



Environmental Quality Board

Analysis of Alternatives
for
Environmental Governance and Coordination
and the
Role of the MPCA Citizens' Board

September 19, 2012 DRAFT

Analysis of Alternatives for Environmental Governance and Coordination in Minnesota

September 19, 2012 DRAFT

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I. INTRODUCTION

This report was prepared to fulfill one of several directives included in Executive Order 11-32. Governor Dayton issued the Executive Order in November 2011. Among other directives, Executive Order 11-32 requires that:

By November 15, 2012, the EQB will evaluate and make recommendations for improved environmental governance and coordination.

To clarify the intent of this directive, the Environmental Quality Board provided guidance at its March 21, 2012 meeting:

[The Improved Governance and Coordination] Team is to examine the processes for making state environmental policy with particular emphasis on bodies where multiple agencies or interests are involved. Team does not have sufficient time or resources to set or suggest changes to policies, protection levels, standards, or agency reorganizations.

Subsequent to the issuance of Executive Order 11-32, the Minnesota Legislature adopted a provision mandating that the evaluation of environmental governance conducted under the Executive Order include a review of the Minnesota Pollution Control Agency Citizens' Board's role in reviewing permits, EAWs, and EISs:

The evaluation of environmental governance under Executive Order 11-32 must include a review of the Minnesota Pollution Control Agency Citizen's Board's role in reviewing permits, environmental assessment worksheets, and environmental impact statements. The evaluation should include, but is not limited to, an examination of the benefits and drawbacks of the board versus the agency's commissioner making final decisions on all or various subsets of permits and environmental reviews, along with how these matters are referred to the board versus the commissioner. Any recommendations must be reported to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over the environment and natural resources.

(MN Laws 2012, Chapter 272, Section 95)

To accomplish these charges, a policy analysis approach is used to evaluate alternatives for the EQB to consider. The evaluation leads to the development of recommendations. The steps of the policy analysis approach, which form the framework for this report, are as follows:

1. Define policy problem
2. Define objectives (desired policy outcomes)
3. Define criteria for evaluation (intrinsic capacity of alternatives to achieve objectives)
4. Define alternatives (including status quo)
5. Evaluate alternatives
6. Develop recommendations

II. DEFINITION OF POLICY PROBLEMS

POLICY PROBLEM 1: ENVIRONMENTAL GOVERNANCE AND COORDINATION

Environmental issues are affected by and affect human activity. Issues often are interconnected, crossing agency jurisdictions. This was clearly recognized in actions by past legislatures and governors. In the 1972 executive order establishing the original EQC, Governor Wendell Anderson stated as a reason for its establishment that:

“...because of the multitude of institutions, public and private, that variously affect the quality of our air, water, and land resources, no single state department or agency exerts a profound influence in environmental planning...”¹

The Minnesota Legislature adopted Minn. Stat. §116C in 1973, which includes this finding:

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

The means for state agencies to work together on complex, interconnected issues effectively and efficiently can be characterized as “planning and coordination,” (or “strategic planning and coordination”). States and the national government have developed various, evolving strategic planning methods and institutions over the course of the 20th and 21st centuries. Literature in the planning field has attempted to describe and develop models for this function, and one description that appears to capture the policy problem at hand is of the “management model” of state planning:

“the purpose of the management model is to ensure that state agencies operate in an efficient and coordinated manner consistent with the priorities of the chief executive.”²

¹ Executive Order No. 25, Providing for the establishment of an Environmental Quality Council, April 5, 1972.

² Meck, Stuart ed. 2002. Chapter 4, “State Planning,” in *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*. Chicago: American Planning Association. Another description of a “central planning agency” in state government is a unit “...with overarching responsibilities cutting across any policy fields which may need to be interrelated or correlated.” Source: So, Frank ed. 1986. *The Practice of State and Regional Planning*, American Planning Association in cooperation with the International City Management Association, Chicago, p.21.

This description is consistent with the functions and duties of the EQB contained in Minn. Stat. §116C.04, which can be summarized as follows:

- a. Study environmental problems of interagency concern
- b. Review and coordinate environmental programs that are interdepartmental in nature and ensure agency compliance with state environmental policy
- c. Review environmental permit criteria and resolve interagency conflicts
- d. Review environmental legislative proposals

In addition to the core planning and interagency coordination duties summarized above, other responsibilities are established in a variety of other statutes:

- Oversee the statewide environmental review program (M.S. 116D.04-.06). The board writes the rules for conducting environmental reviews and provides guidance to the governmental units responsible for conducting environmental review (i.e., preparing environmental assessment worksheets, environmental impact statements, and alternative urban areawide reviews). The board is also responsible for ordering and preparing generic environmental impact statements.
- Coordinate state water planning activities and development of a state water plan and periodic policy reports to the Governor and Legislature (M.S. 103A.204, 103A.43 and 103B.151).
- Coordinate state and federal regulatory activities related to genetically engineered organisms (M.S. 116C.91-.98)
- Recommend designation of state critical areas (M.S. 116G)
- Coordinate development of an energy and environment strategy report (M.S. 116D.10-.11)

Strategic planning and coordination activities are key EQB powers and duties by statute. In recent years, however, those functions have been problematic due to resources being eliminated or moved to other agencies. Two examples are of particular note. The abolishment of the Office of Strategic Planning in 2003 took the EQB out of a larger office with an overall mission related to policy and planning and placed it in an agency with a mission largely unrelated to environmental policy (Administration). Second, the transfer of energy facility siting responsibilities to the Public Utilities Commission and Commerce in 2005 had the practical effect of further reducing EQB staff and prominence. As a result of such changes, in recent years EQB has concentrated almost exclusively on two areas: environmental review rule maintenance, information, and outreach under Minn. Stat. §116D and Minn. Rules Ch. 4410; and water resource planning and coordination under Minn. Stat. §§103A.204, 103A.43, and 103B.151.

This situation contributed to the 2010 EQB Citizens Committee report conclusion that the EQB had not been fulfilling what it termed its “strategic planning mission”: interagency planning and coordination

under Minn. Stat. §116C and the development of an energy and environment strategy report under Minn. Stat. §116D.10-11.

There is a need for state environmental policies and programs to be both effective and efficient. Policies and programs should work toward common goals rather than at cross-purposes. They should minimize duplication and ensure that no important environmental challenges or opportunities are left unaddressed.

There also is a need to ensure that environmental policies and programs are developed in an open and transparent public process, and that state environmental leadership is accountable to the people of Minnesota.

A number of institutions have been developed in Minnesota over the years to plan and coordinate environmental policy and programs across agencies, most notably the EQB and the Board of Water and Soil Resources. Other institutions touch on interagency environmental policy and programs: the NextGen Energy Board, the Clean Water Council, the Clean Water Fund Interagency Coordination Team, the Lessard-Sams Outdoor Heritage Council. The MPCA Citizens' Board, exists to make policy decisions solely within the sphere of influence of the MPCA.

However, the EQB is the sole entity that was created expressly to serve as a strategic planning body for environmental issues that, like Nature itself, include numerous natural resources and cannot be confined within agency boundaries, specific interests, geographic jurisdictions, or levels or branches of government. Numerous policy and organizational decisions in state government have affected the EQB's fulfillment of that role. Nonetheless, the needs for such planning and coordination continue to exist.

The first policy problem can, therefore, be stated as a question:

Policy Problem 1

With regard to environmental issues, policies, and programs, how should the state ensure that state agencies operate in an efficient and coordinated manner consistent with the Governor's priorities?

POLICY PROBLEM 2: ROLE OF THE MPCA CITIZEN BOARD

The first policy problem and analysis focus on interagency planning and coordination, and therefore mostly on the functions assigned to the EQB. However, the legislative charge to examine the role of the MPCA Citizens' Board necessitates a second, narrower policy problem. The legislation requires an analysis of the MPCA Citizen's Board role in making final decisions on permits, EAWs and EISs. The provision requires a comparison of the Board making these final decisions compared to the Agency's commissioner and examination of how these matters are referred to the Board. Since the Board's creation in 1967, federal and state permitting and environmental review regulations have undergone significant revisions. The policy problem can be stated as follows:

Policy Problem 2

What should be the MPCA Citizen's Board role in making final decisions on permits? Does the current process of the Board making final decisions provide additional benefits compared to a commissioner decision model used by other agencies? If the Board maintains a large role in decision making on permits and environmental review, should the process used to refer issues to the Board remain the same?

III. OBJECTIVES AND CRITERIA FOR EVALUATION

OBJECTIVES (DESIRED POLICY OUTCOMES)

Any changes to the structure or function of environmental governance and coordination should have the following policy outcomes. Any changes should:

1. Provide a mechanism for interagency strategic thinking to facilitate Administration policy (analysis and strategic planning regarding environmental issues of interagency interest);
2. Provide a mechanism for interagency coordination to facilitate Administration policy;
3. Provide relevant and useful information for the governor and agencies;
4. Be efficient (minimize redundancies/inefficiencies);
5. Be cost-effective (benefits outweigh costs);
6. Provide for effective public input and engagement; and

CRITERIA FOR EVALUATION (INTRINSIC CAPACITY OF ALTERNATIVES TO ACHIEVE OBJECTIVES)

The alternatives will be evaluated by their ability to achieve the objectives—the desired policy outcomes. That is, by their positive impact on:

1. Interagency strategic thinking to facilitate Administration policy
2. Interagency coordination to facilitate Administration policy
3. Relevance and usefulness to the governor and agencies
4. Efficiency and minimization of redundancies
5. Cost-effectiveness (benefits outweigh costs)
6. Effectiveness of public input/engagement

IV. ANALYSIS OF POLICY PROBLEM 1: ENVIRONMENTAL GOVERNANCE AND COORDINATION

POLICY PROBLEM 1

With regard to environmental issues, policies, and programs, how should the state ensure that state agencies operate in an efficient and coordinated manner consistent with the Governor's priorities?

