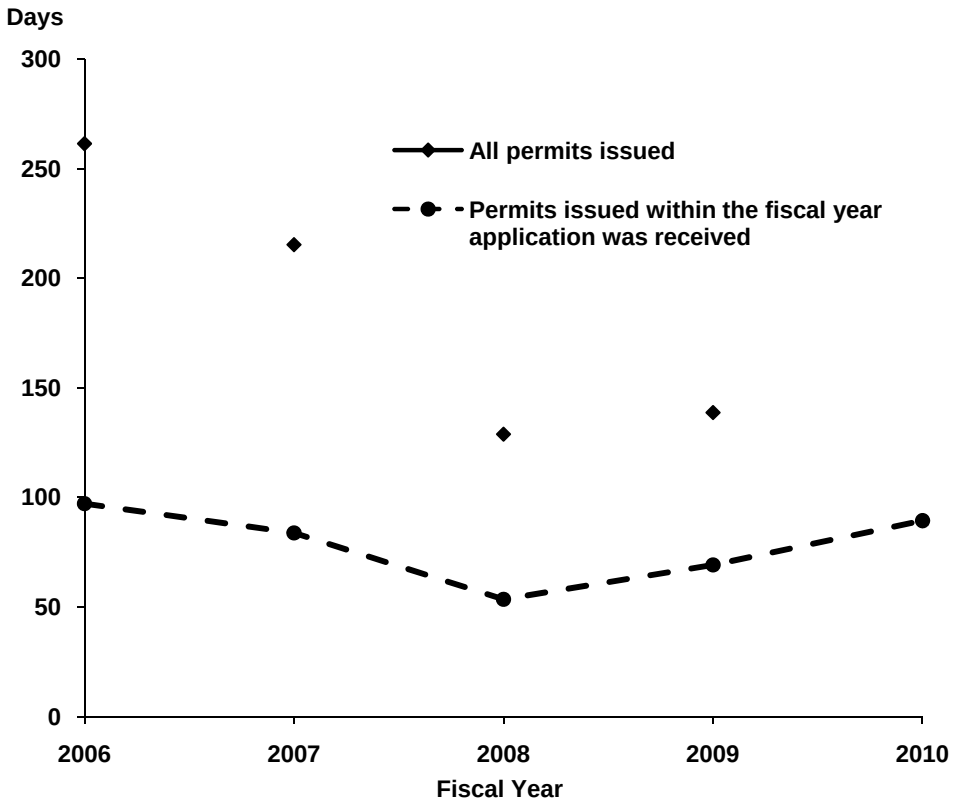
Second, we did not look at PCA's timeliness issuing coverage under storm water general permits. Although PCA received large numbers of applications for coverage by the construction storm water general permit each year, coverage by the permit is effective within seven days for most applicants. The fact that coverage is effective within a short time frame means that the room for improvement is relatively small. We could not analyze trends for the industrial storm water general permit because we had data only for permits issued in fiscal year 2010.

For permits where we could analyze trends, we analyzed timeliness for private sector permit applications received between fiscal years 2006 and 2010 by looking at the number of applications issued within time ranges or that remained pending as of June 30, 2010.[25] We chose this method instead of analyzing only permits that had been issued. Reporting average timeliness for only issued permits—and ignoring applications still pending—might lead to a different conclusion. In analyzing only issued permits, each subsequent year of data would include only permit time lines of equal or shorter duration than the prior years. This fact could skew annual averages, as Figure 3.7 illustrates using data

[25] Applications may have been for new permits, reissued permits, or permit modifications.

on private sector air quality permits. When all issued permits are included, as in the solid line in Figure 3.7, the average time to issue permits appears to have decreased substantially over time. However, the data for fiscal year 2010 applications includes only permits issued within the fiscal year. The average is not affected by permits that will ultimately take longer to issue, as prior years' averages are. When each year's data are restricted to include only permits issued within the fiscal year the application was received, the picture is quite different. As indicated by the dashed line in Figure 3.7, equally restricting each year's data shows that the average time to issue permits decreased for applications received in 2007 and 2008 but then increased again for applications received in the last two years.

Figure 3.7: Average Days to Issue Air Quality Permits to Private Sector Applicants, by Year Application Received, Illustration of Impact of Limited Years of Data, Fiscal Years 2006-10



NOTE: Applications include those made by private sector applicants for new permits, permit modifications (including minor modifications), reissuances, capped permits, or registration permits.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency permit data.

In the following sections, we present our analysis of the extent to which agency timeliness issuing selected environmental permits has changed. We focused on wastewater permits, feedlot permits, and air quality permits issued by PCA; and water permits issued by DNR.

Wastewater Permits Issued by the Pollution Control Agency

PCA is delegated by the U.S. Environmental Protection Agency to issue certain permits regulating the discharge of pollutants to surface waters.

Wastewater permits regulate discharges of pollutants to surface or subsurface waters or application of treated discharge to the ground. PCA is delegated by the U.S. Environmental Protection Agency (EPA) to issue federal National Pollutant Discharge Elimination System (NPDES) wastewater permits. PCA also issues Minnesota's State Disposal System (SDS) permits. If a person is required to obtain both permits, PCA issues a single NPDES/SDS permit.

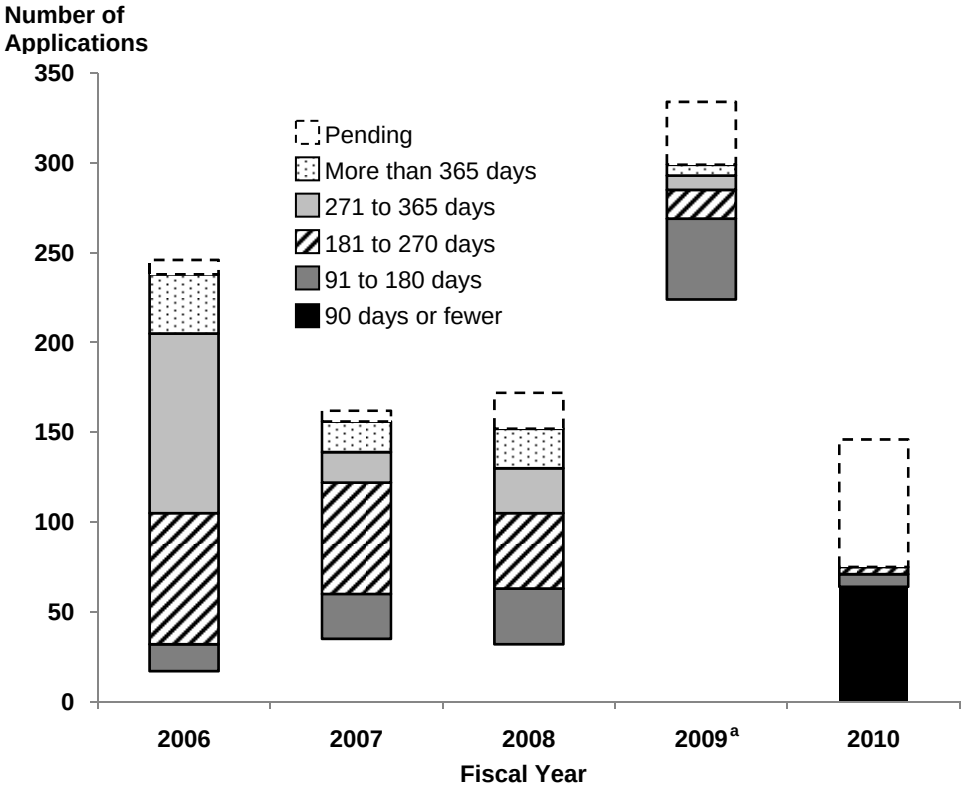
PCA issues general and individual NPDES/SDS wastewater permits. As of January 2011, PCA had 12 general wastewater permits in effect. For example, one general permit covered construction sand and gravel, rock quarrying, and hot mix asphalt production facilities statewide; another covered ballast water discharges to Lake Superior; and a third authorized phosphorus discharges to the Minnesota River Basin.

Figure 3.8 shows PCA timeliness in issuing wastewater permits for private sector applications received in fiscal years 2006 through 2010. Disregarding the jump in fiscal year 2009, the number and percentage of permits PCA issued within 180 days gradually increased between 2006 and 2010. In response to 246 fiscal year 2006 applications, PCA issued 32 permits within 180 days; in 2010, PCA received 146 permit applications and issued 71 permits in 180 days.

PCA's timeliness granting general permit coverage partly explains this increase. In fiscal year 2006, two-thirds of the private sector permit applications were for issuance or reissuance of general permits, and only 11 percent of these applicants were granted coverage within 180 days. Many of the applications were for a general permit that PCA did not reissue until December of the next fiscal year.[26] Once PCA reissued the general permit, coverage was granted to most applicants within the following month. In 2009 and 2010, PCA granted coverage to over 95 percent of private sector general permit applicants in 180 or fewer days, a greater percentage than in each of the three previous fiscal years. The large number of permits issued in 90 or fewer days in fiscal year 2009 in part reflects coverage granted under the ballast water general permit that the department issued in September 2008.

[26] The permit covers construction sand and gravel, rock quarrying, and hot mix asphalt production facilities.

Figure 3.8: Days to Issue Wastewater Permits to Private Sector Applicants, by Year Application Received, Pollution Control Agency, Fiscal Years 2006-10



NOTES: Status (i.e., issued or pending) is as of the end of fiscal year 2010. Days are calendar days from the date the agency received an initial application to the date the agency issued a permit. Pending applications had not been issued or withdrawn as of June 30, 2010. Pending applications will ultimately be issued or withdrawn and, if issued, will change the distribution of the bar graph for 2010. Applications include those made by private sector applicants for new permits, major permit modifications, or reissuances. Efforts by the Pollution Control Agency (PCA) and our office to eliminate erroneous records may have resulted in some records being inappropriately excluded from analysis.

[a] The large number of permits issued in 90 or fewer days reflects coverage granted under the ballast water general permit issued by PCA in September 2008.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency permit data.

Animal Feedlot Permits Issued by the Pollution Control Agency

Feedlot permits are intended to ensure that manure from feedlots does not pollute state waters either directly or when it is applied as fertilizer to cropland. The animal feedlot permit is another water quality permit area for which PCA has been delegated authority from the EPA to issue NPDES permits. The federal permit is required for large animal feedlots called "concentrated animal feeding operations," or CAFOs. For example, feedlots that hold 55,000 or more turkeys or 700 or more mature dairy cattle are CAFOs. Feedlots that are not required to apply for the federal permit but have a capacity to hold 1,000 or more "animal units" are required to apply for a state SDS permit.[27] Permits for CAFOs and for feedlots with a capacity of 1,000 or more animal units are issued as NPDES/SDS permits. PCA has one general NPDES/SDS feedlot permit, and it accounted for the greatest number of feedlot permit applications between fiscal years 2006 and 2010.[28] The department also issues individual NPDES/SDS feedlot permits.

Between fiscal years 2006 and 2010, PCA issued permits to most feedlot permit applicants within 90 days.

PCA issues two additional types of feedlot permits: interim permits and construction short-form permits. Interim permits are for feedlots that do not need an NPDES/SDS permit but pose a pollution hazard. Also, feedlots with a capacity of 300 or more animal units may need to apply for an interim permit depending on the soil, slope, and water where they are located. A construction short-form permit is required for remaining feedlots with a capacity of 300 or more animal units.

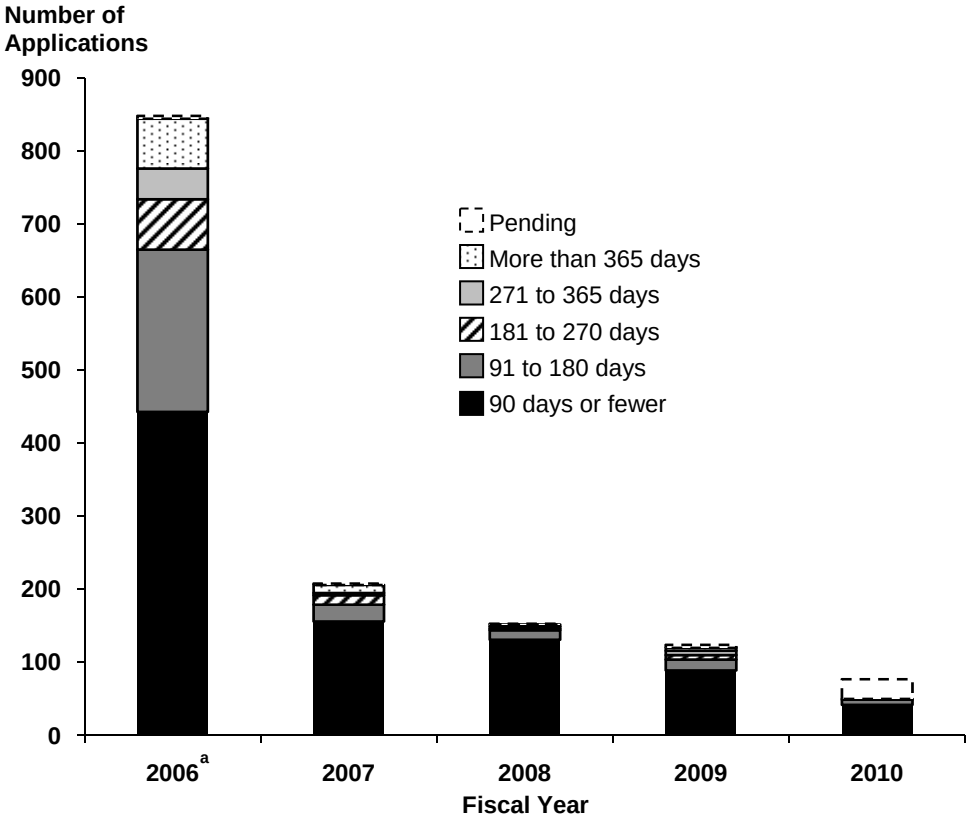
As Figure 3.9 shows, each year PCA issued permits to most feedlot permit applicants within 90 days. Figure 3.9 also illustrates the impact of the feedlot general permit on feedlot permit issuances and timeliness. The reissuance of the feedlot general permit in fiscal year 2006 meant PCA was able to issue hundreds of permits relatively quickly.

