

2012 MACPZA Annual Conference, Mankato
Bob Patton, Environmental Quality Board

ENVIRONMENTAL REVIEW



Circa Earth Day–Nation



- Wild and Scenic Rivers Act (1968)
- National Flood Insurance Act/Flood Disaster Prevention Act (1968/1972)
- National Environmental Policy Act (1969)
- Clean Air Act (1970)
- Federal Water Pollution Control Act/Clean Water Act (1972/1977)
- Coastal Zone Management Act (1972)
- Safe Drinking Water Act (1974)
- Endangered Species Act (1973)



Circa Earth Day–Minnesota



- Minnesota Environmental Rights Act (1971)
- Minnesota Environmental Quality Council (1973)
- Minnesota Environmental Policy Act (1973)



Minnesota Environmental Policy Act (Minnesota Statutes Ch. 116D)

“It is the continuing policy of the state government . . . to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations”



Environmental Review Program Basics

- Established by MEPA – Minn. Stat. §116D.04
- Rulemaking and coordinating authority assigned to Environmental Quality Board
- ER rules (Minn. Rules, chapter 4410) prescribe what projects need review and how review is to be done
- EQB provides standard forms, guidance documents, and consultation and advice



Environmental Quality Board

- Governor's representative
- Nine Agency Commissioners
 - Administration
 - Agriculture
 - Commerce
 - Employment & Economic Development
 - Health
 - Natural Resources
 - Pollution Control
 - Transportation
 - Water & Soil Resources
- Five Citizen Members



Environmental Review Program Basics

- Applies to projects that “may have potential for significant environmental effects”
- Intended to disclose information through a systematic, public process
- Works in conjunction with permits and other approvals



Program Elements

- Categories of projects with thresholds
 - When review mandatory (EAWs and EISs)
 - When exempt
- Environmental Assessment Worksheet (EAW)
- Environmental Impact Statement (EIS)
- Citizens Petition for an EAW
- AUAR, GEIS and other alternative forms of review



EAWs and EISs

Environmental Assessment Worksheet

“...a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required...”



Decision on Need for EIS

“An EIS shall be ordered for projects that have the potential for significant environmental effects”



Environmental Impact Statement

“...a detailed written statement...”