DEFINITION AND EVALUATION OF ALTERNATIVES

The following analysis considers a variety of alternatives. The alternatives include changes in such things as organizational structure, functions, mission, budget, or combinations of these. The five alternatives analyzed are:

- EQB Alternative 1: Status Quo
- EQB Alternative 2: Refocus EQB On Environmental Review and Reduce Other Duties Significantly
- EQB Alternative 3: Revitalize and Refocus EQB
- EQB Alternative 4: Merge EQB and MPCA Boards and Create a new Environmental Review Board
- EQB Alternative 5: Abolish EQB and Eliminate or Transfer Powers and Duties

EQB Alternative 1: Status Quo

In the "status quo" alternative, the structure of the EQB remains as it has been in recent years. Staffing levels remain as they currently exist. The assumption for this alternative is that additional resources are not going to be available. The EQB's responsibilities and functions remain with the EQB and are unchanged. As has been reported, there will be intermittent success on a limited number of specific projects but inconsistent progress on a broader scale of strategic thinking. The environmental review program will continue.

Duties/Authority: The EQB has a wide array of specific statutory responsibilities and functions. Core activities are outlined in Minn. Stat. 116C.04:

- Study environmental problems of interagency concern
- Review and coordinate environmental programs that are interdepartmental in nature and ensure agency compliance with state environmental policy
- Review environmental permit criteria and resolve interagency conflicts
- Review environmental legislative proposals

Beyond those core duties, other responsibilities are established in a variety of other statutes:

- Oversee the statewide environmental review program (Minn. Stat. 116D.04-.06). The board writes the rules for conducting environmental reviews and provides guidance to the governmental units responsible for conducting environmental review . The board is also responsible for ordering and preparing generic environmental impact statements.
- Coordinate the state water planning activities and development of a state water plan and periodic policy reports to the Governor and Legislature (Minn. Stat. 103A.204, 103A.43 and 103B.151).
- Coordinate state and federal regulatory activities related to genetically engineered organisms (Minn. Stat. 116C.91-.98)
- Recommend designation of state critical areas and review plans in the areas (Minn. Stat. 116G)
- Coordinate development of an energy and environment strategy report (Minn. Stat. 116D.10-.11)

Staffing Resources: Two full-time staff and a donated-time, part-time Executive Director employed by another agency. This assumes the outside agency is willing to continue to donate the part-time Executive Director. The EQB would continue to draw upon the agency Tech Reps and, on an ad hoc/project basis, upon other agency staff resources (such as with the current Executive Order 11-32 effort). Total: two “plus”.

Membership: A governor’s representative (currently, the Chair, MDA Commissioner Frederickson), nine agency commissioners, and five citizen members.

Location: MPCA (since September 2011; previously Administration)

Authority needed for making change: No changes with this alternative.

Evaluation

1) Impact on interagency strategic thinking to facilitate Administration policy:

Benefits

- Possibility of success on an extremely limited number of specific projects.

Drawbacks

- Governor’s vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Inadequate strategic planning or coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Guarantees inconsistent progress on a broad scale of strategic thinking: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Strategic planning mission for state government will not be fulfilled.
- Environmental review program issues will preempt Board and staff attention to strategic thinking.

- Environmental Congress and Report Card likely will not be continued annually.

Interagency strategic thinking is a fundamental aspect of strategic planning. As noted in the 2010 Citizens' Committee report, the strategic planning mission for state government is not being fulfilled. Reasons cited included diminished EQB staff and status, and lack of political will at higher levels. However, the EQB facilitated interagency efforts to assemble information and help set policy direction in water policy. It also has served as a forum for some interdisciplinary environmental issues. It is important to note that the EQB staff was far more extensive while those activities were being conducted and even with that more extensive staff numerous other roles assigned by statute have not been fulfilled consistently. Due to the time-sensitive, urgent nature of environmental review projects, oversight of the program often dominates staff activity, making it difficult or impossible to devote time to longer range projects. Consequently, staff time for facilitating interagency strategic thinking is very limited. The status quo alternative with its sparse staff offers the possibility of success on an extremely limited number of specific projects but guarantees inconsistent progress on a broader scale of strategic thinking.

2) Impact on interagency coordination to facilitate Administration policy:

Benefits

- Occasional coordination on specific mandates.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Unlikely to see consistent coordination: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Inadequate interagency coordination entity and resources leaves the state vulnerable when issues arise that need such functions.

Interagency coordination is an important goal of strategic planning. As stated in the 2010 Citizens' Committee report, the strategic planning mission for state government is not being fulfilled. It logically follows that the goal of interagency coordination is not being achieved as envisioned. However, to reiterate, the EQB has facilitated interagency efforts in water policy and served as a forum for some interdisciplinary environmental issues. Those activities occurred when the EQB had more staff resources and even with that more extensive staff numerous other roles assigned by statute have not been fulfilled consistently. Staff resources from other agencies have carried much weight on the other projects such as Executive Order 11-32 elements. It is less clear that such efforts have resulted in or represent consistency in state agencies acting in a coordinated manner. With the status quo alternative, this situation likely will continue.

3) Impact on relevance and usefulness to the governor and agencies:

Benefits

- Some intermittent ability to provide information

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Unlikely to see consistent coordination.
- Only intermittent ability to provide information beyond the environmental review program.
- Information relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

The EQB has facilitated interagency efforts in water policy, resulting in the 2010 Minnesota Water Plan. However, the Citizens' Subcommittee report notes that the Legislature authorized and funded a separate water policy planning effort, diminishing the EQB's stature and the significance of the Water Plan. The EQB also has served as a forum for some interdisciplinary environmental issues. Those activities occurred when the EQB had more staff resources and even with that more extensive staff numerous other roles assigned by statute have not been fulfilled consistently. Those roles can continue only on a very limited basis under the status quo alternative. The environmental review program, perhaps the most widely known duty of the EQB, would continue. EQB staff will continue to provide guidance on the program as requested by all branches of government and to the public. However, several aspects of that program are not being fulfilled regularly. The situation will continue under the status quo alternative.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Benefits

- Interagency strategic planning and coordination would not be duplicated by other agencies.

Drawbacks

- Strategic planning and coordination intermittent at best, continued inefficiency: decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

No agency other than the EQB has been assigned by statute the overall strategic planning and coordination roles for environmental issues. Under the status quo alternative, this broader responsibility would continue (with very limited success, as explained above) and would not be duplicated by other agencies. Some overlapping may continue to exist with specific activities within specific programs related to water quality.

5) Impact on cost-effectiveness (benefits versus costs):

Benefits

- Environmental review program can be maintained.

Drawbacks

- Planning and coordination activities intermittent due to uneven resources and support.
- Environmental review program will not be updated nor will desirable elements of the program be created.

- Continued reactive rather than proactive approach results in higher cost for curing problems than cost of preventing problems.

Funding for the EQB has been problematic at best. Ongoing attrition over the previous three years left no full time staff in early 2012. Two full time staff were hired mid-2012. As noted in other points of analysis above, the EQB's statutory planning and coordination activities have been intermittent due to uneven resources and support. With the status quo alternative, the environmental review program can be maintained but little else will be possible. Any work other than environmental review will continue to rely on other agencies donating staff, even for project management roles. The status quo, with the new staff hired in 2012, will allow the EQB to do more compared to previous months, but the situation is not sustainable. Because funding has been unreliable, interagency strategic thinking and coordination have suffered. Thus, the EQB as an organization has been primarily reactive rather than proactive. Recalling the adage about an ounce of prevention being worth a pound of cure, the current situation results in higher over all costs to the public, both short term and long term. The question is whether or not the current level of cost-effectiveness is acceptable.

6) Impact on effectiveness of public input/engagement:

Benefits

- Existing level of public input and engagement will continue.

Drawbacks

- Needed upgrades and improvements to environmental review program will not occur.
- Inquiry response time will not improve.
- Environmental Congress and Report Card likely will not be continued annually.

Many of EQB's numerous statutory roles require public access and discussion. Even if not specifically required, current practice for most initiatives includes obtaining public input through comment periods, focus groups, or other forums. All EQB Board meetings are open to the public. Environmental review rules specifically require public notice and comment periods, and serious consideration of public comments. Those requirements and practices will not change. However, experience has shown that minimal staffing minimizes public input and engagement. Meetings are open and information is available electronically. However, the ability to proactively involve the public on policy questions and is severely limited, as is the ability to evaluate and respond to public input. In addition, the EQB website and guidance information are in serious need of revision and updating, rule amendments to meet changing needs have been significantly delayed, and an envisioned training program for local governments has been shelved. The environmental review program requires significant staff time to respond to inquiries, provide guidance, and process petitions, and response times often are delayed. The question is whether or not the current level of public engagement is acceptable.