[27] An "animal unit" is a measure used to equalize different types of animals based on their production of manure. It is based on the amount of manure produced on a regular basis by a slaughter steer or heifer. *Minnesota Rules* 2009, 7020.0300, subp. 5.

[28] The process for issuing coverage under the general feedlot permit is different from the process for other general permits. For most general permits, a public notice period is held when the state issues the permit, not when coverage under the permit is granted to individual facilities. However, the general feedlot permit requires public notice when the state issues the permit and each time coverage under the permit is granted.

A large number of feedlot permits were issued in 2006 because that was the year PCA reissued its "general" permit, which covers a large number of facilities.

Figure 3.9: Days to Issue Animal Feedlot Permits to Private Sector Applicants, by Year Application Received, Pollution Control Agency, Fiscal Years 2006-10



NOTES: Status (i.e., issued or pending) is as of the end of fiscal year 2010. Days are calendar days from the date the agency received an initial application to the date the agency issued a permit. Pending applications had not been issued or withdrawn as of June 30, 2010. Pending applications will ultimately be issued or withdrawn and, if issued, will change the distribution of the bar graph for 2010. Applications include those made by private sector applicants for new permits, permit modifications (including minor modifications), reissuances, interim permits, or construction short-form permits.

[a] The large number of permits issued in 90 or fewer days reflects coverage granted under the feedlot general permit that the Pollution Control Agency reissued this year.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency permit data.

Air Quality Permits Issued by the Pollution Control Agency

Air quality permits contain requirements to minimize the impact of air emissions from permitted facilities. PCA is delegated by the EPA to issue federal general and individual air quality permits—known as Part 70 permits. PCA also issues state general and individual permits, capped permits, and registration permits.[29] In general, federal air quality permits are needed by facilities that have the potential to emit greater quantities of regulated pollutants, while state permits regulate businesses with lesser potential or actual emissions.[30] The state permits that regulate smaller polluters are less stringent than the permits that regulate facilities with large potential emissions.

Between 17 and 21 percent of private sector applications for air quality permits in fiscal years 2007 through 2009 were still pending as of June 30, 2010.

PCA received from 183 to 282 private sector air quality permit applications that it processed as separate actions each year of fiscal years 2006 through 2010.[31] Several of each year's applications were ultimately withdrawn by the applicants. Figure 3.10 shows the status and time to issue permits for the remaining permit actions by the year PCA received the application. As the figure shows, a fair number of each year's applications were still pending as of June 30, 2010. Between 17 and 21 percent of private sector applications received in fiscal years 2007 through 2009 were still pending by that date. Most pending applications were for individual permit actions that had not been deemed "high priority" by PCA.

The figure also shows that PCA issued a greater number of the private sector permits within 180 days in each of 2008 and 2009 than it did in 2007. Although the 2009 number of permits issued within 180 days was only slightly higher than the 2006 number, the percentage of applications resulting in a permit within the time frame was 64 percent in 2009, compared with 59 percent in 2006.[32] The higher percentage of 2009 applications issued within 180 days may be partly explained by the fact that almost three-quarters of the private sector applications

[29] According to its Web site, currently, PCA is not accepting applications for coverage under the state or federal general permits while it evaluates whether the current general permits appropriately limit greenhouse gas emissions given federal thresholds. See http://www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-permits-and-forms/air-forms/air-quality-forms-permit-application-notifications-compliance-and-miscellaneous.html?menuid=&redirect=1; accessed 2/21/2011.

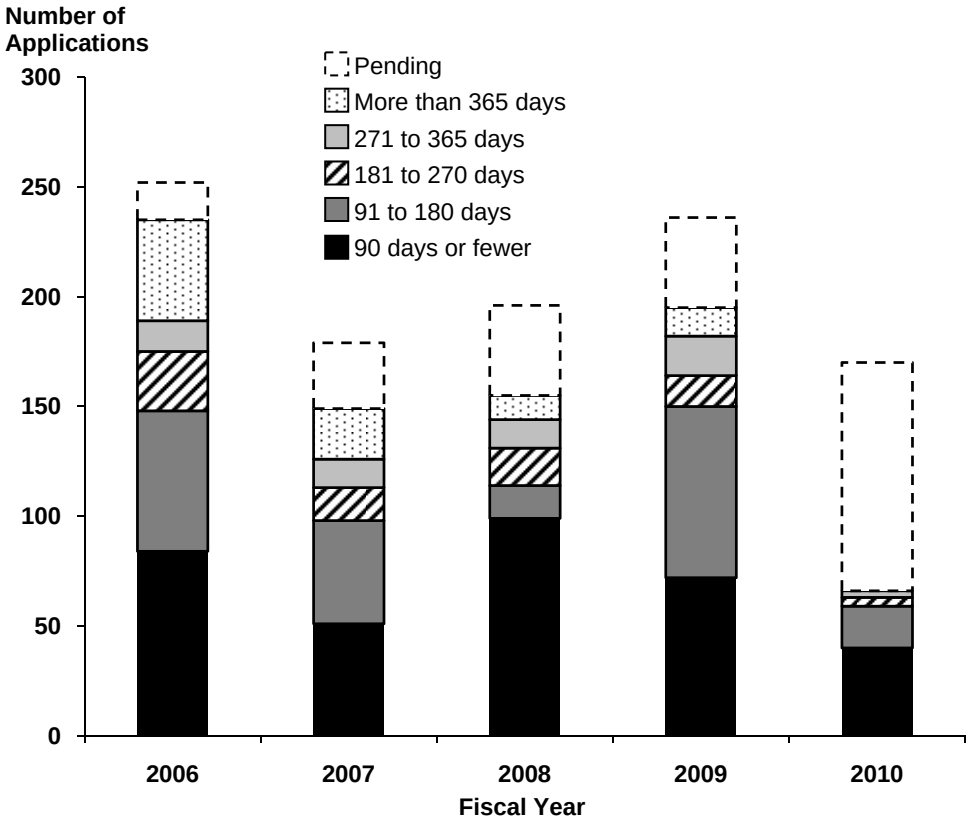
[30] A facility's potential to emit reflects emissions that the facility would generate operating at full capacity, 24 hours a day, seven days a week.

[31] Two issues affected PCA's air quality permit data. First, if the same facility submitted multiple applications for different actions and agreed to have PCA process them together, we counted the multiple applications as a single application. The fiscal year reflects the year of the action with which other more minor actions were combined. Second, PCA has changed what the "application receipt date" represents for air quality permits. In later years, instead of recording receipt dates for incomplete applications, the Air Quality Permit Section began returning incomplete applications to applicants and recording application receipt dates only for applications that included all the necessary components. Although these administratively complete applications may require technical work, future years of data could show shorter timelines between application receipt and permit issuance that reflect different definitions rather than real changes in timeliness.

[32] Too many of fiscal year 2010 permits were pending when we completed our analysis to draw conclusions about timeliness in that year.

were for general, capped, or registration permits, over 80 percent of which were issued within 180 days.

Figure 3.10: Days to Issue Air Quality Permits to Private Sector Applicants, by Year Application Received, Pollution Control Agency, Fiscal Years 2006-10



NOTES: Status (i.e., issued or pending) is as of the end of fiscal year 2010. We excluded applications that were noted as withdrawn. Days are calendar days from the date the agency received an initial application to the date the agency issued a permit. Pending applications had not been issued or withdrawn as of June 30, 2010. Pending applications will ultimately be issued or withdrawn and, if issued, will change the distribution of the bar graph for 2010. Applications include those made by private sector applicants for new permits, permit modifications (including minor modifications), reissuances, capped permits, or registration permits.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency permit data.

Water Permits Issued by the Department of Natural Resources

The DNR Waters Division issues two types of water permits, one for water appropriation and a second for public waters work. DNR issues general and individual water permits. However, the department has available centrally data on only individual permits.

DNR issued most permits for water appropriations or public waters work within 180 days of receiving an application—and many within 90 days.

Water appropriation permits are required for individuals who use large quantities of water. For example, large amounts of water are needed for power generation, industrial processing, and irrigation. The permit program allows DNR to manage water resources to meet the needs of various water users. Permits for public waters work are required for projects that will change the course of public water. Construction of a marina is an example of a project that would require this permit.

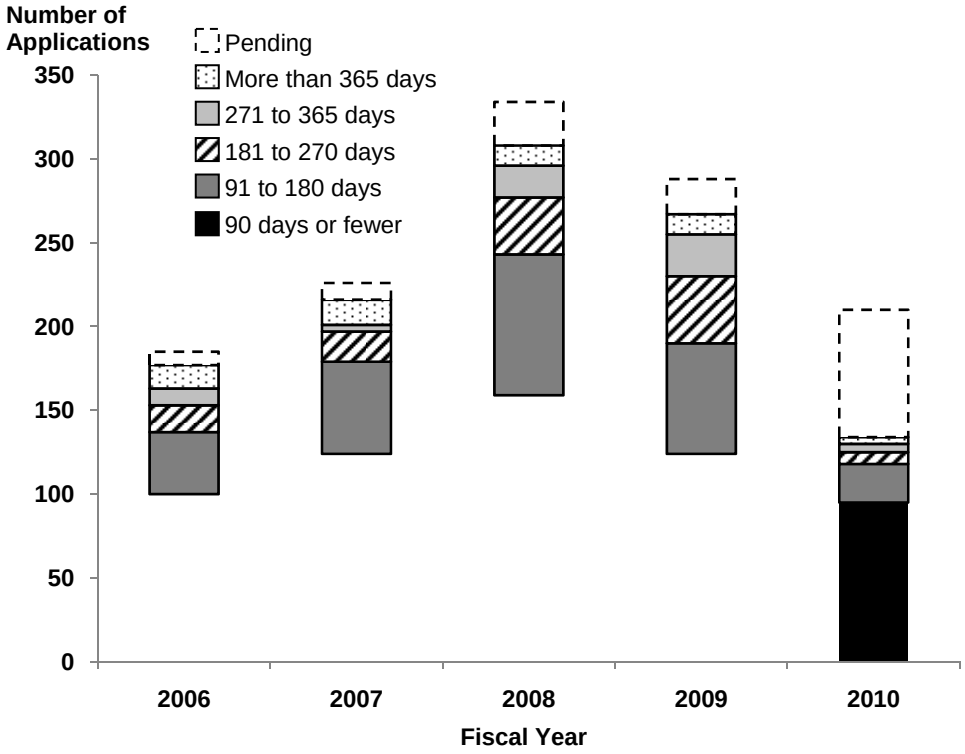
As Figure 3.11 shows, for each year's private sector applications in fiscal years 2006 through 2010, DNR issued most permits for water appropriation or public waters work within 180 days of receiving an application and many permits within 90 days. Excluding 2010 due to the large number of applications pending, after an increase between fiscal years 2006 and 2007, the percentage of applications resulting in a permit within 180 days decreased from 79 percent in 2007 to 66 percent in 2009. During that period, the percentage of private sector applicants receiving a permit within 180 days decreased for both permits for public waters work and those for water appropriations, but more so for the latter. For one type of water appropriation permit—major crop irrigation permits—the percentage of applications resulting in a permit within 180 days decreased from 80 percent in 2007 to 60 percent in 2009.

OTHER ISSUES

Lack of data prevented us from analyzing efficiency in PCA and DNR. Trend data—and in some cases, any data—on staff time and costs to complete individual environmental reviews and permits were not available from either agency.[33] Instead, we asked the agencies about efforts they have made to address timeliness issues. Although the agencies, too, lack data to show whether their efforts have improved timeliness, we have highlighted several efforts that one might reasonably expect would improve the environmental review or permitting processes. We also asked agency staff and project proposers about the effect that staff turnover has on the environmental review and permitting processes. We discuss these two issues in the following sections.

[33] PCA compiled data showing staff hours spent on recent EAWs and associated permits. These data are in the Appendix.

Figure 3.11: Days to Issue Water Permits to Private Sector Applicants, by Year Application Received, Department of Natural Resources, Fiscal Years 2006-10



NOTES: Water permit fiscal years are based on the date DNR entered the permit application into the permit database. Status (i.e., issued or pending) is as of the end of fiscal year 2010. We excluded applications that were withdrawn or denied, and those that resulted in permits but were missing dates needed to calculate timeliness. Days are calendar days from the date the agency received an initial application to the date the agency issued a permit. Pending applications had not been issued or withdrawn as of June 30, 2010. Pending applications will ultimately be issued, denied, or withdrawn and, if issued, will change the distribution of the bar graph for 2010. Applications include those made by private sector applicants for new permits for either water appropriations or public waters work. Fields in the water permit database indicating whether an applicant was a business (versus individual) or private sector (versus public sector) were not reliable. Thus, we may be missing some private sector business applications, and we may have inadvertently included public sector or individual applicants.

SOURCE: Office of the Legislative Auditor, analysis of Department of Natural Resources permits.

Agencies' Improvement Efforts

We interviewed agency staff about their practices to address timeliness issues. We found:

- **PCA and DNR have taken steps to improve the timeliness of the environmental review and permitting processes but have not measured the steps' effects.**

PCA and DNR staff highlighted several actions they have taken to improve the timeliness of environmental review and permitting. A selection of items is listed in Table 3.7. Staff from both agencies indicated that they have created permits that allow for faster permitting, changed their internal work processes, and taken steps to improve the applications they receive. In addition, each agency coordinates its internal environmental review and permitting processes to avoid duplication and delays. The agencies have not measured the extent to which each action may have affected timeliness. Although we do not have evidence that these practices have led to shorter process timelines, they are practices that one might reasonably expect to produce benefits.

Table 3.7: Sample of Agency Actions to Improve Timeliness of Permitting and Environmental Review

Pollution Control Agency (PCA) and Department of Natural Resources (DNR)

- **General Permits:** DNR and PCA have issued general permits to cover businesses and situations for which environmental impacts are known, reserving individual permits for higher risk or more complicated applications.
- **Better Permit Applications:** PCA is developing permit applications that can be completed online. The system would accept only complete applications and data from the applications would automatically be entered into PCA's permit database. Applicants would immediately know if their information is complete.