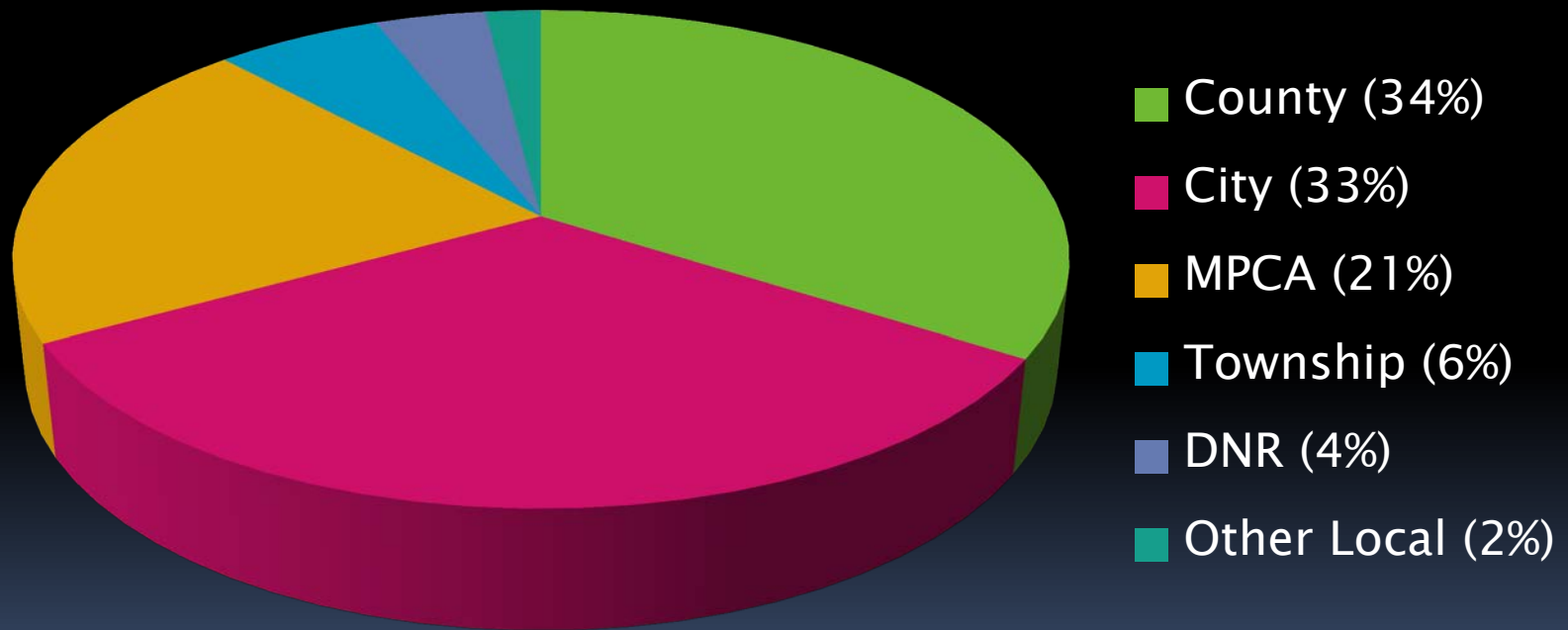
Responsible Governmental Unit

- RGU carries out ER following EQB rules
- EQB rules specify how to identify RGU for each project – normally the unit with most authority over the project
- RGU decides what needs review, what information to collect and when review is complete
- RGU can seek assistance from EQB, but RGU must make its own decisions



RGUs

Responsible Governmental Units for Private Sector Projects, FY 2007–10*



* Office of the Legislative Auditor, analysis of EQB Monitor, 7/3/2006 through 7/12/2010

What is a “project”?

- “Project...a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly...”
- “Governmental action...activities including projects wholly or partially conducted, assisted, financed, regulated, or approved by governmental units, including the federal government.””



What is a “project?”

Three conditions:

1. Requires at least one form of governmental approval or govt financial assistance
2. Physical manipulation of the environment – directly or indirectly
3. Must involve future action – can’t be already fully permitted or construction completed



What is a “project?”

- **Connected actions**
 - One induces the other
 - Prerequisite for the other
or
 - Neither is justified by itself
- **Phased actions**
 - environmental effects on same geographic area
 - substantially certain to be undertaken sequentially over a limited period of time
- **3-year look-back rule**



Prohibition on Final Governmental Decisions and Construction

- Before project approved or started
 - Petition for EAW dismissed
 - Negative declaration
 - EIS determined adequate
or
 - Variance granted by EQB
- “Final” does not mean the last action



Relation to govt permitting and approval

- Purpose -- to allow better informed permitting/approval decisions
- Precede or concurrent with permit/approval review
- Prohibition on all “final approvals” and construction until completed
- ‘60-day rule’ suspended during ER
- ER is not an approval process -- does not approve or disapprove a project – does not itself impose conditions on projects -- does not change authority of gov’tal units



EAW

- Format: 6–page worksheet with 31 standardized questions
- Information about project description, environmental setting, potential env. impacts, and mitigation measures
- By statute, a brief document to disclose information necessary to decide if EIS is needed – in practice not necessarily brief
- Project proposer supplies basic data, RGU prepares/approves EAW



EAW Procedures

1. Preparation

1. Proposer submits “completed data portions”
2. RGU decides when EAW complete and ready for public review

2. Distribution – use EQB list

3. *EQB Monitor* notice

4. Comment period – 30 days

5. Review comments & prepare responses

6. EIS need decision – per 4410.1700, s 7

7. Scope EIS or proceed to permitting



Citizens Petitions

- Formalized way to seek an EAW if not mandatory (and not exempt)
- Must present material evidence that the project may have potential for significant environmental effects because of its nature or location
- Must be signed by at least 100 Minnesotans



Petition Procedure

1. Petition filed with EQB
2. EQB
 1. screens for completeness
 2. if complete, assigns RGU
3. Petition forwarded to RGU
4. RGU makes EAW need decision
(within 30 working days of receipt)
5. EAW or permitting



EIS Content

- Project description
- Alternatives – sites, technologies, modified design/scale & full mitigation
- Compare env., economic & social impacts
- Mitigation of impacts
- “Analytical, not encyclopedic” – scoping process to focus EIS on essential info



EIS Procedures

1. Scoping
2. Preparation of Draft EIS
3. Notice & distribution of Draft EIS
4. Comments
5. Finalize EIS & respond to comments
6. Notice & distribution of Final EIS
7. Adequacy decision
8. Permitting



EAW Mandatory Categories & Local RGUs

4410.4300, subpart	EAW Mandatory Category	Notes
6	Transmission Lines	mainly PUC
12	Nonmetallic Mineral Mining	also DNR
14	Industrial, Commercial, and Institutional Facilities	
19	Residential Developments	
19a	Residential Development in Shoreland Outside TC	
20	Campgrounds and RV Parks	
20a	Resorts, campgrounds, and RV parks in shorelands	
21	Airport Projects	also MAC
22	Highway Projects	also MnDOT
25	Marinas	