EQB Alternative 2: Refocus EQB on Environmental Review and Reduce Other Duties Significantly

In this alternative, the structure of the EQB remains as it has been in recent years. Staffing levels remain as they currently exist. The assumption for this alternative is that additional resources are not going to be available. Therefore, the EQB's responsibilities and functions would be significantly reduced, especially related to interagency strategic thinking and coordination. This allows the organization to focus on remaining duties, primarily environmental review, and achieve more consistency and successful results. The environmental review program would be maintained but the agency would do only limited work in other areas, if any. This alternative is a functional change.

Duties/Authority: The wide array of specific statutory responsibilities and functions would be scaled back significantly. Core activities outlined in Minn. Stat. §116C.04 to be changed are shown below:

- Study environmental problems of interagency concern (*on a very limited, selective basis*)
- Review and coordinate environmental programs that are interdepartmental in nature (*on a very limited, selective basis*) and ensure agency compliance with state environmental policy
- ~~Review environmental permit criteria and resolve interagency conflicts~~
- Review environmental legislative proposals

Responsibilities established by other statutes to be eliminated are:

- Oversee the statewide environmental review program (Minn. Stat. 116D.04-.06). The board writes the rules for conducting environmental reviews and provides guidance to the governmental units responsible for conducting environmental review. The board is also responsible for ordering and preparing generic environmental impact statements.
- ~~Coordinate the state water planning activities and development of a state water plan and periodic policy reports to the Governor and Legislature (Minn. Stat. 103A.204, 103A.43 and 103B.151).~~
- ~~Coordinate state and federal regulatory activities related to genetically engineered organisms (Minn. Stat. 116C.91-.98)~~
- ~~Recommend designation of state critical areas and review plans in the areas (Minn. Stat. 116G)~~
- ~~Coordinate development of an energy and environment strategy report (Minn. Stat. 116D.10-.11)~~

Staffing Resources: Two full-time staff and a donated-time, part-time Executive Director employed by another agency. This assumes the outside agency is willing to continue to donate the part-time Executive Director. The EQB would continue to draw upon the agency Tech Reps and, on an ad hoc/project basis, upon other agency staff resources. Total: two "plus".

Membership: A governor's representative, nine agency commissioners, and five citizen members.

Location: MPCA

Authority needed for making change: Several statutes should be amended (116C, 103A, 103B, 116G, and 116D) to eliminate specific duties listed for deletion with this alternative. Corresponding amendments to Minn. Rules also would need to be examined.

Evaluation

1) Impact on interagency strategic thinking to facilitate Administration policy:

Benefits

- Focusing on the environmental review program conceivably may result in some improved strategic thinking related specifically to environmental review.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Inadequate strategic planning entity and resources leaves the state vulnerable when issues arise that need such functions.
- Guarantees inconsistent progress on a broad scale of strategic thinking: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Strategic planning mission for state government will not be fulfilled.
- Environmental review program issues will preempt Board and staff attention to strategic thinking.
- Environmental Congress and Report Card likely will not be continued annually.

The strategic planning mission for state government is not being fulfilled due to limited resources. Without increased resources, this will continue to result in limited success with specific projects but inconsistent progress on a broader scale of strategic thinking. Such inconsistency diminishes the EQB's status and credibility. This alternative addresses the situation by reducing the amount of strategic planning required or expected of the EQB. Reduced responsibility increases the probability of success and consistency with the remaining duties. However, the limited staff resources will limit the amount of strategic planning that can occur. One significant topic or project—such as the Executive Order 11-32 project—will fully occupy the staff and in fact the work on the Executive Order would not have been possible without significant contributions of staff resources from EQB member agencies. If another project arises, a GEIS for example, the organization will not be able to fulfill the needs of the new project and even the environmental review activities would suffer.

2) Impact on interagency coordination to facilitate Administration policy:

Benefits

- Occasional coordination on specific mandates.
- Focusing on the environmental review program conceivably may result in some improved coordination related specifically to environmental review.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Inadequate coordination entity and resources leaves the state vulnerable when issues arise that need such functions.

- Unlikely to see consistent coordination: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Environmental Congress and Report Card likely will not be continued annually.

Since the strategic planning mission for state government is not being fulfilled, interagency coordination is not being achieved as envisioned. This alternative addresses the situation by significantly reducing the amount of interagency coordination required or expected of the EQB. Very little interagency coordination will occur, but what does occur will be more effective. This alternative recognizes the limits on significant projects that could be done at one time.

3) Impact on relevance and usefulness to the governor and agencies:

Benefits

- Some intermittent ability to provide information.
- Information relating to environmental review program can be improved.

Drawbacks

- Only intermittent ability to provide information beyond the environmental review program.

The EQB has facilitated interagency efforts in water policy, resulting in the 2010 Minnesota Water Plan. However, the Citizens' Subcommittee report notes that the Legislature authorized and funded a separate water policy planning effort, diminishing the EQB's stature. The EQB also has served as a forum for interdisciplinary environmental issues but those activities occurred when the EQB had more staff resources and even with that more extensive staff numerous other roles assigned by statute have not been fulfilled consistently. This role can continue on a very limited basis under this alternative. The environmental review program, perhaps the most widely known duty of the EQB currently, would continue and become the primary activity. EQB staff will continue to provide guidance on the program as requested by all branches of government and to the public.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Benefits

- Strategic planning and coordination would not be duplicated by other agencies on the limited number of planning and coordination projects conducted by EQB.

Drawbacks

- Strategic planning and coordination intermittent at best, continued inefficiency: decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Continued reactive rather than proactive approach is less efficient than preventing problems.

No agency other than the EQB has been assigned by statute the overall strategic planning and coordination roles for environmental issues. Under this alternative, this broader role may not be duplicated by other agencies but it would only be fulfilled rarely. Some overlapping may continue to exist with specific activities within specific programs related to water quality.

5) Impact on cost-effectiveness (benefits versus costs):

Benefits

- Environmental review program can be maintained, perhaps with some improvements.

Drawbacks

- Planning and coordination activities very limited due to uneven resources and support.
- Continued reactive rather than proactive approach results in higher cost for curing problems than preventing problems.
- Creation of desirable elements of the environmental review program remains questionable.

Funding for the EQB has been problematic at best. Ongoing attrition over the previous three years left no full time staff in early 2012. Two full time staff were hired mid-2012. As noted in other points of analysis above, the EQB's statutory planning and coordination activities have been intermittent due to uneven resources and support. A very limited number of strategic planning projects may be possible under this alternative though it would draw staff attention from the environmental review program and would continue to rely heavily on other agencies donating staff, perhaps even for project management roles: therefore costs are incurred by those other agencies. With Alternative 2, the environmental review program can be maintained and improved. This alternative will allow the EQB to do more with the environmental review program compared to previous months, but the sustainability of the situation remains doubtful. The question is whether or not the current level of cost-effectiveness is acceptable.

6) Impact on effectiveness of public input/engagement:

Benefits

- Existing level of public input and engagement will continue.
- Progress can occur over time on updating some elements of environmental review program.
- Inquiry response time will improve.

Drawbacks

- Few projects outside of environmental review program means little public involvement on such projects.
- A strategic planning project would draw resources away and eliminate progress on the environmental review program, returning the situation to the status quo.
- Environmental Congress and Report Card likely will not be continued annually.

Many of EQB's numerous statutory roles require public access and discussion. Even if not specifically required, current practice for most initiatives includes obtaining public input through comment periods, focus groups, or other forums. All EQB Board meetings are open to the public.

Environmental review rules specifically require public notice and comment periods, and serious consideration of public comments. Those requirements and practices will not change. Nonetheless, experience has shown that minimal staffing minimizes public input and engagement. Meetings are open and information is available electronically. However, the ability to proactively involve the public on policy questions and is severely limited, as is the ability to evaluate and respond to public input. In addition, the EQB website and guidance information are in serious need of revision and updating. No new public training activity is being prepared. The environmental review program

requires significant staff time to respond to inquiries, provide guidance, and process petitions, and response times often are delayed. With two staff concentrating almost exclusively on environmental review, progress can be made on those projects. A strategic planning project would draw resources away and eliminate such progress, returning the situation to the status quo. The question is whether or not these levels of public engagement are acceptable.

EQB Alternative 3: Revitalize and Refocus EQB

In this alternative, the structure of the EQB remains as it has been in recent years. Staffing levels increase. The EQB's responsibilities and functions are reduced somewhat, though not as much as in Alternative 2. The assumptions for this alternative is that additional resources are made available, on a consistent basis, and that priority activities are identified and those of minimal importance are eliminated. This allows the organization to focus and achieve consistent and successful results on the most important activities. This alternative includes functional changes and changes in size of the organization, but no structural changes.

This alternative is based on recommendations from the 2007 report of the EQB Subcommittee on Future Directions (referenced and attached to the 2010 EQB Citizens Committee report). The subcommittee recommended that the EQB should focus on three key functions: strategic planning; being a forum for discussion and resolution of complex issues (i.e., coordination); and providing environmental review process oversight³.