  The DNR Waters Division created an eight-page letter to send to proposers of ethanol projects. The letter emphasizes proposers' need to identify a water source for their project, and it outlines the data necessary for an application.
- **Coordinated Environmental Review and Permitting:** Each of PCA and DNR coordinates environmental review and permitting when it makes sense to do so. Both agencies indicated that coordinating the processes is more efficient than conducting them independently.

Pollution Control Agency

- **Staff Assignment:** PCA assigns a permit application to the next available permit writer, rather than assigning it to staff currently tied up on other permits.
- **Risk Assessment Group:** PCA created a Risk Assessment group including permit writers, effluent standards staff, and air modelers/risk assessors. The group meets weekly to make sure all staff prioritize their work to reflect permit priorities.
- **Strategic Project Sector:** Starting in 2010, high-profile, controversial projects have been assigned to this new group of leadership staff who oversee, staff, and coordinate activities within the agency.

Department of Natural Resources

- **Lead Workers:** DNR created two new "lead worker" positions (one for mining, one for other projects) to more efficiently manage environmental reviews.
- **Preapplication Meetings:** DNR is experimenting with meeting with proposers early in the environmental review process to agree on technical approaches and assumptions.
- **EIS Contractors:** DNR said it has had mixed success with hiring EIS contractors earlier in the environmental review process and will use this approach on a limited basis.

NOTES: We were not able to document that these practices have led to shorter timelines for environmental review and permitting. However, they are practices that one might reasonably expect to produce benefits.

SOURCE: Office of the Legislative Auditor, interviews with staff from the Pollution Control Agency and Department of Natural Resources.

As listed in Table 3.7, both PCA and DNR have created—and continue to explore—general permits. As discussed previously, state agencies typically are able to issue permit coverage under general permits more quickly than when individual permits are needed. According to PCA staff, the agency's focus of systemic improvements to permitting timeliness has been on the large number of permits that pose lower risk to the environment. They reason that with fewer resources spent on low-risk permits, more staff are available to work on complicated and larger projects. Further, staff said they develop or amend general permits to cover additional businesses when it makes sense. For example, PCA amended the feedlot general permit to include anaerobic digesters, incorporating this newer technology after researching and understanding its effects. Consequently, the new general permit will potentially cover more feedlots. According to DNR staff in the Waters Division, general permits partly explain the decline in applications for individual water permits from 2,391 in 1976 to 662 in fiscal year 2010. The division is considering developing a new general permit for water appropriations but is not sure one is feasible.

Each agency also coordinates internally its environmental review and permitting processes. As discussed in Chapter 2, the environmental review and environmental permitting processes intersect. For efficiency and to allow the public to comment at one time on all aspects of a proposal, PCA has followed parallel processes for writing permits concurrently as EAWs are developed. In other words, information that is needed for both an environmental review and a permit is generated once, in a way that will meet the needs of each process. As a consequence, a draft permit related to a project may be available for public comment at the same time as the environmental review document. PCA staff have concluded that coordinating environmental review and permitting gives a better result and is more efficient.

DNR also coordinates environmental review with the agency's permitting. According to the supervisor of the Environmental Review Unit, environmental review staff consult with permitting staff on issues that relate to permits, but joint development of data needed for both environmental review and permitting is more common with EISs than with EAWs. Staff who work on mining permits also noted coordinated environmental review and permitting efforts. They said that environmental review staff and staff who work on mining permits work in parallel tracks to create the information necessary for both the environmental review and the permit, and permit staff who work on an environmental review will likely work on the permit for the project.

Table 3.7 also lists some changes PCA and DNR have made to their internal work processes to increase efficiency. For example, PCA created the Strategic Project Sector to address the need for agency coordination for high-profile and controversial projects. The Strategic Projects Sector is composed of leadership staff who can appropriate other staff from within the agency when needed. For projects assigned to the Strategic Projects Sector, one manager is in charge of all PCA activity related to the project, with staff reporting to that manager for the particular project (instead of to their usual supervisor).

The supervisor of DNR's Environmental Review Unit highlighted changes to internal processes to improve timeliness, particularly related to mining projects.

For example, the Environmental Review Unit added two "lead worker" positions to more efficiently manage environmental reviews. One lead worker focuses exclusively on mining, while the other covers all remaining areas.

Staffing

State agency staff assignments can change over the course of environmental review or permitting. Staffing changes may reflect standard practices, agency internal reorganization, or employee turnover. We interviewed state agency staff and other individuals who have participated in environmental review about the impact of employee turnover on timeliness. We found:

- **Turnover in staff at PCA and DNR may have affected individual projects, but agency managers believe it has not contributed to lengthier processing times overall.**

Interviews with state agencies indicated that staff turnover has been a minimal issue. According to staff at DNR, little staff turnover has occurred. Environmental review and permitting cover complex topics, however, and turnover can lead to loss of expertise that could be difficult to replace or develop. At some point, retirements and other staff departures at PCA and DNR could have an impact. In fact, with retirements looming, staff in the DNR Waters Division said they have been training some junior hydrologists so they will have full knowledge of all program areas when senior hydrologists retire.

When relevant to our case studies, we also asked project proposers about the staff turnover that occurred during environmental review of their projects. In one case, the proposers indicated the change actually improved timeliness, as the new manager was more familiar with the type of project being proposed. In another case, the consultant working with the proposer indicated that the change in staff slowed the process due to the steep learning curve.[34] The consultant for the final project indicated that the staffing change did not delay the project.

[34] The consultant noted, however, that this factor was not chiefly responsible for delays in completing the environmental review.

4 Meeting Objectives of Environmental Review

In this chapter we assess how well the environmental review process meets its objectives. Minnesota does not have formal performance measures for gauging the effectiveness of environmental reviews. As an alternative, we measured the environmental review process against its objectives as stated in Minnesota rules.

OBJECTIVES OF ENVIRONMENTAL REVIEW

State rules lay out the purpose and objectives of the environmental review process. In assessing how well environmental reviews meet these objectives, we concluded that:

- **Not all environmental reviews fully meet all of the objectives of the environmental review process.**

As described in Chapter 1, the purpose of environmental review is to understand the impact a proposed project might have on the environment by preparing documents and publicly reviewing them. State rules specify five objectives of environmental review, which are listed in Table 4.1. As an example, one objective of the process is providing usable information on a project's primary environmental effects.

Table 4.1: Objectives of Environmental Review

The environmental review process is designed to:

1. Provide usable information to the project proposer, governmental decision makers, and the public concerning the primary environmental effects of a proposed project;
2. Provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;
3. Delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;
4. Reduce delay and uncertainty in the environmental review process; and
5. Eliminate duplication.

SOURCE: *Minnesota Rules* 2009, 4410.0300, subp. 4.

We assessed achievement of the objectives in part by analyzing 14 case studies.[1] Table 4.2 lists the case studies. For the case studies, we interviewed representatives of responsible governmental units, certain proposers or their consultants, and others involved in the process. In addition, we analyzed documents, including environmental assessment worksheets (EAWs) or environmental impact statements (EISs), records of meetings, and permits issued for the projects, among other things. In addition to case studies, we used results from two surveys we conducted, one of recent project proposers and the second

Table 4.2: 14 Environmental Review Case Studies, 2010

Proposed Project	Project Type	Region	Responsible Governmental Unit
Canby Inn & Suites	Commercial	Southwest	City of Canby
Cooperative Mineral Resources Manganese Bulk Sampling Project	Mining	North central	Department of Natural Resources
Concrete Products of New London	Mining	West central	Kandiyohi County
Dollymount Dairy	Animal feedlot	West	Pollution Control Agency
Gengler Quarry	Mining	Southeast	Houston County
Hutchinson Senior Housing	Residential	West central	City of Hutchinson
Kohl's Parking	Commercial	Northeast	City of Duluth
Marathon Petroleum	Industrial	Metropolitan area	Pollution Control Agency
Saukinac Campground	Recreational	North central	Todd County
SLT Cattle	Animal feedlot	Southwest	Pollution Control Agency
University of St. Thomas Student Center and Athletic Complex	Commercial[a]	Metropolitan area	City of St. Paul
Wetzel Pork	Animal feedlot	South	Pollution Control Agency
Winjum's at Izatys	Recreational	North central	Mille Lacs County
Wireless Communication Tower	Commercial	Northeast	Carlton County

[a] To select projects of different types, we grouped this educational facility with commercial projects because there were too few educational facility projects to constitute their own group.

SOURCE: Office of the Legislative Auditor, case study analysis, October through December 2010.

[1] The cases represented a mix of types, locations around the state, levels of controversy, and level of government responsible for the environmental review. We selected them from among all privately proposed projects for which an environmental review decision had been reached between January 1, 2009, and June 30, 2010.

of parties who had commented on recent EAW or EIS documents.[2] In the next sections we first present how well environmental reviews meet some of their objectives and then describe what prevents environmental reviews from fully achieving their objectives.

Providing Information

The first objective of the process, as listed in Table 4.1, is to provide usable information—to the proposer, government decision makers, and the public—concerning the primary environmental effects of a proposal. We found:

- **For the most part, environmental reviews accomplish the objective of providing information to aid understanding of environmental impacts.**

Our analysis of environmental review documents for our 14 case studies indicates that all contained information concerning the proposed projects' environmental effects, although some documents were more thorough than others. In addition, several representatives of the responsible governmental units we interviewed said the EAW documents they received from proposers were largely complete and had sufficient environmental information.

In response to our survey of project proposers, a majority rated the environmental review process as acceptable, somewhat good, or very good at providing usable information to the public; the same was true about information for proposers. Table 4.3 shows their ratings as well as ratings of others we surveyed.

We surveyed people who had commented on environmental review documents in 2009 and the first half of 2010.

Among the three groups we surveyed of people who had commented on environmental review documents, fewer citizens than other commenters gave high ratings to the environmental review process for providing usable information. Table 4.3 shows that majorities of each of the three groups of commenters rated the environmental review process as at least acceptable in providing information to the public. A smaller share of citizen commenters, though, gave favorable ratings. Majorities of all three groups of commenters rated the process favorably in providing information to proposers, but again fewer citizens had positive ratings. Regarding how well environmental review aids in understanding projects' environmental impacts, majorities of proposers and two of the three groups of commenters—public interest groups and public agency employees—rated the environmental review process as acceptable or somewhat or very good. As Table 4.3 illustrates, however, a far smaller proportion of citizens agreed.

[2] Survey recipients had been involved in EAWs or EISs for which a public comment period had been held between January 1, 2009, and June 30, 2010. The first survey was of project proposers or their consultants and had a 63 percent response rate. The second was of parties who had commented on EAWs or EISs; the response rate was 65 percent. The parties consisted of three groups: citizens, government agency employees, and representatives of nonprofits or public interest groups. Response rates cannot be calculated by each group because we did not know in advance of the survey in which group respondents belonged. Complete results from the two surveys are available online at www.auditor.leg.state.mn.us/ped/2011/envir.htm.

Table 4.3: Ratings of Meeting Environmental Reviews' Objectives on Providing Usable Information and Aiding the Understanding of Environmental Impacts, 2010

	N	Somewhat or Very Good	Acceptable	Somewhat or Very Poor	Don't Know or Not Applicable
Providing usable information to the public on the primary environmental effects of a project					
Project Proposers or Consultants	26	50%	31%	19%	0%
Citizens	104	38	14	44	3
Nonprofit or Public Interest Group Representatives	27	56	19	26	0
Public Agency Employees	54	52	30	13	6
Providing usable information to project proposers on the primary environmental effects of a project					
Project Proposers or Consultants	26	46%	35%	19%	0%
Citizens	101	36	18	27	20
Nonprofit or Public Interest Group Representatives	27	48	15	26	11
Public Agency Employees	54	59	19	11	11
Understanding the impact that a proposed project will have on the environment					
Project Proposers or Consultants	26	50%	27%	23%	0%
Citizens	101	31	15	49	6
Nonprofit or Public Interest Group Representatives	27	41	22	37	0
Public Agency Employees	54	50	35	11	4

NOTES: Survey respondents are people who were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010. The survey question read: "On a scale of 1 to 5, with 1 being very good and 5 being very poor, how would you rate the environmental review process in achieving the following purposes?" Some rows may not sum to 100 percent due to rounding.

SOURCE: Office of the Legislature Auditor, analysis of proposer and commenter surveys, August 2010.

Providing Access to Decision Makers

The second objective of environmental review, looking back to Table 4.1, has two components: providing the public with systematic access to decision makers to (1) help maintain public awareness of environmental concerns and (2) encourage accountability in decision making. We address each component in turn.

Maintaining Awareness of Environmental Concerns

Regarding the first component of this objective, we found:

- **Minnesota has structured the environmental review process in ways that provide access to decision makers to maintain public awareness of environmental concerns, but the structure has flaws.**

The environmental review structure provides public access by requiring public comment periods and meetings. State rules require a public comment period of at least 30 days for all EAWs, as Chapter 1 explained. For 197 EAWs for which we had data from fiscal years 2007 through 2010, all but one held the minimum

30-day comment period.[3] For EISs, state rules require a series of public comment periods and public meetings. Environmental review is also structured to make this access meaningful; state rules require responsible governmental units to respond in writing to the substantive and timely comments they receive. Plus, the rules require decisions on EAWs and EISs to be based in part on these comments.

In addition, all of our case studies complied with requirements on public comments, and some responsible governmental units paid great attention to addressing public concerns about proposals. In one case we examined, for example, the city of St. Paul held multiple public meetings to discuss an EAW, even though state rules do not require such meetings.

Our surveys of proposers and commenters showed that majorities of most groups of respondents rated as acceptable or better the process's ability to provide systematic access to decision makers, as Table 4.4 shows. This stands in contrast, however, with citizens' views. A large proportion (46 percent) of citizen respondents rated the process as somewhat or very poor at meeting the objective of providing systematic access to decision makers.