EAW Mandatory Categories & Local RGUs

4410.4300, subpart	EAW Mandatory Category	Notes
26	Stream Diversion	
27	Wetlands and Protected Waters	
29	Animal Feedlots	mainly MPCA
30	Natural Areas	also DNR
31	Historical Places	
32	Mixed Residential Industrial-Commercial Projects	
33	Communication Towers	
34	Sports and Entertainment Facilities	
36	Land Use Conversion, including Golf Courses	
36a	Land conversions in shoreland	



EQB Guidance Documents

- Rules
- *Guide to MN Environmental Review Rules*
- *EAW Guidelines*
- Guides for citizens and local govt. units
- Distribution Lists
- *EQB Monitor* – current issue and archives





Programs, projects, studies

- Environmental review program
- Water program
- All

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MINNESOTA ENVIRONMENTAL QUALITY BOARD

The Environmental Quality Board brings together the Governor's Office (as chair), five citizens and the heads of nine state agencies to coordinate environmental policy and development. The board develops policy, creates long-range plans and reviews proposed projects that would significantly influence the state's environment.

Notices

- [EQB Board Meeting Proposed Agenda, September 19, 2012](#): Agenda and accompanying materials for meeting, September 19, 2012.
- [Executive Order 11-32 projects move toward completion](#): In November, the EQB is scheduled to make recommendations on environmental governance and coordination. The Board is also scheduled to adopt an environment and energy report card on October 17th, and October 30th, with adoption on November 14th. The Environmental Review Improvement and the Governor's public review | [Notice details](#)
- [Minnesota Environmental Congress 2013](#): The EQB is hosting an Environmental Congress! Starting in November, state leaders will discuss about the present and future of our state's environmental and economic health. Learn how you can help shape a long-term plan for the future.
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MINNESOTA ENVIRONMENTAL QUALITY BOARD.

ENVIRONMENTAL REVIEW PROGRAM

View web site: <http://www.eqb.state.mn.us/resource.html?id=18107>

- [Overview](#)
- [Guidance documents](#) (1 items)
- [Ongoing projects and studies](#) (1 items)
- [Completed projects and studies](#) (6 items)
- [Contact us](#)

Overview

The Environmental Quality Board writes the rules for conducting environmental reviews. The actual reviews are usually conducted by the Minnesota Department of Natural Resources. Duties are directed by [Minnesota Statutes 116D.04](#).

Not all development projects require environmental review. The nature, size and location of a project determines this, and the responsible state or local government body with jurisdiction over the project works with the developer to complete one or both of the following documents:

Environmental assessment worksheet: A screening tool to determine whether a full environmental impact statement is needed. It is used to assess potential environmental harm and plans to reduce the harm. About 150 worksheets are completed each year.