Duties/Authority: This alternative is based on recommendations from the 2007 report of the EQB Subcommittee on Future Directions (referenced and attached to the 2010 EQB Citizens Committee report). The subcommittee recommended that the EQB should focus on three key functions: strategic planning; being a forum for discussion and resolution of complex issues (i.e., coordination); and providing environmental review process oversight. The difference from Alternatives 1 and 2 is that the strategic planning and coordination functions would once again be a major focus of the EQB.

Based on those recommendations, the wide array of specific statutory activities and functions would be focused. Core activities outlined in Minn. Stat. §116C.04 to be eliminated are shown below:

- Study environmental problems of interagency concern
- Review and coordinate environmental programs that are interdepartmental in nature and ensure agency compliance with state environmental policy
- ~~Review environmental permit criteria and resolve interagency conflicts~~
- Review environmental legislative proposals

³ The 2010 report recommended implementing a "robust strategic planning process", which consisted of a process to implement the powers and duties of MS 116D.04 and the energy and environment strategic planning process of 116D.10-11.

Responsibilities established by other statutes to be eliminated are:

- Oversee the statewide environmental review program (Minn. Stat. 116D.04-.06). The board writes the rules for conducting environmental reviews and provides guidance to the governmental units responsible for conducting environmental review. The board is also responsible for ordering and preparing generic environmental impact statements.
- Coordinate the state water planning activities and development of a state water plan and periodic policy reports to the Governor and Legislature (Minn. Stat. 103A.204, 103A.43 and 103B.151).
- ~~Coordinate state and federal regulatory activities related to genetically engineered organisms (Minn. Stat. 116C.91-.98)~~
- Recommend designation of state critical areas and review plans in the areas (Minn. Stat. 116G)
- ~~Coordinate development of an energy and environment strategy report (Minn. Stat. 116D.10-.11)~~

Staffing Resources: Executive Director, six environmental and planning professionals, and one administrative support. Total: eight

The Citizen's Committee report concluded that four elements are needed to make this approach work: a communications strategy; an independent staff; upgraded technology; and active participation by board members. Staff would increase to fulfill the focused EQB responsibilities and functions. This likely would require full time staff of eight comprising an Executive Director, six environmental and planning professionals, and one administrative support. The EQB would continue to draw upon the agency Tech Reps and, on an ad hoc/project basis, upon other agency staff resources. However, with an EQB staff supported by consistent funding, the demand on other agencies would be significantly reduced. It has been suggested that there could be rotating staff from other agencies or entities on mobility assignments. This may be a possible option if the assignment to the EQB work is clearly established rather than "in your spare time".

Membership: One option is to retain the current membership of governor's representative, nine agency commissioners, and five citizen members. However, the Citizen's Committee report discusses changes to membership that could be considered as part of this alternative: removing the Department of Administration, adding the Metropolitan Council, and making the Lieutenant Governor the EQB Chair.

Location: Several options might be considered. For example: an independent staff and budget housed in Governor's Office; a small independent agency housed in a "neutral" state agency (such as MMB or Administration); or a small independent agency housed in one of the EQB member agencies.

Authority needed for making change: Several statutes should be amended to eliminate specific duties. Changes in EQB membership would require amending 116C.03

Evaluation

1) Impact on interagency strategic thinking to facilitate Administration policy:

Benefits

- Governor's vision for environmental policy could be clearly articulated and reflected by state agencies.
- Consistent funding would enable the EQB to fulfill its refocused strategic planning duties on a consistent basis .
- More strategic thinking could occur and the efforts would be more effective.
- Several significant topics or projects could be addressed concurrently.
- Environmental Congress and Report Card could be continued annually.

Drawbacks

- None.

The core statutory powers and duties provide EQB a strong role in interagency strategic planning, but EQB has not performed that role consistently for many years. Consistent funding would enable the EQB to fulfill its refocused strategic planning duties on a consistent basis. More strategic thinking could occur and the efforts would be more effective. Several significant topics or projects could be addressed concurrently, such as the Executive Order 11-32 project and a GEIS. Some energy policy planning could be included but the energy and environment strategy report described in statute would not be possible even with the increase in staff in this alternative.

2) Impact on interagency coordination to facilitate Administration policy:

Benefits

- Consistent funding would enable the EQB to fulfill its refocused coordination duties on a consistent basis .
- More coordination could occur and the efforts would be more effective.
- Several significant topics or projects could be addressed concurrently.
- Environmental Congress and Report Card could be continued annually.

Drawbacks

- None.

Since the strategic planning mission for state government would be better fulfilled, more interagency coordination would be achieved. The EQB's ability to serve as a forum for interdisciplinary environmental issues will be greatly improved. More interagency coordination will occur and will be more effective. Several significant topics or projects could be addressed concurrently. Some energy policy coordination could be included but the energy and environment report described in statute would not be possible even with the increase in staff in this alternative.

3) Impact on relevance and usefulness to the governor and agencies:

Benefits

- Better interagency strategic planning and coordination will provide more information, better quality information, and on a more consistent basis to policy makers and their advisors
- The environmental review program and information needs can be fulfilled regularly and the program can be improved and updated.
- Inquiry response time will improve.
- If connection to Governor's office is improved, better direct information.

Drawbacks

- None.

Better interagency strategic planning and coordination will provide more information, better quality information, and on a more consistent basis to policy makers and their advisors. The EQB's duties for the environmental review program can be fulfilled regularly and the program can be improved and updated. This will improve the ability to provide guidance on the program as requested by all branches of government and the public.

The Governor appoints all members of the EQB. However, actions may be worth considering to have a more direct connection to the governor's office. Possible options include: a member of the Governor's staff as Chair of the EQB; EQB Executive Director reporting directly to the Governor; or a combination Chair/Executive Director reporting to the Governor.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Benefits

- Active EQB engaged in strategic planning and discussion on complex issues will reduce the creation of new government committees and workgroups.
- Interagency strategic thinking and coordination, by definition, means working toward common goals rather than duplicating efforts.

Drawbacks

- None.

An active EQB engaged in strategic planning and discussion on complex issues will reduce the creation of new government committees and workgroups. Interagency strategic thinking and coordination, by definition, pull together multiple agency resources to work toward a common goal. This is intended to avoid uncoordinated, duplicative efforts. On the other hand, this alternative does not automatically increase coordination with other councils and workgroups created by the administration or legislature, which creates duplication in mission. With better support, credibility, and success, such inefficient activities should be reduced.

5) Impact on cost-effectiveness (benefits versus costs):

Benefits

- Consistent, adequate funding to support statutory planning and coordination activities will greatly increase the effectiveness of those activities.
- Reduces the need for other agency staff resources.
- Proactive rather than reactive approach will reduce over all costs to the public: an ounce of prevention is worth a pound of cure .
- Duties for the environmental review program can be fulfilled regularly and the program can be improved and updated.

Drawbacks

- Increased direct cost for staffing and operation of EQB compared to EQB status quo.

Consistent, adequate funding to support EQB's statutory planning and coordination activities will greatly increase the effectiveness of those activities. This alternative will significantly reduce the need for other agency staff who have been providing EQB services and thus reduce the costs to those other agencies. The EQB's duties for the environmental review program can be fulfilled regularly and the program can be improved and updated. This will improve the ability to provide guidance on the program as requested by government units and the public, reducing costs to project proposers and other units of government. The EQB as an organization can be proactive rather than reactive. The direct costs of this function would increase over the status quo, but increased agency coordination should result in cost savings on a broader scale. Recalling the adage about an ounce of prevention being worth a pound of cure, this alternative should reduce overall costs to the public.

6) Impact on effectiveness of public input/engagement:

Benefits

- More public discussions about strategic planning and environmental policy, emerging complex issues, and environmental review.
- Improved means of engaging the public would be possible.
- Environmental review program can be updated and improved on a regular basis which will provide significantly better public service and allow for better public engagement.

Drawbacks

- None.

Since EQB is a public forum, the public and all interested parties would continue to have access, and there would be more public discussions about strategic planning and environmental policy, emerging complex issues, and environmental review. A successful communications plan could also help elicit more and better participation. The environmental review program can be updated and improved on a regular basis which will provide significantly better public service and allow for better public engagement.

EQB Alternative 4: Merge EQB and MPCA Boards and Create a new Environmental Review Board

The alternative would eliminate both the EQB and the MPCA Citizens' Board, and would create a new Environmental Review Board. The new Board would assume most or all the current authorities pertaining to environmental review that are held by both existing boards. The purpose of the new board would be to combine environmental review-related functions of the EQB and the MPCA Citizens' Board, expand opportunities for recourse for the public, and minimize perceptions of bias for large or controversial projects. This alternative includes both structural and functional changes.

Duties/Authority: The strategic planning and coordination powers and duties of the EQB under Minn. Stat. 116C would be eliminated or transferred to other agencies. The specific responsibilities under other statutes for state water planning activities, critical areas activities, and the energy and environment strategy report would be eliminated or transferred as well.

The EQB also oversees the environmental review program, providing guidance and maintaining the rules. Under the current rules, the EQB can: determine that an EAW must be prepared and assign the RGU; designate the RGU for projects based on approval authority or expertise; designate the RGU for a petition for an EAW; intervene to determine the adequacy of an EIS; and decide on the need for a Generic EIS.

Current statute describes situations when the MPCA Citizens' Board has authority to make decisions on: EAW petitions when the MPCA is the RGU; the need for an EIS following preparation of an EAW; and the scope and adequacy of an EIS. These are similar to several of the EQB authorities. Under specified circumstances, the Citizens' Board also has authority over MPCA permit decisions and agency rule making.