Table 4.4: Ratings of Meeting Environmental Reviews' Objective on Systematic Access to Decision Makers, 2010

	N	Somewhat or Very Good	Acceptable	Somewhat or Very Poor	Don't Know or Not Applicable
Providing the public with systematic access to decision makers involved with environmental reviews					
Project Proposers or Consultants	26	46%	31%	19%	4%
Citizens	103	27	21	46	6
Nonprofit or Public Interest Group Representatives	27	37	37	15	11
Public Agency Employees	54	44	30	15	11

NOTES: The survey question read: "On a scale of 1 to 5, with 1 being very good and 5 being very poor, how would you rate the environmental review process in achieving the following purposes?" Survey respondents are people who were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010.

SOURCE: Office of the Legislature Auditor, analysis of proposer and commenter surveys, August 2010.

Responsible governmental units from our case studies affirmed the value of public comment periods. Many representatives of the responsible governmental units we interviewed, including those who believed the process ought to be improved, remarked on the benefits of public review. Some of the benefits cited were that the process offered a way for citizens to make their voices heard and that comments from technical experts provided information the responsible governmental unit itself did not have.

At the same time, we learned of concerns about the public comment process. For instance, requirements for informing potential commenters of an EAW and

[3] In the one exception, the comment period was shorter because the responsible governmental unit counted the 30 days starting at the point it completed its work on the EAW instead of at the point the *EQB Monitor* published notice that the EAW was available.

The environmental review process requires public notice on the availability of EAWs, but it does not assure that nearby residents are notified.

project details have limitations. Although the process requires public notification as Chapter 1 described, it does not assure that nearby residents are notified. One representative of a responsible governmental unit voiced concern that people unfamiliar with the *EQB Monitor*, which is recognized in state rules as a means for relaying information on the availability of EAWs, may not learn of environmental review projects. None of the citizens who responded to our survey of people commenting on EAWs and EISs indicated that they learned of the project through the *EQB Monitor*; just 22 percent of them were alerted by reading notices in their local newspapers.

In addition, the process makes it incumbent upon each individual to learn about a proposed project and its EAW. No public meeting is required, although some responsible governmental units hold them. The current structure does not engage citizens in meaningful ways or help prepare them to provide useful input, according to a representative of one responsible governmental unit. Another said this is compounded by the fact that the EAW process does not require a public meeting. Further, responsible governmental units identified problematic aspects of public review, such as that some comments did not address the accuracy and completeness of the EAW. Table 4.5 lists the benefits and disadvantages of public review periods, from the perspective of representatives of responsible governmental units.

Table 4.5: Responsible Governmental Unit Staff Opinions on Pros and Cons of Public Comment Periods in Environmental Reviews, 2010

Pros	Cons
• Raise issues that would not otherwise be raised	• Bring little or no new information to light
• Offer technical review of subjects for which the responsible governmental unit does not have expertise	• Insufficiently address adequacy and completeness of EAW, impacts that warrant additional investigation, or the need for an EIS
• Identify issues that the responsible governmental unit's review alone may have missed	• Raise issues far afield from EAW contents
• Give citizens an opportunity to voice their perspectives	• Comments arriving at the end of the 30-day period may delay the project
• Enlighten proposers about neighbors' concerns and encourage them to address the concerns	• Comments are "boilerplate" and not tailored to specific project at hand
• Lead to conditions to be inserted in the conditional use permit	• Comments can come from people not directly affected by the project
• Provide unique information from citizens due to their longevity in the area	• Commenters may lack technical or substantive backgrounds

SOURCE: Office of the Legislative Auditor, case study analysis, October through December 2010.

Opinions of people we surveyed showed strong sentiment for the public comment period but also raised questions. Results from our survey of citizens, public agency staff, and public interest group representatives affirmed the value of the public comment period, as Table 4.6 shows. For instance, majorities of all three groups of commenters either somewhat or strongly agreed that their involvement was useful and the environmental review was important to having their concerns addressed. Plus, majorities of public agency staff, who are likely to be the most acquainted and experienced with environmental reviews, believed their comments on EAWs or EISs were understood and received reasonable responses.

Table 4.6: Survey Respondents' Agreement on Aspects of Environmental Review's Public Comment Period, 2010

	N	Somewhat or Strongly Agree	Neither Agree nor Disagree	Somewhat or Strongly Disagree	Don't Know or Not Applicable
The environmental review was important to having my concerns addressed.					
Citizens	106	64%	7%	25%	4%
Nonprofit or Public Interest Group Representatives	28	64	14	21	0
Public Agency Employees	54	63	24	11	2
In my view, my involvement was useful.					
Citizens	106	52%	14%	30%	4%
Nonprofit or Public Interest Group Representatives	28	68	18	7	7
Public Agency Employees	54	63	26	11	0
The amount of time available to provide comments was about right.					
Citizens	105	55%	19%	25%	1%
Nonprofit or Public Interest Group Representatives	28	50	21	29	0
Public Agency Employees	54	74	7	17	2
My comments on the environmental review documents were understood by the responsible governmental unit that oversaw the development of the documents.					
Citizens	105	43%	15%	30%	11%
Nonprofit or Public Interest Group Representatives	28	43	32	14	11
Public Agency Employees	54	65	15	11	9
The responsible governmental unit responded to my comments in a reasonable manner.					
Citizens	105	42%	18%	31%	9%
Nonprofit or Public Interest Group Representatives	28	39	29	25	7
Public Agency Employees	54	54	22	15	9

NOTES: Survey respondents are people who offered comments on environmental review documents during an EAW or EIS public comment period held between January 1, 2009, and June 30, 2010. The survey question read: "How strongly do you agree or disagree with the following about your experiences with your most recent environmental review project?" Some rows may not sum to 100 percent due to rounding.

SOURCE: Office of the Legislature Auditor, analysis of commenter survey, August 2010.

At the same time, however, smaller shares of citizens and public interest group representatives than public agency staff agreed that their comments were understood and responded to in a reasonable manner. As Table 4.6 exhibited, 31 percent of the citizens disagreed that the responsible governmental unit reasonably responded to their comments. In response to an open-ended question on the survey, one citizen indicated his dissatisfaction by writing:

> The county board didn't seem to pay attention to my comments…. They just wanted to get the project approved.

Another wrote:

> The city government is capricious. They…make decisions without regard to presented information as if they had already had their minds made up.

Opinions of proposers we surveyed showed dissatisfaction with the usefulness of public comment periods. Half of project proposers or their consultants had favorable opinions about the overall environmental review process. But when asked about the usefulness of input from the public comment period, more proposers were negative than favorable. Table 4.7 shows the results. In addition, some of the proposers and consultants we interviewed were not favorably inclined. They expressed skepticism about the need for the public review period. Some said the comments provided little or no helpful information and proved frustrating for themselves but also for citizens who expressed input but went away dissatisfied when the responsible governmental unit declared an EIS was unnecessary.

Table 4.7: Survey Respondents' Agreement on Experiences with Environmental Reviews of Their Projects, 2010

	N	Somewhat or Strongly Agree	Neither Agree nor Disagree	Somewhat or Strongly Disagree	Don't Know or Not Applicable
Overall, the environmental review process worked well.	26	50%	19%	27%	4%
Generally, comments made during the public comment period were useful.	26	23	31	38	8

NOTES: Survey respondents are people who either proposed projects that underwent environmental review or worked as proposers' consultants. They were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010. The survey question read: "How strongly do you agree or disagree that the following statements reflect your experiences with the environmental review of your project?"

SOURCE: Office of the Legislature Auditor, analysis of proposer survey, August 2010.

Encouraging Accountability for Decisions

The second component of the second objective in Table 4.1 is providing the public with systematic access to decision makers to encourage accountability in decision making. To assess accountability in decision making, we looked at the extent to which EAW and EIS documents contained information required by statute and rule. Specifically, we verified whether the documents had information (1) to address proposed projects' significant environmental issues

and (2) on the responsible governmental units' consideration of factors required when making EAW or EIS decisions. Based on our assessment, we found:

- **In general, responsible governmental units in our case studies demonstrated accountability in decision making because most EAWs and EISs addressed proposed projects' significant environmental effects.**

Minnesota rules state that environmental review documents shall contain information that addresses the significant environmental issues of a proposed action.[4] One measure of this is information to help avoid or mitigate adverse environmental effects, and most environmental review documents in our case studies contained this information. Such information is evident in instances of permitting agencies using information gathered during the environmental review to set conditions in permits required for a proposed project.[5] As an example, for a proposed gravel quarry expansion in Kandiyohi County, one outcome of the EIS was a county requirement to locate mining operations beyond a 100-foot setback from a wetland on site. The city of St. Paul's conditional use permit for a proposed University of St. Thomas student center and athletic complex included provisions for parking spaces and pedestrian safety improvements due to concerns raised in the EAW. In addition, state agency staff told us of cases where proposers responded to concerns raised in environmental reviews by changing their proposals, such as modifying their expected hours of operation to reduce noise after 10 p.m.

The permits required for many of the case study projects we reviewed contained conditions that were based on information gathered during the environmental review process.

Responsible governmental units in some cases required modifying the EAW with information to mitigate potential environmental effects. For instance, in response to questions by a responsible governmental unit, a proposer studied storm water runoff concerns and added information on them to the EAW. While useful, these efforts are more meaningful when the information is used, such as in permits, to control potential negative effects; compliance with information in the EAW is not necessarily monitored as a project is developed or operating.

State rules also require responsible governmental units to make declarations on the need for an EIS after considering four factors related to environmental effects. Table 4.8 lists the four factors. One is the extent and reversibility of the effects. Another is the extent to which environmental effects can be anticipated and controlled due to studies undertaken as part of (or in addition to) the environmental review. Most of the decisions in our case studies included assessments of the proposed projects against these four criteria. However, two did not explicitly address these criteria in the records of their decision on the need for an EIS.

[4] *Minnesota Rules* 2009, 4410.0300, subp. 3.

[5] In addition, *Minnesota Rules* 2009, 4410.7055, requires public agencies that issue permits (regardless of whether they serve as the responsible governmental unit) to consider the environmental review when authorizing the project.

Table 4.8: Factors that Responsible Governmental Units Are Required to Consider with EAWs, 2010

In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- Type, extent, and reversibility of environmental effects.
- Cumulative potential effects. The responsible governmental unit shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project.
- The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.
- The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

SOURCE: *Minnesota Rules* 2009, 4410.1700, subp. 7.A.-D.

Delegating Authority

The third objective of the environmental review process, according to state rules and listed in Table 4.1, is that responsibility for reviews is delegated to the governmental unit most closely involved with the proposed project.[6] As described in Chapter 1, state rules specify which public agency is to serve as the responsible governmental unit for mandatory reviews; they also outline a process for designating the responsible unit when reviews are discretionary or initiated via petition.[7] This process focuses on the governmental entity with the most jurisdiction over approving a given project. Once assigned, the responsible governmental unit has specific duties. We found:

- **The environmental review process meets the objective of delegating authority to the public agency closest to a project, and the role of the responsible governmental unit is instrumental to the process.**

Responsible governmental units are required to verify the accuracy of environmental review documents.[8] Among our case studies, responsible governmental units tended to take this role seriously. They improved environmental review documents by clarifying or expanding information describing environmental effects. For instance, in the case of one feedlot EAW, the responsible governmental unit requested that the proposer detail the storm

[6] *Minnesota Rules* 2009, 4410.0300, subp. 4.C.

[7] *Minnesota Rules* 2009, 4410.0500, subps. 1-6.

[8] *Minnesota Rules* 2009, 4410.0400, subp. 2.

water retention area at a feedlot and explain the routing of surface water at the site.

In one case, the responsible governmental unit worked with the proposer's consultants after finding that initial data for an EAW were missing air quality modeling information.

Furthermore, our comparisons of different versions of the case studies' EAWs—initial versions, which represented the original data submitted to the responsible governmental unit, and later versions, which represented the EAW submitted for public comment following review by the responsible governmental unit—often showed numerous and substantive improvements. As an example, for one feedlot EAW, the data originally submitted did not contain the protocols or results of air quality modeling needed to understand how expected emissions compared with state standards. This was remedied after the responsible governmental unit worked with the proposer's consultant on the matter. As described later in this chapter, however, not all responsible governmental units offer the expertise that is necessary to verify environmental review documents.

Inconsistency in Meeting Other Objectives

We looked at how well environmental reviews meet the fourth and fifth objectives of the environmental review process. State rules say that environmental review is designed to "reduce delay and uncertainty in the environmental review process" and "eliminate duplication," as previously shown in Table 4.1. We found:

- **The environmental review process does not consistently allow public agencies to either reduce delay and uncertainty or eliminate duplication.**

Delay

Delay occurred in many but not all of our case study projects undergoing environmental review. For some of our case studies, the environmental review process took three months or less from the time proposers initially submitted EAW data to the time a decision was made on the need for an EIS. For others, the process took from 9 to 12 months. Some of the difference in timeliness was due to the complexity of the proposed project or a need to research and understand the effects of new technology. In two projects of longer duration, proposers or their consultants attributed part of the delay to inexperience of the staff person overseeing the EAW. But even projects of shorter duration experienced delays. As an example, delay occurred when the proposer spent time meeting with consultants and public agencies to fully understand issues related to the proposal. Another case was delayed when the responsible governmental unit waited for the proposer to provide more complete EAW information.

In reviewing Pollution Control Agency (PCA) files, we also found cases involving lengthy periods of environmental review. One example was an EAW process for a proposed ethanol facility, which took more than two years. Subsequent to the PCA's Citizen Board decision that an EIS was needed, the proposer withdrew the project. The EAW process for another proposed ethanol facility lasted more than 20 months. In each case, the length of the process far

exceeded original expectations. Chapter 3 examined more thoroughly the timeliness of the environmental review process.

Half or more of all groups of respondents to our surveys considered the process at least acceptable at meeting the objective of reducing delay in collecting information on environmental impacts, as Table 4.9 shows. Particularly for project proposers and citizens, though, these were slim majorities. Plus, a significant share (42 percent) of proposers were negative in their ratings of the environmental review process in meeting this objective.