The new Environmental Review Board would focus on two key functions: overseeing the environmental review program and being a forum for discussion and resolution on complex environmental projects. The new Board would assume most or all the current authorities held by both existing boards pertaining to environmental review. While local or state agency RGUs would still conduct the bulk of environmental reviews in the state, the intent is that the new Environmental Review Board would intervene more often in individual projects in ways such as making EIS need decisions, making EIS adequacy determinations, or designating RGUs. The specific responsibilities and authorities would require more extensive analysis and discussion than this report provides, and would need to take into account the alternatives analyzed for the functional role of the MPCA Citizens' Board. (Policy Problem 2 of this report.)

There exists a perception of bias due to the Citizens' Board being part of the MPCA. Removing the new Board from the MPCA eliminates an organizational basis for this perception. If the new Board increases its presence in overseeing environmental review by interceding where an RGU lacks expertise or there are other problems, it will demonstrate its ability to act as an unbiased agent. When such interventions require additional public discussion, it allows for greater public discourse.

Staffing Resources: Executive Director, four environmental and planning professionals, and one administrative support. Total: six

Membership: The new Board should comprise commissioners of several agencies that currently make up the EQB plus additional citizen members. The final makeup would need to be determined.

Location: Independent staff and budget housed in one of the member agencies.

Authority needed for making change: Legislation is needed to abolish the EQB and the MPCA Board, create a new Board, and transfer powers. In addition, the duties and authorities found in current statutes and rules for both the EQB and the MPCA Citizens' Board would need to be carefully examined to determine which roles would be established for the new Environmental Review Board. At a minimum starting point, this would involve examination of Minnesota Statutes 116, 116C, 116D, 116G, 103A, and 103B. It also would require examination of Minn. Rules 4405, 4410, 4420, 7000, and potentially any other rule that refers directly or indirectly to the MPCA agency or board: 7000 through 7190. In addition, it is possible that statutes or rules governing activities of other state agencies that refer to the EQB or MPCA would need to be amended.

The intent of this alternative is that the new Environmental Review Board would intervene more often in individual projects. Though current EQB authority provides for this, it has been unusual for the EQB to exercise its authority to intervene. The specific responsibilities and authorities to be established would require more extensive analysis and discussion than this report provides.

Evaluation

1) Impact on interagency strategic thinking to facilitate Administration policy:

Benefits

- Combining resources to focus exclusively on the environmental review program conceivably may result in some improved strategic thinking related specifically to environmental review.

Drawbacks

- Elimination of strategic planning eliminates interagency strategic thinking.
- Lack of strategic planning entity and resources leaves the state vulnerable when issues arise that need such functions.
- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Guarantees inconsistent progress on a broad scale of strategic thinking: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Individual agencies conducting interagency strategic planning ad hoc most likely will not achieve consistent success.
- Strategic planning mission for state government will not be fulfilled.
- Environmental Congress and Report Card will not be continued annually.

Elimination of strategic planning obviously would have a negative impact on the potential for interagency strategic thinking. Eliminating the EQB, the only state strategic planning entity, would leave the state without any structure to fulfill that role when issues arose that need such functions. The effects of transferring the interagency planning role to another agency would depend on what

agency takes it on. Expecting individual agencies to conduct interagency activities on an ad hoc basis most likely will not achieve consistent success.

2) Impact on interagency coordination to facilitate Administration policy:

Benefits

- A forum for discussing environmental review of projects could improve coordination on the environmental review of those projects.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Elimination of coordinating duties has negative impact on interagency coordination.
- Lack of coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Unlikely to see consistent coordination: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Individual agencies conducting interagency coordination on ad hoc basis most likely will not achieve consistent success.

By eliminating strategic planning functions, this alternative would have a negative impact on the potential for interagency coordination. Eliminating the EQB, the only entity created to fulfill this role, would leave the state without any structure to fulfill the role when issues arise that need such functions. Again, the frac sand mining issue is a good example: though the EQB was created to address such needs, it does not have staffing to address it and this lack is being felt by the Governor's office, state agencies, the legislature, and the public. The effects of transferring the interagency coordination role to another agency would depend on what agency takes it on. Expecting individual agencies to conduct coordination on an ad hoc basis most likely will not achieve consistent success.

However, coordination might improve on the individual environmental review projects being considered by the new Board.

3) Impact on relevance and usefulness to the governor and agencies:

Benefits

- New Board may be a good source for information specifically regarding environmental review issues.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Eliminating strategic thinking and coordination leaves gap in information.
- Lack of interagency strategic planning and coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Information relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

Eliminating the strategic planning and coordination duties would not result in reliable, consistent information for policy makers. The new Board may be a good source for information specifically regarding environmental review issues.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Benefits

- Stronger oversight of environmental review would reduce instances of poorly conducted reviews.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Eliminating strategic thinking and coordination leaves gap in information.
- Lack of interagency strategic planning and coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Continued reactive rather than proactive approach is less efficient than preventing problems.
- Information, decisions, and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

Complete elimination of strategic planning and coordinating duties obviously would eliminate all possibility of duplication of those duties but would leave unfilled needs. The effects of reassignment of those duties would depend on what agencies take them on. It may result in more duplication of the planning is not coordinated across departments. Better environmental review guidance and enforcement would reduce inefficient, poorly conducted reviews by inexperienced governmental units statewide.

5) Impact on cost-effectiveness (benefits versus costs):

Benefits

- Stronger role in environmental review would reduce instances of poorly conducted reviews that can result in higher costs.

Drawbacks

- Decisions and actions relating to environmental policy—other than the environmental review program—will be fragmented, inconsistent, and potentially duplicative.
- Other agencies would assume costs of interagency strategic planning and coordination.
- Continued reactive rather than proactive approach—on issues other than the environmental review program—will result in higher cost for curing problems than cost of preventing problems.

Lack of any strategic planning or coordination would leave the state vulnerable when issues arise that need such functions. Other agencies would take on these costs. The lack of an existing structure would result in higher costs than having the structure in place. Without a strategic planning and coordinating organization, the state is left in a position of being reactive rather than proactive. Recalling the adage about an ounce of prevention being worth a pound of cure, this results in higher

over all costs to the public, both short term and long term. The environmental review program requires significant staff time to respond to inquiries, provide guidance, and process petitions. The minimal EQB budget would be available, but the costs of staffing and operating the new Board would be greater.

6) Impact on effectiveness of public input/engagement:

Benefits

- Stronger role in environmental review could increase level of public input and engagement in environmental review of projects.
- Environmental review program can be updated and improved on a regular basis which will allow for better public engagement in environmental review of projects.
- Inquiry response time will improve for environmental review issues.
- Reduced perception of bias of a board reviewing its agency activities.

Drawbacks

- No public engagement would occur on interagency strategic planning or coordination outside of environmental reviews.
- Some may consider increased state agency intervention in environmental reviews of projects to be an undesirable policy goal.
- Some may consider increased public engagement in environmental review of projects to be an undesirable policy goal.
- Some project proposers may consider increased state agency intervention in the environmental reviews of their projects to be detrimental to their projects.
- Some project proposers may consider increased public engagement in the environmental reviews of their projects to be detrimental to their projects.
- Environmental Congress and Report Card would not be continued annually.

With no interagency strategic planning or coordination, public engagement on such issues and projects is eliminated. The new Board's role would be environmental review, with goals to allow for more public discourse and reduce the perception of bias on complex or controversial projects. Intervening where an RGU lacks resources to conduct open and reliable environmental review should increase public engagement. The new Board's independence from a permitting agency would reduce the perception of bias. However, it is not a universal view that more environmental review, more oversight of environmental review, and more public engagement in environmental review are desirable goals.

EQB Alternative 5: Abolish EQB and Eliminate or Transfer Powers and Duties

The EQB would be abolished under this alternative, and its powers and duties would be eliminated or transferred. This alternative includes both functional and structural changes.

Duties/Authority: The strategic planning and coordination powers and duties of the EQB under M.S. Ch. 116C would be eliminated. It is presumed that they could be performed by other agencies on an ad hoc

basis. Responsibilities for state water planning activities, critical areas activities, and the energy and environment strategy report would be transferred to other agencies as well. Responsibilities for maintaining the environmental review program would have to be transferred to another agency.

Staffing Resources: All EQB staff would be eliminated. There may be a need to create new positions in other state agencies to accommodate new workloads based on the transferred responsibilities.

Membership: None.

Location: None.

Authority needed for making change: Legislation is needed to abolish the EQB and eliminate or transfer powers. It also would require revision of Minn. Rules 4405, 4410, 4420 and possibly others. In addition, it is possible that statutes or rules governing activities of other state agencies that refer to the EQB would need to be amended.

Evaluation

1) Impact on interagency strategic thinking to facilitate Administration policy:

Benefits

- None.

Drawbacks

- Elimination of strategic planning eliminates interagency strategic thinking.
- Lack of strategic planning entity and resources leaves the state vulnerable when issues arise that need such functions.
- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Guarantees inconsistent progress on a broad scale of strategic thinking: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Individual agencies conducting interagency strategic planning ad hoc most likely will not achieve consistent success.
- Strategic planning mission for state government will not be fulfilled.
- Environmental Congress and Report Card will not be continued annually.

Elimination of strategic planning obviously would have a negative impact on the potential for interagency strategic thinking. Eliminating the EQB, the only state strategic planning entity, would leave the state without any structure to fulfill that role when issues arose that need such functions. The frac sand mining issue is a good example: the public demand for a Generic EIS or another form of interagency analysis project is well known and the EQB was created to address such needs. The effects of transferring the interagency planning role to another agency would depend on what agency takes it on. Expecting individual agencies to conduct interagency activities on an ad hoc basis most likely will not achieve consistent success.

2) Impact on interagency coordination to facilitate Administration policy:

Benefits

- None.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Elimination of coordinating duties has negative impact on interagency coordination.
- Lack of coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Unlikely to see consistent coordination: agency decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Individual agencies conducting interagency coordination on ad hoc basis most likely will not achieve consistent success.

Elimination of strategic planning would have a negative impact on the potential for interagency coordination. Eliminating the EQB, the only entity created to fulfill this role, would leave the state without any structure to fulfill the role when issues arise that need such functions. Again, the frac sand mining issue is a good example. The effects of transferring the interagency coordination role to another agency would depend on what agency takes it on. Expecting individual agencies to conduct coordination on an ad hoc basis most likely will not achieve consistent success.

3) Impact on relevance and usefulness to the governor and agencies:

Benefits

- None.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Eliminating strategic thinking and coordination leaves gap in information.
- Lack of interagency strategic planning and coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Information relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

Eliminating the strategic planning and coordination duties would not result in reliable, consistent information for policy makers. Inconsistent coordination activity would result in a lack of reliable, consistent information.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Benefits

- None.

Drawbacks

- Governor's vision for environmental policy will not be clearly articulated or reflected by state agencies.
- Eliminating strategic thinking and coordination leaves gap in information.
- Lack of interagency strategic planning and coordination entity and resources leaves the state vulnerable when issues arise that need such functions.
- Continued reactive rather than proactive approach is less efficient than preventing problems.
- Information, decisions, and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.

Complete elimination of strategic planning and coordinating duties obviously would eliminate all possibility of duplication of those duties but would leave unfilled needs. The effects of reassignment of those duties would depend on what agencies take them on. It may result in more redundancy and inefficiency if the planning is not coordinated across departments.

5) Impact on cost-effectiveness (benefits versus costs):

Benefits

- EQB budget eliminated.

Drawbacks

- Decisions and actions relating to environmental policy will be fragmented, inconsistent, and potentially duplicative.
- Continued reactive rather than proactive approach will result in higher cost for curing problems than cost of preventing problems.
- Other agencies would assume costs of interagency strategic planning and coordination as well as costs of administering environmental review program.

The cost of supporting the EQB would be saved. However, the lack of any strategic planning or coordination would leave the state vulnerable when issues arise that need such functions. Other agencies would take on these costs. The lack of an existing structure would result in higher costs than having the structure in place. The frac sand mining issue may be an example. Without a strategic planning and coordinating organization, the state is left in a position of being reactive rather than proactive. Recalling the adage about an ounce of prevention being worth a pound of cure, this results in higher over all costs to the public, both short term and long term. The environmental review program requires significant staff time to respond to inquiries, provide guidance, and process petitions. The minimal EQB budget would be available, but the costs would only be transferred to other agencies that take up the roles currently provided by the EQB.

6) Impact on effectiveness of public input/engagement:

Benefits

- None.

Drawbacks

- No public engagement would occur on interagency strategic planning or coordination.

- Public engagement on environmental reviews may be different depending on what agency is performing the review. This would depend on the assignment of program oversight authority.
- Environmental Congress and Report Card would not be continued annually.

With no interagency strategic planning or coordination, public engagement on such issues and projects is eliminated. Many of EQB's numerous statutory roles require public access and discussion. Even if not specifically required, current practice for most initiatives includes obtaining public input through comment periods, focus groups, or other forums. All EQB Board meetings are open to the public. Few agencies have boards where the public can access decision makers. The existence of the EQB provides public access to Executive Branch discussion of environmental policies. Eliminating the EQB significantly reduces this access. Environmental review rules specifically require public notice and comment periods, and serious consideration of public comments. These public engagement requirements and practices will be eliminated or change significantly under this option, depending on how the roles are assigned via statute and rule amendments.

E. RECOMMENDATIONS

xxxxxxxxxx pending xxxxxxxxxxxxxxxxx

IV. ANALYSIS OF POLICY PROBLEM 2: ROLE OF THE MPCA CITIZENS' BOARD

MPCA Citizens' Board Background

Background: In statute (M.S. 116.02) the Minnesota Pollution Control Agency or "agency" is defined as the commissioner and eight members of the Citizens' Board. The Citizens' Board was created when the MPCA was created in 1967. MPCA staff numbered less than 20. As the MPCA took on more environmental protection and assistance tasks and increased in size, the Board's decision making workload escalated.

In 1996, major revisions were made to M.S. 116.02 to scale back Citizens' Board decision making. Subdivisions 6 through 10 were added to describe specific circumstances where the Board was to make a final decision. The only decisions the Citizens' Board must make related to environmental review and permits is on the scope and adequacy of Environmental Impact Statements (EISs) or if a variance is sought from certain state standards. Other decisions on permits and environmental review documents are brought before the Board only at the request of the commissioner, a Board member, project proposer, or interested party. Adding subdivisions 6 through 10 narrowed the scope and under what circumstances items are brought before the Board. This change reduced the number of Citizens' Board decisions considerably.

In the five year period between 2007 and 2011, the Citizen's Board made decisions on 15 environmental review projects. Only one of those was a mandatory Board decision of an EIS adequacy determination. In contrast, during that same 5-year time period, the MPCA Commissioner made final decisions on 72 environmental review documents.

Between 2007 through 2011, the Citizen's Board made permit decisions on 9 individual projects and 4 general permits. The MPCA issues thousands of permits every year.

No other state permitting agency has a Citizens' Board. Counties and cities that prepare environmental review documents and permits typically take these decisions before their county boards or city councils.

Duties/Authority: The Citizens' Board can make the following decisions on environmental review and permits (see M.S. 116.02, Subd. 6 through 10):

Environmental Review

- Petition for the preparation of an environmental assessment worksheet if project proposer or interested party requests it and the agency agrees.
- The need for an EIS following preparation of an EAW if requested by project proposer or interested party and the agency agrees or the commissioner recommends preparation of an EIS.
- The scope and adequacy of EISs.

Permits

- Issuance, reissuance, modification, or revocation of a permit if the permittee or interested party requests it and the agency agrees; or

- A variance is sought in the permit application; or
- A contested case hearing request is pending.

In addition, a decision can come before the Board if the Commissioner, another Board Member, or interested party requests that a decision be made before the Board and that request is granted.

POLICY PROBLEM 2

What should be the MPCA Citizen's Board role in making final decisions on permits? Does the current process of the Board making final decisions provide additional benefits compared to a commissioner decision model used by other agencies? If the Board maintains a large role in decision making on permits and environmental review, should the process used to refer issues to the Board remain the same?

DEFINITION AND EVALUATION OF ALTERNATIVES

The alternatives presented in this document are intended to highlight a few of the possible options available to promote discussions around the topic. However, it is not an exhaustive list of alternatives. While some initial stakeholder survey has been conducted, it is important to understand that the possible "benefits" and "drawbacks" described for each of the alternatives is subjective – what might be considered a benefit to one person might often be a drawback to another. The agency has never operated without a Citizen's Board so the actual degree of impacts of changing the scope or responsibilities are unknown.

This analysis uses the same criteria for evaluation as previous section. The four alternatives analyzed are:

- MPCA Citizens' Board Alternative 1: Status Quo
- MPCA Citizens' Board Alternative 2: Commissioner Makes Final Decisions On All Environmental Review and Permitting Documents
- MPCA Citizen's Board Alternative 3: Modified Citizens' Board Process On Permits and Environmental Reviews – MPCA Commissioner ONLY Can Grant That a Decision Be Made By the Citizen's Board
- MPCA Citizens' Board Alternative 4: Modified Citizens' Board Process On Permits and Environmental Reviews – Environmental Review Decisions Remain With the Citizens' Board, MPCA Commissioner ONLY Can Grant That a Permit Decision Be Made By the Citizen's Board

MPCA Citizens' Board Alternative 1: Status Quo

Duties/Authorities: These are described above for environmental review and permit decisions.

Staffing Resources: A part-time Board secretary manages administrative portions of Citizens' Board preparations and meetings. Staff bringing decisions before the Board must prepare Board documents that are mailed 10 days prior to the meeting. Environmental review and permitting projects that are brought before the MPCA Citizen's Board for decision are usually large projects that are controversial and have garnered a great deal of public interest. Generally it takes more staff time to prepare a project for a Board decision than it does for a decision by the Commissioner. While some of the documentation may be similar, the level of preparation needed for the presentation and Board Q&A adds staff time.

Membership: The Citizens' Board consists of the commissioner as Chair and eight members who are appointed by the governor and confirmed by the senate to four-year staggered terms. One member must be knowledgeable in the field of agriculture, and one member must be a representative of organized labor. All are voting members.

Location: All Board meetings take place at the MPCA offices located in St. Paul. Meetings are held once a month.