Table 4.9: Ratings of How Environmental Reviews Meet Objectives on Delay, Uncertainty, and Duplication of Effort, 2010

	N	Somewhat or Very Good	Acceptable	Somewhat or Very Poor	Don't Know or Not Applicable
Reducing delay in collecting and analyzing information on environmental impacts					
Project Proposers or Consultants	26	31%	23%	42%	4%
Citizens	102	27	23	31	19
Nonprofit or Public Interest Group Representatives	27	33	26	30	11
Public Agency Employees	54	35	33	15	17
Reducing uncertainty about a project's potential environmental effects					
Project Proposers or Consultants	26	42%	35%	23%	0%
Citizens	102	25	14	53	8
Nonprofit or Public Interest Group Representatives	27	41	15	44	0
Public Agency Employees	54	43	39	13	6
Eliminating duplication of effort in collecting and analyzing information on environmental impacts					
Project Proposers or Consultants	26	35%	23%	38%	4%
Citizens	100	24	13	26	37
Nonprofit or Public Interest Group Representatives	27	30	37	19	15
Public Agency Employees	54	44	28	6	22

NOTES: Survey respondents are people who were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010. The survey question read: "On a scale of 1 to 5, with 1 being very good and 5 being very poor, how would you rate the environmental review process in achieving the following purposes?" Some rows may not sum to 100 percent due to rounding.

SOURCE: Office of the Legislature Auditor, analysis of proposer and commenter surveys, August 2010.

Uncertainty

We also noted inconsistency in whether the environmental review process reduced uncertainty. State rules do not specify the type of uncertainty that is to be reduced in the environmental review process. However, the rules state that the purpose of environmental review is "understanding the impact [that] a proposed project will have on the environment."[9] It is reasonable to assume that at least part of the intent of the objective is reducing uncertainty about a project's environmental impacts.

Our survey results showed inconsistency among groups' opinions on how well the environmental review process reduced uncertainty about a project's potential

[9] *Minnesota Rules* 2009, 4410.0300, subp. 3.

Opinions of people we surveyed were inconsistent on how well the environmental review process reduced uncertainty about a project's potential environmental effects.

environmental effects. Fewer citizens than other respondents rated the environmental review process as acceptable or better in meeting the objective on reducing uncertainty. Table 4.9 shows that just 39 percent of citizens rated the process as at least acceptable at reducing uncertainty about a project's potential environmental effects, while majorities of the other groups of respondents ranked it favorably. Inconsistency was evident within groups as well. Substantial shares of both citizens and nonprofit or public interest group representatives (about 53 and 44 percent, respectively) rated the process as poor in reducing uncertainty.

Representatives of businesses and project proposers we interviewed were concerned about uncertainty of a different type. Their concern lay with uncertainty over how long environmental review will take, which they said affects their costs.[10] They also felt uncertainty about whether the process's outcome would pave the way to receiving the necessary permits, an uncertainty which made it difficult to plan and run their business. Because state rules say that environmental reviews are not to be used for justifying a decision to approve a project, we are not measuring this type of uncertainty as an objective of the environmental review process. We note it here to indicate some proposers' concerns about uncertainty in the process. Among proposers and their consultants who replied to our survey, a majority of 58 percent rated the environmental review process as at least acceptable for reducing uncertainty in obtaining project approvals. More than a third (38 percent), however, rated the process as somewhat or very poor at reducing this uncertainty.

Duplication

Some proposers and business representatives voiced concern over what they saw as duplication of effort among government agencies. In many of our case studies, proposers had to obtain environmental permits or approvals from numerous governmental agencies. Plus, permits related to water can emanate from multiple state and local government jurisdictions. For example, the Department of Natural Resources (DNR) manages permits for water appropriations, while PCA manages storm water permits and wastewater permits, and local governments manage implementation of the Wetland Conservation Act. Because the structure for managing water resources in Minnesota crosses multiple agencies, project proposers could well view this structure as cumbersome. At the same time, representatives from the responsible governmental units we interviewed did not believe their work duplicated that of other agencies in the environmental review. Agencies in our case studies explained that they administered only those provisions within their own regulatory jurisdiction.

Our survey results showed mixed opinions on how well the environmental review process meets the objective on eliminating duplication, with fewer citizens than other respondents ranking the process as acceptable or better. Table 4.9 shows the results. Clear majorities of proposers and representatives of both

[10] Some responsible governmental units acknowledged uncertainty about the length of the process but said their responsibility was to develop defensible EAWs that could withstand court challenges. Further, as Chapter 3 described, many factors, including the responsiveness of the proposer to supply needed data, may affect the length of environmental review.

public interest groups and public agencies rated the process as at least acceptable in eliminating duplication of effort in collecting information on environmental impacts. Just 37 percent of citizens rated it favorably, and an equal share responded they did not know or it was not applicable. Among respondents rating the process as somewhat or very poor in meeting this objective, proposers constituted the largest share at 38 percent. Among respondents other than proposers, smaller percentages, by at least 10 percentage points, rated the process negatively.

Effects of Inconsistency

While it is clear that the environmental review process does not allow governmental units to consistently meet objectives on reducing delay and uncertainty or eliminating duplication, it is difficult to quantify these effects. We interviewed a small number of project proposers and asked proposers about the effects of environmental review in our survey. We also examined national literature related to the deterrent factor that state environmental regulations are perceived to have upon business location decisions. We found:

- **Businesses indicated that environmental review may contribute to their decisions to forestall or forego projects, although academic literature on the topic is not conclusive.**

Several project proposers and consultants told us they believed environmental review put Minnesota at a competitive disadvantage with other states. In answer to an open-ended survey question, one respondent wrote the following, which echoed several others' sentiments:

> I can state, without a doubt, that before this company would ever do further investment in this State, we would consider other options based on our [environmental review] experience.

Many project proposers we surveyed said their negative experience with environmental review would influence their future decisions on projects.

Many project proposers responding to our survey indicated that their negative experience with the timing and cost of environmental review would influence their future decisions on projects. Majorities of the project proposers believed that the time and costs needed for their environmental review were unreasonable relative to overall costs and environmental risks of their projects, as Table 4.10 details. A significant share of project proposers agreed that the time and costs of environmental review would cause them to reconsider expanding or building future projects. A similar share said that environmental review would be a driving factor in deciding whether to build future projects in Minnesota.

Our review of literature on business location decisions does not conclusively support or deny a relationship between state environmental regulations and such decisions. Study results vary by type of regulation and the specific type of firm studied, which make them less useful for generalizing across all regulations and industries. Further, none of the most frequently cited academic research focused specifically and exclusively on the effect of environmental review on business location decisions. Our review suggests that environmental review may be one of many factors in a business's decision to locate elsewhere.

Table 4.10: Survey Respondents' Opinions on Timing and Costs of Environmental Reviews for Their Projects, 2010

	N	Somewhat or Strongly Agree	Neither Agree nor Disagree	Somewhat or Strongly Disagree	Don't Know or Not Applicable
The time and costs needed for environmental review were reasonable relative to possible environmental risks posed by the project.	26	19%	19%	62%	0%
The time and costs needed for environmental review were reasonable in the context of overall costs of your proposed project.	26	31	15	54	0
The time and costs needed for environmental review would not cause you to reconsider expanding or building future projects.	26	35	19	42	4
The time and costs needed for environmental review would not be a driving factor in deciding whether to build future projects within Minnesota or outside the state.	26	35	23	42	0

NOTES: Survey respondents either had proposed projects that underwent environmental review or were the proposers' consultants. They were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010. The question read: "How strongly do you agree or disagree with the following statements about the costs and time needed for environmental review?"

SOURCE: Office of the Legislature Auditor, analysis of proposer survey, August 2010.

Recommendation

The lack of consistency in meeting objectives suggests that changes to environmental review may be appropriate under certain circumstances. Currently, state rules specify which projects must undergo environmental review, as Chapter 1 described. The categories for mandatory environmental reviews do not allow exceptions, regardless of the amount of environmental risk a project may pose.

RECOMMENDATION

The Legislature should authorize and fund the Environmental Quality Board (EQB) to examine on a trial basis the feasibility of allowing certain proposed projects, based on criteria that identify them as low risk, to bypass the EAW process.

Bypassing today's EAW process may be appropriate for particular projects recognized as posing low environmental risks when they meet environmental standards by operating under existing permit conditions. Implementing this approach would require developing criteria to identify low-risk projects that would otherwise fall into one of the mandatory EAW categories in state rules. At a minimum, such criteria should include: 1) the nature of the project, 2) the project's proposed location, 3) whether the project proposes using proven and technically sound technologies, 4) whether the project is a source of local controversy, 5) the proposer's track record for environmentally responsible

operations, and 6) whether required permits on similar projects have proven to offer sufficient controls over likely environmental effects. Proposers of projects meeting the criteria would still need to collect all required information, conduct the customary technical tests, and prepare all necessary operations plans to comply with permit regulations. They would, however, become eligible to bypass the customary EAW process. We suggest that the Legislature authorize this approach, but we believe that state rules will also have to be modified. Rules currently allow EQB to approve alternative forms of environmental review but only for processes that address substantially the same issues as in the EAW and EIS and use procedures similar to those in the EAW and EIS processes.[11]

We envision a decision to bypass the EAW process occurring on a case-by-case basis. This means that the existing thresholds triggering mandatory EAWs would remain in place. The decision over whether a particular proposal could qualify for the new approach would rest on the feasibility of that project meeting the aforementioned criteria including the proposer's ongoing compliance with permit requirements for existing projects he may be operating.

If a low-risk project is allowed to bypass the EAW process as we recommend, EQB should fully evaluate the outcomes from this initial trial before continuing or expanding the approach.

Implementing this approach would require EQB to undertake an extensive study and evaluation process. First, EQB would have to identify the appropriate criteria for identifying low-risk projects. As part of that, it would have to work with the state's regulatory agencies to determine whether sufficient evidence exists to demonstrate that permit regulations have adequately prevented or controlled environmental effects. Second, EQB would have to determine which of the mandatory EAW categories would contain projects that lend themselves to the new approach without introducing the potential for significant adverse environmental effects. Third, EQB would have to design a structure to implement the new approach. The structure would have to include, for instance, identifying who—the EQB itself, a responsible governmental unit, the regulatory agencies, or others—would be authorized to decide which projects meet the criteria. Designing the structure would also include determining how proposers apply and to what degree each criterion must be met.

It would be important to implement the new approach on a trial basis. EQB would have to fully evaluate the outcomes from the initial trial before deciding to continue or expanding the approach to cover projects within additional categories of EAWs. This could involve a comparison analysis of the trial case, statistically matching it against a comparison group of projects to identify the extent to which outcomes differ and why.

We believe EQB is positioned to lead the effort but question whether it has sufficient resources to do so. EQB has independence from parties closely involved with the process: the agencies that serve as responsible governmental units and the proposers whose projects stand to be affected. Plus, it has the necessary knowledge of the environmental review process. At the same time, we recognize that, as it now exists, EQB is unlikely to have the staff resources to undertake a sizable, ongoing study and evaluation process. Additional resources would likely be required and other staffing options, such as greater involvement

[11] *Minnesota Rules* 2009, 4410.3600, subp. 1.

of EQB's "technical representatives" or use of interagency transfers, should be explored.[12]

Further, we acknowledge that this new approach would not offer the immediate relief from delay and uncertainty that can arise from environmental review and that many project proposers seek. Nonetheless, we urge a measured and rigorous approach to ensure that changes to the existing process do not result in environmental harm.

OBSTACLES TO MEETING OBJECTIVES

We identified obstacles that prevented environmental reviews from fully meeting their objectives. We examined to what degree the process is structured to hold responsible governmental units accountable for environmental reviews that meet the objectives listed in state rules. To assess accountability in the environmental review process, we considered (1) whether responsible governmental units were well equipped to manage the EAW process, (2) the extent to which accountability was supported by oversight, and (3) whether responsible governmental units were impartial. We also considered the usefulness of the template used as the basic form for completing EAWs. We describe the considerations below.

Responsible Governmental Units' Experience and Expertise

Although the role of the responsible governmental unit is crucial, we found:

- **Varying levels of expertise and experience among government agencies may compromise their abilities to meet environmental review objectives.**

Some local government staff in the case studies we reviewed had worked on only one EAW over a span of many years.

PCA and DNR have staff who work full time on environmental reviews. Our case studies suggest, however, that local governments have staff who work only sporadically on environmental reviews. For instance, one county zoning administrator told us that the 2009 EAW case was the first one on which he had worked in his ten years with the county. Another county zoning official had overseen only one EAW in her 37 years as a county employee. Several other county and city staff reported similar experiences. Despite the infrequency of environmental reviews for any single local official, local governments frequently are assigned to serve as responsible governmental units, as Chapter 1 indicated.

In our case studies, we interviewed staff in responsible governmental units about the process they followed, and we examined the extent to which responsible governmental units reviewed the EAW or EIS data submitted by project proposers. When staff of responsible governmental units are inexperienced, the lack of experience can lead to problems in the review of a project. Among our

[12] As Chapter 1 explained, the technical representatives are employees from the nine state agencies represented on the board.

Even with help from EQB, local government staff in two of our case studies said they had problems completing the EAW process.

14 case studies, two made very few and minor changes to the EAWs that were released for public comment. Staff in each of the cases acknowledged their inexperience with environmental review. They had relied on information from EQB to answer their questions, which they found helpful. Yet, their inexperience still hampered their efforts. In one of the two cases, the staff person said because she was inexperienced, she was unsure what type of changes she could ask the proposer's consultant to make to the EAW information. As part of her review, however, she did work with external agencies (a watershed district and a soil and water conservation board) to understand their concerns on erosion. In the other case, the responsible governmental unit said it had not known about the need for an EAW, felt it had to rush through the process, and found the form complicated for someone new to the EAW process.

State environmental review staff and others we interviewed also voiced concern about local governments that lacked environmental review experience and the effect that inexperience might have on the quality and thoroughness of EAWs. Lack of expertise was also a concern. Some representatives of responsible governmental units we interviewed described their own lack of expertise with environmental reviews. In one case, until a third party intervened, the responsible governmental unit did not know that environmental review was needed for a proposed project, even though it was aware that the project had already obtained a state permit. In addition, in our survey of commenters, responses to an open-ended question raised concerns about perceived inexperience or lack of expertise on the part of certain responsible governmental units. For example, one respondent wrote:

> More assistance needs to be available to [responsible governmental units] on how to handle environmental reviews…especially [responsible governmental units] that do not deal with these often.