Evaluation

1) Impact on interagency strategic thinking: not applicable to MPCA policy problem.

2) Impact on interagency coordination: not applicable to MPCA policy problem.

3) Impact on relevance and usefulness to the governor and agencies and legislature: not applicable to MPCA policy problem.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Possible Benefits:

- Citizens' Board decisions build a strong public record on certain projects and issues of statewide significance.
- The Citizens' Board provides for an additional level of public oversight and accountability.
- Appearing in front of the Citizen's Board requires agency staff to refine information and present it in a way that is both understandable to the broad audience but detailed enough for a decision to be made.

Possible Drawbacks:

- Many project proposers see a Board decision as an extra, unnecessary and time-consuming step before they can obtain an environmental review decision and/or a permit. Decisions are not being made at the "speed of business".
- Additional MPCA staff time and resources are required to prepare permitting documents and presentations for the Citizen Board – time that might be better spent on meeting the 150-day deadline for issuing other permits.

- For permitting, some project proposers have expressed the belief, that there are sufficient federal and state rules currently in place and decisions made by the Citizens' Board decisions do not significantly deviate from those laws. Therefore, there is little value added to the overall process.

5) Impact on cost-effectiveness (benefits versus costs):

Possible Benefits:

- Citizens' Board meetings provide resolution to decisions on large and controversial projects - projects that might otherwise go through more expensive contested case hearings or appeals court proceedings. Both would add time to the process, if they occurred.

Possible Drawbacks:

- Project proposers have expressed the belief that the time and cost associated with coming before the Board outweighs the value of Board input.
- More MPCA staff resources are needed to bring decisions before the Citizens' Board.

The Board has a positive track record following appeals of their decisions. At present, very few Citizens' Board decisions are challenged in the Court of Appeals. This may be because the Board process allows the agency to carefully build a strong public record that supports the decision (is not arbitrary or capricious) and can be upheld under judicial review.

For interested parties, appearing before the Citizens' Board may give them the forum they need to voice their concerns and receive a response, even if they do not get their desired outcome. Therefore, they do not feel the need to find another venue to air their concerns, such as the Court of Appeals, which is costly and draws out the process even longer.

Project proposers have suggested that instead of Citizens' Board meetings, public meetings required for contentious projects could be strengthened by having the Commissioner chair the meetings.

6) Impact on effectiveness of public input/engagement:

Possible Benefits:

- The Board connects citizens to its government by providing another clear entry into the agency's decision making process.
- Interested parties value the opportunity to appear directly before the decision makers in a public forum at the point of decision.
- Interested parties appreciate the opportunity to be heard and have their concerns addressed, even if the decision does not go their way.
- If citizens are heard, they might not feel the need to find another venue to air their concerns, such as the Court of Appeals, which can be costly and draw out the process even longer.
- Input from the public can bring about positive changes in project designs or permits.
- The Board adds value to the commissioner on controversial projects.

Possible Drawbacks:

- Project proposers see a Board decision as a needless hold up, brought on by those opposed to the project, before they can obtain an environmental review decision and/or a permit.

- Project proposers say decisions have to be made at the “speed of business” and an average additional 45 days to complete the Board process is seen by some as an unnecessary delay.

Environmental review and permitting projects that are brought before the MPCA Citizen’s Board for decision are usually large projects that are controversial and have garnered a great deal of public interest. By the time these projects are brought before the Citizens’ Board they will have had at least a 30-day public comment period and some type of public meeting where the proposer and MPCA permitting staff are in attendance. However, Board meetings allow for greater transparency between interested parties, project proposers, and staff because everything is on the record.

The public may perceive a Citizens’ Board as an important part of a checks and balances system on contentious government decisions. For the public at large, having a Citizen’s Board overseeing the decisions of a state government agency can lend credibility to its decisions.

The Citizen’s Board provides a rare opportunity for citizens to sit on a decision-making Board and be part of government decision-making. Citizens get to participate in government by having a seat on the Board.

The Citizens’ Board provides value to the commissioner for decisions on contentious projects. New commissioners have publicly questioned why the MPCA has a Citizens’ Board. But after having been through a controversial project decision, they recognize and appreciate the contribution of the eight other decision-makers asking hard questions and voicing their informed assessment of the proposed project.

Authority needed for making change: No changes with this alternative.

MPCA Citizens’ Board Alternative 2: Commissioner Makes Final Decisions On All Environmental Review and Permitting Documents

The commissioner would have the final decision on all environmental review and permitting documents. The Citizens’ Board would have no authority to make any decisions on these projects.

Duties/Authority: The final decision on all environmental review and permitting documents would rest solely with the MPCA Commissioner. Currently, the MPCA is the only state agency with a Citizens’ Board that has the ability to make final permitting and environmental review decisions. County and city governments typically take these decisions to county boards or city councils.

Staffing Resources: No special resources. There is staff already working on environmental review and permits.

Membership: No change

Location: No change

Authority needed for making change: Legislation is needed to remove all the Citizens’ Board decision making authority on environmental review and permits.

Statute Language Changes Example:

M.S. 116.02, subdivision 6 would read:

Subd. 6 Required decisions. The commissioner shall make final decisions on items (1) through (4). The agency shall make final decisions on items (5) through (7). ~~the following matters:~~

The rest of the language in subdivision 6 through 10 can remain the same.

The language change takes the authority for decisions on environmental review and permitting away from the Citizens' Board. The commissioner now solely makes the decision on environmental review and permit matters.

Evaluation

1) Impact on interagency strategic thinking: not applicable to MPCA policy problem.

2) Impact on interagency coordination: not applicable to MPCA policy problem.

3) Impact on relevance and usefulness to the governor and agencies and legislature: not applicable to MPCA policy problem.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Possible Benefits:

- Eliminating the Citizens' Board meeting step would remove an average of 45 days off project timelines, saving project proposers time and money in the short term.
- MPCA staff time would be saved by not having to prepare a board presentation.

Possible Drawbacks:

- Interested parties may potentially take their disputed issues to the Court of Appeals, adding to the project timeline and costs.
- Building a stronger public record through presentations, questions, decisions from a 9-member Board would not exist.
- A new commissioner may not be ready to make certain controversial decisions because they are not familiar with the issues and trained in the process. The new commissioner will need time to get up to speed.
- Final permit requirements may not satisfy interested parties. Citizens' Board meetings can and do have an impact on final permit and environmental review decisions. Project proposers have made changes to their projects as a result of testimony of interested parties in front of the Board. Although some of these changes may not have been significant to the project proposer, it made a difference to the citizens involved.

On controversial projects, the Commissioner may still want to meet with project proposers, staff, and interested parties so that he/she can make an informed decision. This would cut into the average 45-day timeline savings, particularly if a commissioner is new. Interested parties have expressed concern that they would not actually get a meeting with the commissioner if requested.

5) Impact on cost-effectiveness (benefits versus cost)

Possible Benefits:

- Cost savings to MPCA budget: per diem of Board Members because of reduced meetings (don't need to meet every month) and staff time.
- Cost and time savings for project proposers.

Possible Drawbacks:

- Time saved from not going to the MPCA Board may be negated because the project may end up in the Court of Appeals.

6) Impact on effectiveness of public input/engagement

Possible Benefits:

- Interested parties still have an opportunity to talk with MPCA staff, submit formal comments on the documents, and attend public informational meetings.

Possible Drawbacks:

- Interested parties and proposers would not have a chance to appear directly before the decision makers in a public forum, voice their concerns, and have them addressed in real time.
- Part of the checks and balances system and a more transparent process on contentious project decisions is gone.
- Although a public record is built, it may not stand up as well as through judicial review as the one built through the Citizens' Board process, which provides additional public meeting input and back and forth dialogue with refinement/resolution of issues.
- Loss of diversity of perspective from nine Board members to just Commissioner.
- Interested parties have expressed concern that they would not get an audience with the commissioner on controversial projects.
- Decision on proposed project may be political if commissioner only makes the decision.

The MPCA Board meetings provide an opportunity for interested parties to express their concerns about a contentious project directly in front of the decision makers – the MPCA Board Members. MPCA staff and/or project proposers must provide answers to questions raised by interested parties in front of an audience. This provides more transparency for the decision. All statements are on the record.

Commissioners are appointed by the Governor, and decisions can have political ramifications. Citizens are appointed to the Board by staggered 4-year terms and therefore do not represent any one governor. Having a Citizens' Board can help keep the politics out of environmental decision-making.

MPCA Citizen's Board Alternative 3: Modified Citizens' Board Process On Permits and Environmental Reviews – MPCA Commissioner ONLY Can Grant That a Decision Be Made By the Citizen's Board

In this alternative, the MPCA Commissioner is the only one that can grant that a decision be made before the Citizens' Board. The commissioner may benefit from a prescribed decision-making process so the decision on whether to bring a project before the Board is not seen as arbitrary or capricious.

Duties/Authority: Anyone can make a request to the commissioner (e.g., a Board member, project proposer, or interested party), but it is not automatically granted as most requests are currently. The commissioner would not have to consult the Board to make the decision. The request would either be granted, or denied. The commissioner could also send decisions on environmental review and permits to the Board on his/her own volition.

Staffing Resources: Unchanged.

Membership: No change.

Location: No change.

Authority needed for making change: Legislation is needed to change that the Commissioner decides what matters in environmental review and permitting are brought before the Citizens' Board.