Another wrote that:

> Many town board members, small city board members, etc., are not sufficiently trained or sophisticated enough to incorporate environmental review information into their…personal decision-making.

Three of the local governments in our case studies had hired consultants to conduct environmental reviews on their behalf. Others mentioned they have hired consultants in the past or would hire a consultant to overcome their inexperience under certain circumstances, such as for a project requiring an EIS.

Existing state rules authorize EQB to designate a different responsible governmental unit after determining a designee has greater expertise to analyze a project's potential impacts.[13] EQB has invoked the redesignation rule just twice in the last five years, at the request of the original responsible governmental unit. In each case, responsibility was transferred from a local unit of government to DNR because the proposals required expertise on water-related issues.

[13] *Minnesota Rules* 2009, 4410.0500, subp. 6.

RECOMMENDATIONS

The Environmental Quality Board should modify the process for redesignating a responsible governmental unit and develop criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to conduct environmental reviews.

The board should work with associations of local governments to 1) identify resources to assist local governments that lack experience or expertise with environmental review and 2) develop and promote environmental review training for continuing education of association members.

In cases where potential responsible governmental units lack sufficient expertise or experience, EQB should be prepared to designate an alternate responsible governmental unit. The process for redesignating a responsible governmental unit should be expanded to consider additional criteria, including the experience of the potential responsible governmental unit. The designation should also be based on criteria that include the environmental issues that have arisen in the past for proposals of the type in question. For instance, if certain concerns had arisen over past projects for aggregate mining, such as over how the mined land would be reclaimed, then one criterion for redesignation would be selecting an entity with expertise on land reclamation.

Current rules limit redesignation to within five days after a proposer has submitted the completed data portions of the EAW. We believe a determination on insufficient expertise or experience should occur, to the extent possible, prior to commencing the EAW process, not after. We acknowledge that some cases may not have sufficient information about the project until the data portions of the EAW are submitted, but in those cases we urge assessing potential impacts based on earlier similar projects.

If determinations of expertise were made earlier, and if level of experience were also considered, the state agencies now serving as responsible governmental units would likely be required to take on additional environmental reviews, when appropriate. This would have budget implications for these agencies. The number of cases where a responsible governmental unit would have to be redesignated is unclear. Although the number of redesignation requests EQB has received in the past has been small, the number could increase. Therefore, options other than state agencies may be needed for conducting the environmental reviews.

EQB and local government associations should identify resources to help communities lacking experience or expertise with environmental review or those seeking a redesignation from EQB. For example, a resource might be the identification of preferred vendors who would work with association members when they face the need to conduct an EAW. Another could be cooperative arrangements in which certain communities, regional organizations, or consultants conduct environmental reviews on behalf of less experienced local

governments. The latter would require determining how such cooperative arrangements would be funded.

On-demand training is needed especially for those responsible governmental units that are rarely involved with environmental reviews.

An expansion of the process for redesignation would likely necessitate changing state rules, which can be a lengthy undertaking. Certain aspects of the current process could remain in tact, however. For instance, we expect that potential responsible governmental units themselves would be the ones most likely to invoke the rule. But anyone could request a redesignation of the responsible governmental unit, as is the case under existing rules.

EQB already has online guidance available for responsible governmental units and provides technical assistance upon request; plus, local government associations have some resources on the topic. However, additional on-demand training would be helpful for those units of government that rarely serve as responsible governmental units or feel they lack expertise. EQB should work with the League of Minnesota Cities, the Association of Minnesota Counties, and the Minnesota Township Association to supplement training on environmental review for their members. To make sure the information is available when local governments need it—especially important for those that are involved with environmental reviews rarely—training should be offered using multiple venues, such as Webinars and online written materials. Training could include items such as what local permitting staff need to know to judge whether a proposed project is required to undergo environmental review.

Limited Oversight

As a second measure of accountability, we assessed the degree of oversight in the environmental review process. We found:

- **Systematic oversight of EAWs and EISs is limited, which in turn limits the accountability of the environmental review process.**

State rules authorize the responsible governmental unit to prepare an EAW using data submitted by the project proposer, but no entity oversees responsible governmental units. Originally, EQB conducted all environmental reviews, but this responsibility was decentralized to cities and certain state agencies starting in 1977, and EQB then served as an appeal body for certain EAW decisions. Since the 1980s, however, state statutes were changed to have appeals decided in court and remove this function from EQB. Since decentralization, the responsible governmental unit itself has been responsible for the completeness and accuracy of all information in the EAW.[14] Although EQB writes the rules governing environmental review and offers technical assistance about the process, it does not determine whether responsible governmental units' environmental review documents are complete and sufficient.[15] Responsible governmental units told us

[14] *Minnesota Rules* 2009, 4410.1400.

[15] However, *Minnesota Rules* 2009, 4410.2800, subp. 1, gives EQB the authority to determine the adequacy of a final EIS under certain conditions, such as when the responsible governmental unit is unable to provide an objective appraisal. This applies only with regard to final EISs, and EQB reported that just one such request was made in the last five years.

that they themselves must judge whether answers to EAW or EIS questions are sufficiently detailed; little written guidance is available for those judgments.

Little guidance is available to help responsible governmental units judge whether the answers to questions on the EAW form are sufficient.

The lack of oversight and limited guidance raises accountability concerns especially when the responsible governmental unit is inexperienced or lacks expertise in environmental review. Such responsible governmental units offer little assurance that the data submitted by the project's proposer receive a rigorous or thorough review. Beyond that, some responsible governmental units have relied on consultants who were also employed by project proposers. This arrangement may introduce conflicts of interest for consultants being paid by both proposers and responsible governmental units.

The recourse now available to someone who wishes to question environmental review documents is judicial review, which poses a high threshold for taking action. Appeals to court represent the only oversight available over most decisions made by responsible governmental units. Statutes allow judicial review of the need for an EAW or EIS or the adequacy of an EIS.[16] However, judicial review is not quick or easy; plaintiffs need the legal and personal wherewithal to resolve such matters through formal court proceedings, and a surety bond may be required of them.[17] People we interviewed suggested that the threat of being taken to court has been an incentive for responsible governmental units to develop comprehensive and lengthy EAWs that can withstand court challenges.[18]

An additional form of recourse is PCA's Citizen Board, but this is available only for cases where PCA serves as the responsible governmental unit. Statutes require the Citizen Board to make a decision on the need for an EIS if anyone requests an EIS after the EAW is completed.[19] However, this option is not available for most environmental reviews. PCA served as the responsible governmental unit for 65 privately proposed projects in fiscal years 2007 through 2010, only about 21 percent of all private projects during that period. Of these 65, the Citizen Board heard 17 cases (26 percent).

Parties who comment on environmental review documents offer a degree of oversight that provides for accountability of the responsible governmental unit, but this is limited. For one thing, some EAWs receive no comments. For another, some observers have raised concerns that certain comments have little substance, have already been covered in the EAW, or do not pertain to issues raised in the EAW document. Further, as described earlier in the chapter, others involved with environmental reviews have indicated dissatisfaction with the

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[16] *Minnesota Statutes* 2010, 116D.04, subd. 10.

[17] *Minnesota Statutes* 2010, 116D.04, subd. 10, says a bond may be required of the plaintiffs unless they can show that their claims have sufficient possibility of success on their merits to sustain the burden required for the court to issue a temporary restraining order.

[18] Data were not available on the number of cases filed in district court involving decisions related directly to the need or adequacy of environmental reviews. However, for the period of January 2007 through December 2010, we identified 12 such cases appealed to Minnesota's Court of Appeals; they involved the need or adequacy of environmental reviews for privately proposed projects.

[19] *Minnesota Statutes* 2010, 116.02, subd. 6.(2)(i).

public comment period. Some representatives of responsible governmental units thought the comment period needed to be improved, and substantial portions of citizens we surveyed questioned how well the process gives them access to decision makers or whether their comments received reasonable responses.

Many citizens we surveyed questioned whether the comments they had submitted on EAWs or EISs received reasonable responses.

Responsible governmental units are required to respond to substantive and timely comments, but they have discretion over the depth of the response, and no one oversees the responses (short of judicial review). In addition, from our case studies, we learned it is common for the proposers or their consultants to write responses to the comments. This is often necessary because proposers have the most information about the proposed projects, but we believe it also means that responsible governmental units must rigorously vet the responses. Our case studies showed that some responsible governmental units were more rigorous than others.

With polarized opinions over changes to environmental review and limited oversight over responsible governmental units, public agencies' actions to improve the environmental review process have not been widespread or systematic. We found:

- **Despite several attempts over time, the Environmental Quality Board and others have had limited success reforming the environmental review process, although the process needs ongoing evaluation and improvement.**

Although EQB has successfully amended rules governing environmental review numerous times, it has had little success at major structural reform over the years in its attempts to improve and streamline the environmental review process.[20] Parties involved in the restructuring efforts have represented the varied stakeholders in the environmental review process; they came with strongly held yet divergent beliefs and were concerned that changing the process would reverse progress as they defined it. Many of the past restructuring efforts included failed attempts to achieve consensus among these stakeholders. EQB's last such effort, in 2007, concluded that future attempts at major reform are likely to result in "a similar impasse" unless significantly new approaches were undertaken.[21] In response to a 2009 law requiring a study of options to streamline the environmental review process, PCA published a report that demonstrated the significantly divided views among stakeholders and, similar to earlier EQB

[20] A partial list of these attempts includes: recommendations from the 1991 EQB technical representatives; a 1993 EQB subcommittee study on environmental review program revisions; legislation developed by the 1995 EQB, which did not pass; a 1995 advisory work group that had been appointed by the EQB chair but was terminated before a report was concluded; and a report by a 2001-02 special advisory committee on environmental review reform concluding that the system balances competing interests and agreement on a better system could not be reached.

[21] *Technical Representatives' Report to the Environmental Quality Board on Environmental Review, As Directed by the EQB at Its January 2007 Retreat* (St. Paul, April 11, 2007), 5.

efforts, did not reach consensus on numerous ideas for changing the environmental review process.[22]

EQB has authority to monitor the effectiveness of the state rules governing the environmental review process and to modify the rules; but it has not focused on the adequacy of a responsible governmental unit's work. Responsible governmental units told us about practices they follow to improve the quality of environmental reviews and reduce delays, but the practices have not been evaluated or shared with others. As an example, the city of Hutchinson organizes what it calls a "one-stop shop meeting" to bring together all environmental review participants early in the process. At this meeting, the proposer customarily describes the proposal's design, and city personnel—including the city engineer, police, electric utility workers, environmental specialists, on-site inspectors, and others—discuss items that will need to be addressed, such as erosion, traffic, or public safety. City officials believe the one-stop meeting clarifies issues and engenders a shared understanding of issues between proposer and responsible governmental unit, which can reduce the amount of time going back and forth with additional data requests. Further, it ensures that problems are addressed before the city council is called upon as the responsible governmental unit to review the environmental documents.

We learned of practices that some responsible governmental units follow to improve their environmental reviews, but the practices have not been evaluated or shared with others.

In a similar vein, DNR officials told us they now hold meetings with project proposers early in the process. Their intent is to collaborate with the proposer, clarify assumptions about the project, define the project's scope, and set a clear definition of the project to avoid problems at later stages of the environmental review. As another example and as discussed in Chapter 3, to speed the process for highly controversial projects, PCA developed what it calls its Strategic Projects Sector. This refers to focusing resources for an environmental review by putting one manager in charge who is able to use staff from other units across PCA to collaborate on the review.

We saw examples of coordination among agencies, but we also heard about room for improvement. For example, we reviewed minutes from several meetings that reflected cooperation between DNR and PCA staff on projects involving both agencies. The two agencies also have worked together to identify and resolve issues prior to public notice of environmental review documents. DNR told us that mining EISs have project management teams that include PCA and the Department of Health. In specific cases, we heard people's perceptions about needs for more coordination. As an example, one PCA planner indicated that DNR staff exhibited a lack of responsiveness regarding water permits for a particular EAW.[23] In a second case, a local responsible governmental unit was dissatisfied because a state agency's comments on an EAW were boilerplate instead of being tailored to the project at hand. As another example, a project proposer had concerns about communication issues between DNR and PCA that he thought led to delay.

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[22] *Laws of Minnesota* 2009, chapter 37, art. 1, sec. 65. Minnesota Pollution Control Agency, *Environmental Review Streamlining* (St. Paul, December 2009).

[23] PCA staff told us that although this may have been more of a widespread problem in the past, they have since changed their process to improve interagency communication.

RECOMMENDATION

The Environmental Quality Board should identify best practices of the environmental review process and encourage their widespread use where appropriate.

We believe that a rigorous method of identifying and promoting best practices is a necessary first step to a continuous improvement process for environmental reviews. Because EQB itself does not conduct environmental reviews, yet it sets rules for how reviews around the state are conducted, it is in a good position to address improvements that could transcend a single governmental unit. At the same time, EQB has limited staffing and is unlikely to have the capacity to take on the added responsibilities involved with a continuous improvement process. Additional resources or other arrangements, such as interagency staff transfers, would likely be required.

Further, we acknowledge that this recommendation would not directly provide a mechanism for evaluating the adequacy of EAWs or EISs. However, we believe it is important to focus on improving the current environmental review process instead of imposing an additional layer of review on the process. Another layer of review would lengthen the time needed for an EAW or EIS, with no guarantee of avoiding judicial review. It would also undermine the accountability that now exists due to the fact that in most cases local elected officials serving on county boards and city councils are making the final decisions as responsible governmental units.

A continuous improvement process is needed for environmental reviews.

Implementing a continuous improvement process would require EQB to work with responsible governmental units and other interested parties to identify areas in need of improvement. One area to examine would be how to best involve citizens and others interested in commenting on environmental documents. It would mean identifying mechanisms, such as communication technologies, to improve how to inform parties about projects as well as assist those parties in making meaningful contributions. Another area to examine would be compiling timeliness information on environmental reviews conducted locally. Over time, such information could help identify opportunities for improvement and determine what changes are needed.