Statute Language Changes Example:

M.S. 116.02, subdivision 6 would read:

Subd. 6 Required decisions. The commissioner shall decide when the agency shall make final decisions on items (1) through (4). The agency shall make final decisions on items (5) through (7). ~~the following matters:~~

The rest of the language in subdivision 6 through 10 can remain the same.

The language change takes the authority for decisions on environmental review and permitting away from the Citizen's Board. The commissioner now solely makes the decision on environmental review and permit matters unless he/she decides it is prudent to bring the decision before the Citizen's Board. The Commissioner alone decides, after getting a request, whether the decision will be made by the Citizens' Board.

Evaluation

1) Impact on interagency strategic thinking: not applicable to MPCA policy problem.

2) Impact on interagency coordination: not applicable to MPCA policy problem.

3) Impact on relevance and usefulness to the governor and agencies and legislature: not applicable to MPCA policy problem.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Possible Benefits:

- The Commissioner now has discretion on what environmental review and permitting decisions come before the Board. In most cases, discretion adds to efficiency. In this case, the Commissioner would only recommend Citizens' Board decisions where assistance from the full Citizens' Board could benefit the final outcome.

Possible Drawbacks:

- May need to come up with a process for the Commissioner to make a decision on whether or not a project comes to the Board for decision.
- Commissioner may let all the requests go through.
- If the commissioner denies the request to have the agency make the decision, then the possible benefits and drawbacks from Alternative 1 apply here.

5) Impact on cost-effectiveness (benefits versus cost)

If the commissioner denies the request to have the agency make the decision, then the possible benefits and drawbacks from Alternative 1 apply here.

6) Impact on effectiveness of public input/engagement:

Possible Benefits:

- Interested parties, project proposers, or Citizens' Board Members would have to make a strong case to the commissioner in order for a decision to come before the Citizens' Board. Although this can be seen as a drawback, this is also a benefit in that there has to be a tangible, thoughtful reason to spend Citizens' Board and extra staff time for a decision.

Possible Drawbacks:

- Limits public access to the Citizens' Board.
- Commissioner has added responsibility and accountability to the public when the request is denied.
- It could also take time for the commissioner following a prescribed decision-making process to decide what proposed projects come before the Board.
- Interested parties, project proposers, or Citizens' Board Members would have to make a strong case to the commissioner in order for a permitting decision to come before the Citizens' Board.
- Possible drawbacks from Alternative 1 apply if commissioner denies the request to have the Citizens' Board make the decision.

MPCA Citizens' Board Alternative 4: Modified Citizens' Board Process On Permits and Environmental Reviews – Environmental Review Decisions Remain With the Citizens' Board, MPCA Commissioner ONLY Can Grant That a Permit Decision Be Made By the Citizen's Board

In this fourth alternative, the current status of environmental review decisions is unchanged. However, the MPCA Commissioner is the only one that can grant that a permit decision be made before the Citizens' Board per request from a Board member, project proposer, or interested party.

Duties/Authority: Environmental review decisions would come before the Citizens' Board when requested as is the current practice. Citizens' Board review of environmental review decisions requested by interested parties seems to be a good fit for public engagement and participation for the following reasons:

- Environmental review must be completed before any permits can be issued.
- One purpose of environmental review is to capture all the impacts of the whole project in a readable form for the public all in one document.
- Environmental review covers issues that are subject to permits such as air emissions, water discharges, stormwater runoff, water appropriation, and solid waste.
- It also covers issues that are either narrowly covered or not covered in permits: noise, odor, visual impairment, traffic patterns, compatibility with land use plans, historical resources, soils, and fish and wildlife. These issues may be of great concern to the public and may not be adequately covered in a permit, but are covered in environmental review.
- At the MPCA, environmental review staff and permit engineers work closely together for efficiency of both documents. Permits conditions are described in the relevant portions of the environmental review documents. Permit engineers often are asked questions by Board Members at Citizens' Board meetings where the decision on environmental review is made.

Permits would come before the Citizen's Board for decision only if the MPCA Commissioner granted the request from a Board member, project proposer, or interested party. Permits are highly technical documents written for the company's facility operator to maintain compliance with all local, state, and federal standards for release of specific pollutants. Permits are extremely specialized and a facility may need more than one type of permit. Each permit needed by a facility only covers a certain media. For example, an air permit only covers emissions to the air; water permits covers discharges to surface or groundwater; water appropriations permit says how much water can be drawn from groundwater. Permits cannot be issued until environmental review is complete.

Staffing Resources: Unchanged.

Membership: No change.

Location: No change.

Authority needed for making change: Legislation is needed to change that the Commissioner decides what matters in permitting are brought before the Citizens' Board.

Statute Language Changes Example:

M.S. 116.02, subdivision 6 would read:

Subd. 6 Required decisions. The commissioner shall decide when the agency shall make final decisions on item (4). The agency shall make final decisions on items (1) through (3) and (5) through (7). ~~the following matters:~~

The rest of the language in subdivision 6 though 10 can remain the same.

Evaluation

1) Impact on interagency strategic thinking: not applicable to MPCA policy problem.

2) Impact on interagency coordination: not applicable to MPCA policy problem.

3) Impact on relevance and usefulness to the governor and agencies and legislature: not applicable to MPCA policy problem.

4) Impact on efficiency (minimization of redundancies and inefficiencies):

Possible Benefits:

- The commissioner now has discretion on what permitting decisions come before the Board. In most cases, discretion adds to efficiency. In this case, the commissioner would only recommend Citizens' Board decisions where assistance from the full Citizens' Board could benefit the final permitting outcome.

Possible Drawbacks:

- Possible drawbacks from Alternative 1 apply if commissioner denies the request to have the Citizens' Board make the permitting decision.

5) Impact on cost-effectiveness (benefits versus costs)

If the commissioner denies the request to have the agency make the permitting decision, then the possible benefits and drawbacks from Alternative 1 apply here.

6) Impact on effectiveness of public input/engagement:

Possible Benefits:

- Interested parties, project proposers, or Citizens' Board Members would have to make a strong case to the commissioner in order for a permitting decision to come before the Citizens' Board. Although this can be seen as a drawback, this is also a benefit in that there has to be a tangible, thoughtful reason to spend Citizens' Board and extra staff time for a permitting decision.

Possible Drawbacks:

- For permits, it limits public access to the Citizen's Board.
- Interested parties, project proposers, or Citizens' Board Members would have to make a strong case to the commissioner in order for a permitting decision to come before the Citizens' Board.

- Drawbacks from Alternative 1 apply if commissioner denies the request to have the Citizens' Board make the permitting decision.

Current Statutory Language

M.S. 116.02 POLLUTION CONTROL AGENCY, CREATION AND POWERS

Subd. 6. **Required decisions.** The agency shall make final decisions on the following matters:

(1) a petition for the preparation of an environmental assessment worksheet, if the project proposer or a person commenting on the proposal requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8;

(2) the need for an environmental impact statement following preparation of an environmental assessment worksheet under applicable rules, if:

(i) the agency has received a request for an environmental impact statement;

(ii) the project proposer or a person commenting on the proposal requests that the declaration be made by the agency and the agency requests that it make the decision under subdivision 8; or

(iii) the commissioner is recommending preparation of an environmental impact statement;

(3) the scope and adequacy of environmental impact statements;

(4) issuance, reissuance, modification, or revocation of a permit if:

(i) a variance is sought in the permit application or a contested case hearing request is pending; or

(ii) the permit applicant, the permittee, or a person commenting on the permit action requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8;

(5) final adoption or amendment of agency rules for which a public hearing is required under section 14.25 or for which the commissioner decides to proceed directly to a public hearing under section 14.14, subdivision 1;

(6) approval or denial of an application for a variance from an agency rule if:

(i) granting the variance request would change an air, soil, or water quality standard;

(ii) the commissioner has determined that granting the variance would have a significant environmental impact; or

(iii) the applicant or a person commenting on the variance request requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8; and

(7) whether to reopen, rescind, or reverse a decision of the agency.

Subd. 7. **Additional decisions.** The commissioner may request that the agency make additional decisions or provide advice to the commissioner.

Subd. 8. **Other actions.** Any other action not specifically within the authority of the commissioner shall be made by the agency if:

(1) prior to the commissioner's final decision on the action, one or more members of the agency notify the commissioner of their request that the decision be made by the agency; or

(2) any person submits a petition to the commissioner requesting that the decision be made by the agency and the commissioner grants the petition.

If the commissioner denies a petition submitted under clause (2), the commissioner shall advise the agency and the petitioner of the reasons for the denial.

Subd. 10. **Changing decisions.**

(a) The agency must not reopen, rescind, or reverse a decision of the agency except upon:

(1) the affirmative vote of two-thirds of the agency; or

(2) a finding that there was an irregularity in a hearing related to the decision, an error of law, or a newly discovered material issue of fact.

(b) The requirements in paragraph (a) are minimum requirements and do not limit the agency's authority under sections 14.06 and 116.07, subdivision 3, to adopt rules:

(1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions of the agency; or

(2) establishing additional or more stringent requirements for reopening, rescinding, or reversing decisions of the agency.

RECOMMENDATIONS

xxxxxxxx pending xxxxxxxxxxxxxxxx

DRAFT