A continuous improvement process would also require EQB to test the practices to determine under what circumstances they can be successfully applied elsewhere. We believe such an effort could be undertaken within EQB's existing authority.

No Assurance of Impartiality

A third measure of accountability is the extent to which responsible governmental units are objective and independent. We found:

- **Environmental review is not structured to require responsible governmental units to be impartial, third-party decision makers.**

State rules and statutes governing the environmental review process do not require the responsible governmental unit to be independent of the proposed project. Nor do statutes regulate potential conflicts of interest specifically for participants in the environmental review process.

State law contains general provisions related to potential conflicts of interest for certain public officials. For example, public officials involved in decisions that would substantially affect the officials' personal financial interests (or those of an associated business) must write a statement disclosing their potential conflict of interest.[24] However, these provisions do not explicitly cover individual staff or elected officials who work on environmental review documents. In fact, they exclude certain local government officials who could potentially serve as a responsible governmental unit, such as those in cities or counties outside the seven-county metropolitan area or those in cities of less than 50,000 population within the metropolitan area. In one case we reviewed, a member of the responsible governmental unit had a personal financial stake in the proposed project, but he recused himself from relevant votes.

RECOMMENDATION

The Legislature should extend statutes governing potential conflicts of interest to cover all public officials who may serve as members of a responsible governmental unit.

Statutes on practices related to conflicts of interest should explicitly apply to all officials who have the potential to serve as decision makers for a responsible governmental unit. In some cases, such as for commissioners of state agencies, existing statutes already apply. Implementing this recommendation would require amending *Minnesota Statutes* 10A.

Even though state law does not specifically require impartiality for members of responsible governmental units, we believe independence is important. The integrity of the environmental review process is at risk if people who decide on the need for an EIS stand to gain financially from the decision.[25] The risk is particularly great because of the limited oversight over most responsible governmental units.

[24] *Minnesota Statutes* 2010, 10A.07, subd. 1.(1). In the state executive branch, the statute applies to commissioners, deputy commissioners, assistant commissioners, and certain employees who promulgate rules or adjudicate contested cases.

[25] Although not the focus of this evaluation, public sector projects may be proposed by the same agency that serves as responsible governmental unit. For example, a DNR proposal for a nonmotorized recreational trail could undergo environmental review with DNR's Environmental Review Unit serving as responsible governmental unit. We are not referring to these arrangements in our discussion of independence for responsible governmental unit members.

Environmental Assessment Worksheet Forms

State law defines EAWs as brief documents designed to set out facts necessary to determine whether an environmental impact statement is needed, as Chapter 1 described. However, statutes do not define "brief," and environmental review consultants we interviewed agreed that EAWs have become lengthier. As mentioned earlier, some people suggested that responsible governmental units have produced longer EAW documents to lower the risk of being challenged in court. In reviewing the length of the EAW as part of assessing the objective on delay, we found:

- **Minnesota's standard EAW form requires information that is not necessary for all types of proposed projects.**

Our case studies made evident that some of the questions on the standard EAW form are not pertinent to each case. As an example, staff in one responsible governmental unit pointed out that expanding a residential development in an urban setting would usually not create a significant impact on fish and wildlife habitats or generate air emissions, but the standard EAW form requires researching and answering these questions.

The 2010 Legislature required DNR, PCA, and EQB to develop customized EAW forms after reviewing the categories of projects for which state rules require mandatory environmental review.[26] In response, a work group met periodically in 2010 but focused first on updating the existing standard EAW form and corresponding guidance. It planned to address customization later in 2011 along with developing interactive electronic forms that could be submitted via the Internet. The work group had decided on the categories of projects that seemed best suited to customized forms, including aggregate mining, solid waste, and industrial projects with air emission concerns.

Tailoring EAW forms for specific types of projects would focus the forms on the most relevant questions needed to identify potential environmental impacts.

In addition to the work group's efforts, DNR drafted two customized EAW forms in 2010, one for aggregate mining projects and a second for aquatic enhancement projects. The forms were preliminary and intended only as a model; as of December 2010, the forms had not yet been sent to EQB for review. According to DNR staff, the customized forms were needed because the standard form contained many questions that were not applicable to these types of projects while lacking other questions that would be pertinent. As an example, the draft customized form for aggregate mining adds a question specific to the reclamation plan for a mined site.

Interviews we conducted affirmed interest in customizing EAW forms as a way to focus on the most relevant questions in a given project and perhaps lessen time answering questions that are unnecessary. While many of the responsible governmental units in our case studies said the EAW form is not sufficiently tailored, some said they did not know what could be readily deleted.

[26] *Laws of Minnesota* 2010, chapter 361, art. 4, sec. 66. One customized form already exists. In 1999, EQB customized an EAW form specific to proposed animal feedlots.

Our survey did not specifically ask project proposers and their consultants for their thoughts on tailoring the EAW form. But we asked their opinions on whether data requested for the EAW was reasonable and whether the resulting documents were about the right length and detail. Opinions were mixed. Equal numbers of proposers agreed as disagreed that the data requested were reasonable, as is displayed in Table 4.11. While half of the proposers and consultants responded that their environmental review documents were about the right length and appropriately detailed, about 35 percent somewhat or strongly disagreed.

Table 4.11: Survey Respondents' Opinions on Environmental Review Data and Documents for Their Projects, 2010

	N	Somewhat or Strongly Agree	Neither Agree nor Disagree	Somewhat or Strongly Disagree	Don't Know or Not Applicable
The data requested for environmental review documents was reasonable.	26	38%	23%	38%	0%
The resulting environmental review documents were about the right length and appropriately detailed.	26	50	12	35	4

NOTES: Survey respondents either had proposed projects that underwent environmental review or were the proposers' consultants. They were involved in environmental reviews for which a public comment period was held between January 1, 2009, and June 30, 2010. The question read: "How strongly do you agree or disagree that the following statements reflect your experiences with the environmental review of your project?"

SOURCE: Office of the Legislature Auditor, analysis of proposer survey, August 2010.

RECOMMENDATION

The Environmental Quality Board should continue to make its work on customizing EAW forms a priority.

While delays of EAW projects result from various reasons as Chapter 3 described, we believe the environmental review process should remove impediments to timeliness where possible. The work group that began updating the EAW form in 2010 should be encouraged to proceed in tailoring the standard form to the needs of specific types of projects. Tailoring the EAW forms will help concentrate the environmental review on the questions most relevant to a given project type. Using customized forms may not affect the overall time or cost of an EAW, but it could help the process better meet its objectives by focusing efforts on issues most likely to mitigate potential environmental effects.

List of Recommendations

- The Pollution Control Agency (PCA) and Department of Natural Resources (DNR) should improve the value of their data by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits. Doing so will enable them to report on agency performance, identify opportunities for improvement, and change their processes when necessary. (p. 49)

- PCA and DNR should establish explicit standards for the timeliness of agency responsiveness to proposers' initial and supplemental data submissions for environmental assessment worksheets (EAWs). Each agency should measure its performance against these standards and against time lines already in Minnesota Rules. (p. 63)

- PCA and DNR should each develop clear guidance on what constitutes a complete EAW data submittal. (p. 63)

- PCA and DNR should consistently inform project proposers of the environmental review process, information needed for a complete EAW data submittal, agency timeliness standards, and the agency's expectations of the proposers and their consultants. (p. 63)

- The Legislature should authorize and fund the Environmental Quality Board (EQB) to examine on a trial basis the feasibility of allowing certain proposed projects, based on criteria that identify them as low risk, to bypass the EAW process. (p. 101)

- EQB should modify the process for redesignating a responsible governmental unit and develop criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to conduct environmental reviews. (p. 105)

- EQB should work with associations of local governments to 1) identify resources to assist local governments that lack experience or expertise with environmental review and 2) develop and promote environmental review training for continuing education of association members. (p. 105)

- EQB should identify best practices of the environmental review process and encourage their widespread use where appropriate. (p. 110)

- The Legislature should extend statutes governing potential conflicts of interest to cover all public officials who may serve as members of a responsible governmental unit. (p. 111)

- EQB should continue to make its work on customizing EAW forms a priority. (p. 113)

Environmental Review Staff Hours and Costs

APPENDIX

Although we were unable to obtain sufficient data to look at trends in the costs of individual environmental reviews, the Pollution Control Agency (PCA) and the Department of Natural Resources (DNR) each provided some project-specific information.

Table A.1 shows PCA's estimated staff hours and staff compensation related to the environmental assessment worksheets (EAWs) from fiscal years 2009 and 2010 for which the agency served as the responsible governmental unit. It also includes staff time and compensation spent on related permits for each project. The table reflects the varied time lines for completing these documents (as discussed in Chapter 3) and the wide variation in staff resources needed. For example, most of the feedlot EAWs and the related permits required fewer than 300 staff hours to prepare, but one, for Dollymount Dairy, required over 700 hours. Projects listed in the "Other EAWs" group generally required significantly more staff time. For example, the MinnErgy ethanol plant project required an estimated 5,151 staff hours to complete the EAW and work on permits associated with the project.[1]

The numbers of staff who worked on each project gives an indication of how complex the projects can be, as discussed in Chapter 2. For example, 18 staff contributed to the Asbury Asphalt Bulk Plant EAW and permits. Staff included the project manager for the EAW; engineers from the water, air, and aboveground storage tank areas; a hydrologist; an air modeler; and supervisors, administrative staff, and others.

Table A.2 shows the state agency staff hours and contractor costs for recent EISs for which either DNR or PCA was the responsible governmental unit. The table reflects not only the hours of staff in the responsible governmental unit, but also staff from other state agencies.

[1] Table A.1 does not include hours spent by managers (other than project managers), directors, and commissioner's office staff. Staff in these leadership positions tend to become involved in more controversial projects. Leadership staff time on the MinnErgy project exceeded 550 hours.

Table A.1: Staff Hours, Costs, and Days to Complete Environmental Assessment Worksheets (EAWs) and Permits, Pollution Control Agency, Fiscal Years 2009-10

	Days[b]	Staff Hours[a]			Number of Staff	Staff Cost Estimate[c]
		Environmental Review	Permitting	Total		
Feedlot EAWs						
Evers Dairy	504	115	n/a	115	4	$ 4,577
Wetzel Pork	360	268	16	284	7	11,820
Highlevel Egg	292	286	n/a	286	6	12,098
Dollymount Dairy	289	738	n/a	738	12	27,052
R & R Thier Feedlot	278	125	5	130	6	5,086
Manthey Hog Barn	221	154	n/a	154	6	6,588
Gervais Hog Feedlot	197	245	20	265	7	8,761
Strobel Farms	189	189	n/a	189	6	6,641
Langdon Farms[d]	------	134	16	150	3	6,293
Voxland Feedlot	135	65	16	81	5	3,065
Bissonette Feedlot	133	40	16	56	5	2,044
Hein Swine Facility	132	282	n/a	282	5	11,679
Perschbacher Hog Farm	130	88	16	104	5	4,192
SLT Cattle Company	130	167	n/a	167	6	6,701
Meadow Star Dairy	91	108	5	113	5	4,300
Athman Swine Finishing	78	240	n/a	240	7	9,042
Other EAWs						
Asbury Asphalt Bulk Plant	785	1,330	246	1,576	18	63,364
Bituminous Roadways[e]	------	399	1,188	1,587	12	48,270
MinnErgy	469	3,020	2,131	5,151	32	214,568
Sappi –Cloquet	403	1,206	n/a	1,206	9	48,626
Marathon Petroleum	149	336	n/a	336	5	14,591

NOTES: Notation "n/a" means that information on staff permitting hours was not provided. Work on permits may not have been completed by the time the Pollution Control Agency (PCA) generated these data.

[a] PCA estimated staff hours using a combination of time-tracking data as of September 24, 2010, (in which staff record actual hours worked by project and activity) and estimates for staff who did not track their time. Actual hours worked on these projects may exceed those reflected in the table. Distribution of hours between environmental review and permitting may be recorded inconsistently among staff, as tasks for the two activities sometimes overlap. Staff hours do not reflect time spent by managers (other than project managers), directors, and commissioner's office staff.

[b] Days is a count of days between the date PCA received the initial data for an EAW from a project proposer and the date a decision on the need for an EIS was made.

[c] Staff cost estimates are approximations based on the estimated hours worked by each staff person and the person's hourly salaries and benefits at a single point in time. As we requested, PCA provided salary and benefit information as of July 1, 2008, and July 1, 2009, for each staff person. We used the 2008 figure for projects for which the agency received initial data during or prior to fiscal year 2009, and the 2009 figure for environmental reviews that started in 2010.

[d] Project was withdrawn.

[e] Project has been indefinitely postponed. Local government actions rendered the project not permittable.

SOURCE: Office of the Legislative Auditor, analysis of Pollution Control Agency data.

Table A.2: State Agency Staff Hours and Contractor Costs for Preparing Environmental Impact Statements, Department of Natural Resources (DNR) and Pollution Control Agency (PCA), Fiscal Years 2005-10

		Staff Hours				
		Responsible Governmental Unit				
Project (Responsible Governmental Unit)	Fiscal Years[a]	Environmental Review Staff	Other Agency Staff	Other State Agency Staff[b]	Total	Contractor Costs
Mittal Steel (DNR)	2005-07	1,557	491	396	2,444	$ 262,267
Minnesota Steel (DNR)	2005-08	3,181	2,751	3,062	8,994	759,770
PolyMet/NorthMet (DNR)[c]	2006-10	11,247	21,196	4,419	36,862	3,448,545
Keetac (DNR)[c]	2008-10	3,627	1,615	3,604	8,846	1,102,813
Mesabi Nugget (DNR)[c]	2008-10	6,433	4,942	3,445	14,820	707,605
Essar Steel (DNR)[c]	2010	887	306	541	1,734	0
Xcel Energy West Lakeland Ash Disposal Facility (PCA)	2007-08	1,463	1,139	0	2,602	386,430[d]

[a] Fiscal years reflect the years in which hours and costs occurred.

[b] These data represent staff hours from the Pollution Control Agency and Department of Health.

[c] This project was ongoing as of June 30, 2010.

[d] In addition to reporting these contractor costs, PCA reported $105,107 in staff costs and $28,655 in nonsalary project costs.

SOURCE: Office of the Legislative Auditor, analysis of Department of Natural Resources and Pollution Control Agency data.

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February 24, 2011

James Nobles, Legislative Auditor
Room 140 Centennial Building
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RE: Report on Environmental Review and Permitting

Dear Mr. Nobles:

Thank you for the opportunity to comment on this report. These are comments from Environmental Quality Board staff. The EQB is responsible for promulgation of rules implementing the Minnesota Environmental Policy Act (Minn. Stat. Chapter 116D).

We appreciate the quality of the work, attention to detail, and the time spent consulting with us. This report provides an excellent foundation for continued discussion about environmental review and environmental permitting and concerns about timeliness, efficiency, and effectiveness. The report is very well researched, providing thorough background and analysis. Overall the findings and recommendations appear to be reasonable, balanced, and based on sound evidence. We do, however, wish to comment on the recommendations and two of the findings, mostly to provide further context.

Findings

OLA Finding: Not all environmental reviews fully meet all the objectives of the environmental review process (p. 87). This is a reasonable finding, given the objectives of the program provided in the environmental review rules.[1] However, this finding obscures the importance of the second finding in the chapter, that "for the most part, environmental reviews accomplish the objective of providing information to aid understanding of environmental impacts." Understanding of environmental impacts is the overarching purpose of environmental review in Minnesota, articulated in Minn. Rules Part 4410.0300, subp. 3:

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[1] Minn. Rules Part 4410.0300, subp. 4, pertaining to usability of the information, access to decision-makers, delegation of authority, reduction of delay and uncertainty, and elimination of duplication. See page 87 of the report.

> *The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.*
>
> *A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.*

OLA Finding: Despite several attempts over time, the Environmental Quality Board and others have had limited success reforming the environmental review process, although the process needs ongoing evaluation and improvement (p. 108). Since its inception in 1973, stakeholders have called for improvements to the environmental review process, and the Environmental Quality Board has responded through major and minor reform efforts. Most of those reforms were controversial because of competing interests among stakeholders. Transparency, openness, thoroughness and quality of information often compete with certainty, predictability, efficiency, and timeliness. Sometimes, "win-win" solutions can be found, but often objectives must be balanced against one another. Because of this constant tension, reforms mostly tend to be modest and incremental. The finding that the EQB and others "have had limited success reforming the environmental review process" may not be entirely accurate, since it can be argued that the EQB has generally achieved balance among competing interests and made progress toward meeting its objectives.

Recommendations

When recommendations refer to the "Environmental Quality Board", it is important to keep in the mind the structure of the organization. The EQB is a board composed of governor's appointees, nine of whom are agency commissioners. Core staffing, administrative, and technical support to the Board is provided by the Department of Administration, but staff resources also may be provided by member agencies. Recommendations within this report are directed to the governor-appointed Board, which must then provide direction and resources for carrying them out.

OLA RECOMMENDATION: The Legislature should authorize and fund the Environmental Quality Board (EQB) to examine on a trial basis the feasibility of allowing certain proposed projects, based on criteria that identify them as low risk, to bypass the EAW process (p. 101). The EQB has in the past considered, and in some cases adopted, alternatives to the standard environmental review process, so it is reasonable for the Board to explore the alternative described. However, a simpler option would be a reexamination of environmental review thresholds (mandatory categories and exemptions) and amendment of rules as necessary to exclude identified "low-risk" project types. The concept of environmental risk is already captured in the current rules' mandatory categories and exemptions, which are based on the scale of the project. The inherent assumption is the larger the project scale, the

greater the risk of significant environmental effect. The system is by no means perfect, but is at least a relatively objective, straightforward, and efficient proxy for environmental risk.

There are other options as well. As recognized in the report, the EQB has the authority to approve use of an "alternative form of environmental review" by responsible governmental units (Minn. Rules Part 4410.3600). The alternative review "must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process." One example of an approved alternative review process is pipeline routing by the Public Utilities Commission under Minnesota Statutes Chapter 216G.

Other "substitute forms of environmental review" under the rules are the "alternative urban areawide review process" (Minn. Rules Part 4410.3610) and the "model ordinance" (Minn. Rules Part 4410.3700), which can be adopted by local governmental units and used to substitute for the standard environmental review process. Should the Legislature pursue the OLA's recommendation, we suggest broadening the charge to include other options, such as processes similar to the substitute forms of alternative review already authorized by rule.

Whatever options are included, the OLA appropriately recognizes that significant resources would be required to undertake the "extensive study and evaluation process."

OLA RECOMMENDATION: The Environmental Quality Board should modify the process for redesignating a responsible governmental unit and develop criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to conduct environmental reviews (p. 105). Modifying the process for redesignating a responsible governmental unit may not be the best way to address insufficient expertise or experience. First, as the report points out, redesignation has budget implications for state agencies that may not have an ability to recover costs. Secondly, most projects for which local governments are RGUs are residential, commercial, industrial, or institutional projects. Those projects typically require local approvals, such as conditional use permits and zoning reclassifications, which address impacts such as traffic, noise, odors, and land-use compatibility. Local governments are generally in a much better position than any state agency to address those types of impacts.

OLA RECOMMENDATION: The Environmental Quality Board should work with associations of local governments to 1) identify resources to assist local governments that lack experience or expertise with environmental review and 2) develop and promote environmental review training for continuing education of association members (p. 105). This recommendation is a better way to address the issue of local government expertise and experience. EQB staff routinely provides training to local RGUs, as limited resources allow, through seminars, conferences, and one-on-one technical assistance. Additionally, guidance is available on the EQB website.

However, there are limits to the benefits of training where local governments perform environmental review infrequently, or where there is staff turnover. For those situations, preferred service providers

or cooperative arrangements among local governments, as suggested in the recommendation, could provide a better solution.

OLA RECOMMENDATION: The Environmental Quality Board should identify best practices of the environmental review process and encourage their widespread use where appropriate. The question of oversight has been raised in environmental review reform efforts over the years, and the EQB has repeatedly come to the same conclusion as the OLA: that providing an oversight function by state government, such as direct oversight by the EQB, has the potential unintended consequence of adding an additional layer of review and lengthening process timelines. The recommendation that the EQB should identify best practices and encourage their use is a better solution. As acknowledged in the report, the Board would need to marshal additional resources to carry out the recommendation, but could do so under its existing authority.

OLA RECOMMENDATION: The Legislature should extend statutes governing potential conflicts of interest to cover all public officials who may serve as members of a responsible governmental unit. This appears to be a reasonable recommendation that would not adversely affect the environmental review process.

OLA RECOMMENDATION: The Environmental Quality Board should continue to make its work on customizing EAW forms a priority. EQB staff is continuing to work on customizing EAW forms as a priority project, and will recommend to the EQB that customizing forms remains a priority.

Thank you for the contribution of this report to further discussion, and the opportunity to comment.

Sincerely,

Bob Patton

Bob Patton, AICP
Executive Director

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February 24, 2011

Mr. James R. Nobles
Legislative Auditor
Office of the Legislative Auditor
658 Cedar Street
Room 140 Centennial Office Building
St. Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to respond to the findings and recommendations of the Office of the Legislative Auditor's (OLA) 2010 Environmental Review and Permitting Audit. The recommendations pertaining to the Minnesota Pollution Control Agency (MPCA) and our responses are as follows:

Recommendation:
PCA... should improve their data's value by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits, which would allow them to report on agency performance and identify needed improvements.

MPCA Response:
We concur with this recommendation. The MPCA manages over 15,000 permits and receives over 4000 permit action requests every year. While we have significantly improved our data systems over the years to better manage the millions of data points associated with these permitting activities, there is more that we must do. To that end, we've recently designed, built and implemented an Agency Permitting database. This comprehensive database will provide more complete, accurate and timely data to achieve the recommended outcomes.

The OLA report also correctly highlights the importance of focusing our detailed data collection, reporting and improvement efforts on construction-focused ("priority") permits. The OLA report states: "Overall, with applications for reissuance excluded, the MPCA exceeded its goal by issuing permits for 93 percent of applications within 180 days." Since we do turn around the large majority of our permits in a timely fashion, it is important that we focus our limited resources on "priority" construction permits which are of primary importance to our external partners.

Recommendations:
PCA...should...clearly define and communicate the data needed to complete an EAW and their expectations of project proposers.
PCA...should set explicit timeliness standards for responding to proposers' EAW data and then measure performance against these standards as well as those already in state rules.

MPCA Response:
We concur with these recommendations and will continue to work with our partners, including the Environmental Quality Board (EQB), other Responsible Governmental Units (RGUs), permittees and interested parties, to develop additional guidance on EAW data requirements, responsibilities, expectations and timelines. Continued conversation and coordination will be particularly important given the proposed Governor's budget and possible organizational changes to the EQB.

The MPCA must continue to improve its efficiency and timeliness while also protecting human health and the environment. To that end, I have directed our staff to immediately implement many of the recommendations in the report. We will also continue to work with the Department of Natural Resources to standardize, to the extent practicable, our data tracking and reporting processes.

Finally, I want to thank you for the respectful manner in which the audit was conducted.

Sincerely,

Tim Scherbenbrock

for Paul Aasen
Commissioner

PA/JS:rm

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February 24, 2011

Mr. James Nobles, Legislative Auditor
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Dear Mr. Nobles:

Thank you for the opportunity to respond to the Environmental Review and Permitting Report (Report) prepared by the Office of the Legislative Auditor. As you know, the Department of Natural Resources (DNR) is committed to ensuring that environmental review and permitting is done as efficiently and effectively as possible to ensure we maintain a business climate that promotes economic growth while protecting the state's precious natural resources. DNR's response to each specific recommendation in the Report is set forth below.

Recommendation 1: The Pollution Control Agency (PCA) and Department of Natural Resources (DNR) should improve the value of their data by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits. Doing so will enable them to report on agency performance, identify opportunities for improvement, and change their processes when necessary.

Agree-The DNR has plans underway to improve the collection of data related to the timeliness of environmental reviews and priority permits to ensure it can report on performance, identify opportunities for improvement and change processes when necessary.

Recommendation 2: PCA and DNR should establish explicit standards for the timeliness of agency responsiveness to proposers' initial and supplemental data submissions for environmental assessment worksheets (EAWs). Each agency should measure its performance against these standards and against time lines already in Minnesota Rules.

Agree-The DNR has plans underway to establish standards for responsiveness to proposers' initial and supplemental data submissions for EAWs and measure its performance against these standards and those in Minnesota Rules.

Recommendation 3: PCA and DNR should each develop clear guidance on what constitutes a complete EAW data submittal.

Partially Agree-The DNR will establish guidance on what constitutes a complete EAW submittal on projects that are routine in nature and for which there are no unique aspects that could require additional submissions to ensure a thorough review can be completed. For projects that are non-routine, the DNR will continue to use the pre-application process to communicate with applicants on the aspects of their projects that may require additional submissions to ensure the review can be

completed as efficiently as possible. The DNR also has and will continue regular meetings with project applicants during the environmental review process to ensure they are aware of additional information that may be necessary to complete the EAW.

Recommendation 4: PCA and DNR should consistently inform project proposers of the environmental review process, information needed for a complete EAW data submittal, agency timeliness standards, and the agency's expectations of the proposers and their consultants.

Partially Agree-The DNR has a process by which it informs project proposers about the environmental review process, agency timeline standards and expectations for proposers and their consultants. For routine projects with no unique aspects, the DNR will work to standardize this information. For projects that are non-routine, the DNR will continue to use the pre-application process to communicate with applicants on the aspects of their projects that may require additional submissions and time to complete a thorough review. The DNR will also advise applicants during this process the steps they and their consultants can take to ensure reviews are conducted efficiently. The DNR also has and will continue to have regular, ongoing meetings with applicants during the environmental review process to ensure they are aware of additional information that may be necessary to complete the EAW.

Recommendation 5: The Legislature should authorize and fund the Environmental Quality Board (EQB) to examine on a trial basis the feasibility of allowing certain proposed projects, based on criteria that identify them as low risk, to bypass the EAW process.

Partially Agree-The DNR agrees that there may be some categories of routine projects where the environmental review process could be abbreviated and a review of those categories would be appropriate.

Recommendation 6: The Environmental Quality Board should modify the process for redesignating a responsible governmental unit and develop criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to conduct environmental reviews.

Partially Agree-The DNR agrees that it would be helpful to provide guidance to local governments to assist them in meeting their environmental review obligations.

Recommendation 7: The EQB should work with associations of local governments to 1) identify resources to assist local governments that lack experience or expertise with environmental review and 2) develop and promote environmental review training for continuing education of association members.

Agree-The DNR agrees that it would be helpful to provide guidance to local governments to assist them in meeting their environmental review obligations.

Recommendation 8: The EQB should identify best practices of the environmental review process and encourage their widespread use where appropriate.

Agree-The EQB should identify best practices throughout the environmental review community and make that information available to responsible governmental units.

Recommendation 9: The Legislature should extend statutes governing potential conflicts of interest to cover all public officials who may serve as members of a responsible governmental unit.

Agree-The DNR agrees that conflict of interest statutes should prevent a person with a personal financial interest in a proposed project from participating in decision making on environmental review on that same project.

Recommendation 10: The Environmental Quality Board should continue to make its work on customizing EAW forms a priority.

Agree-The DNR agrees that customized forms could assist the environmental review process by focusing efforts on the potential environmental effects of most concern and opportunities to mitigate those effects. The DNR has previously participated in a group with the EQB to develop customized EAW forms.

Again, thank you for the opportunity to respond to the Report. We are aware that lawmakers and the public are interested in a quicker process while ensuring we conduct thorough reviews. I believe we are on the path to that goal. I have made it my priority to make the DNR more responsive and the recommendations in the Report are very helpful towards that goal. I would be happy to meet with your Office again or with lawmakers to report our progress.

Sincerely,

Tom Landwehr
Commissioner

Forthcoming Evaluation

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