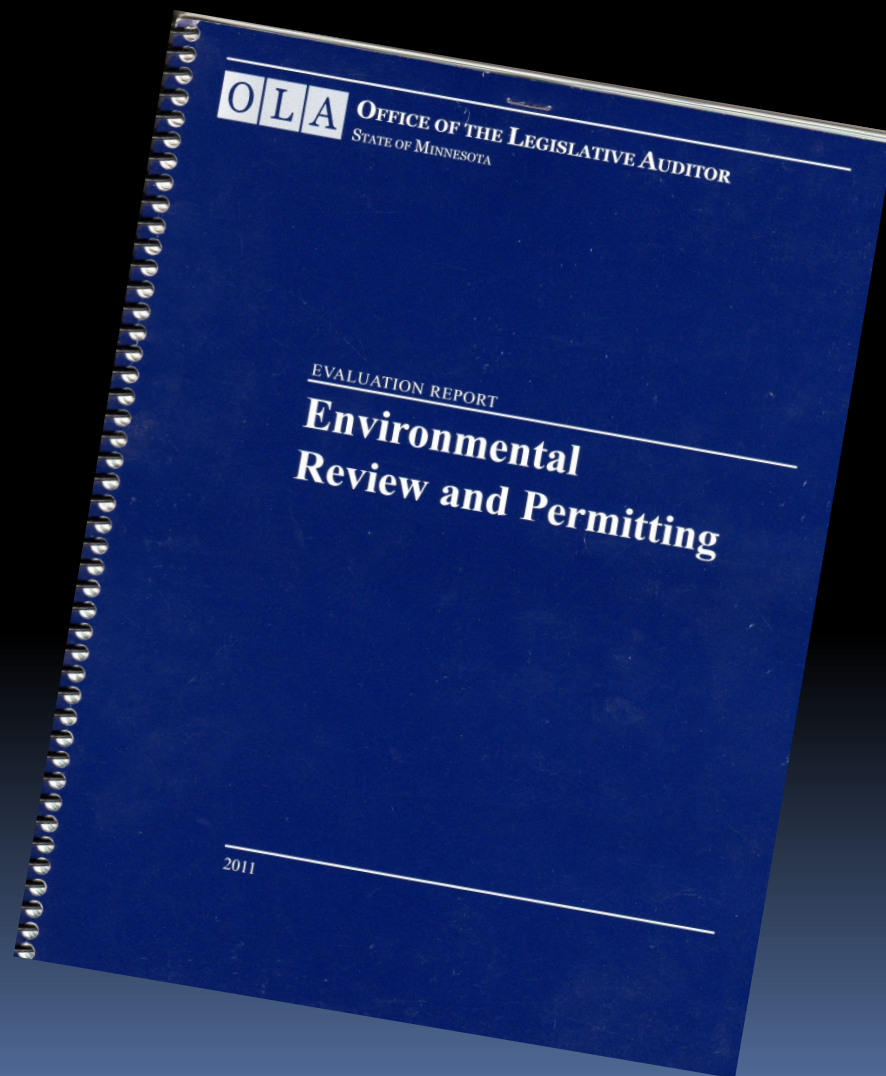
Environmental impact statement: An in-depth analysis used for major development projects that will significantly change the

Form and Guidance Revision Project

Subd. 14. Customized environmental assessment worksheet forms; electronic submission. (a) The commissioners of natural resources and the Pollution Control Agency and the board shall ...develop customized environmental assessment worksheet forms for the category or project type.



2011 OLA Report



OLA Report

- “Varying levels of expertise and experience among governmental agencies may compromise their abilities to meet environmental review objectives.”



OLA Report

- Modify process for redesignating RGUs
- Work with local government associations:
 - ID resources
 - Develop and promote training





STATE OF MINNESOTA
EXECUTIVE DEPARTMENT



MARK DAYTON
GOVERNOR

Executive Order 11-32
Directing the Work of the Environmental Quality Board

I, Mark Dayton, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

Whereas, the Minnesota Environmental Quality Board (EQB) is composed of nine state agency heads, five citizen members, and a governor's representative, who serves as chair;

Whereas, the EQB is directed by law to:

1. Determine which environmental problems of interdepartmental concern to state government it shall consider and initiate interdepartmental investigations into those matters that it determines are in need of study, including but not limited to topics of future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning;
2. Review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and ensure agency compliance with state environmental policy; and

Whereas, Minnesota's environmental review processes are complex, with multiple policy-setting and governing bodies, and are in need of review and revision to ensure that they respond to the public value of promoting economic growth, while also protecting Minnesota's precious natural resources; and

Whereas, the EQB by virtue of its composition is uniquely able to align state economic, energy and environmental policies to create a sustainable future for the our state, our economy, and our environment; and

Whereas, a well-functioning EQB can advance this Administration's goal to deliver the best services to the public at the best price; and

By Whereof, I have set my hand on November 16, 2011.

Mark Dayton
Mark Dayton
Governor

Filed According to Law:

Mark Ritchie
Mark Ritchie
Secretary of State



Executive Order 11-32

1. By November 15, 2012, the EQB shall evaluate and make recommendations on how to improve environmental review, given the changes made in Chapter 4, House File 1, and the recommendations contained in the Office of the Legislative Auditor Environmental Review and Permitting Report.



Evaluation and Recommendations for Improving Environmental Review

- Introduction
- Intent of Environmental Review
- Previous Efforts
- Other States
- Environmental Review and Permitting
- EQB Focus Groups
- Evaluation of Recommendations
- Recommendations



Strengthen EQB Staff Capacity to Implement ER Program

- Monitor process and develop resolutions
- Enhanced training and guidance
- Assist LGUs to develop capacity
- Easier re-designation of RGU
- Periodic rule revisions – mandatory categories
- Revision and customization of EAW Forms



Revise ER Process to Engage Stakeholders Early

- Increased coordination and understanding
- Coordination between governmental units could lead to decreased duplication and timelines
- Allow better understanding of ER purpose and intent
- Additional guidance needed for “early process”



Develop a Better System of Making Information Available

- Enhanced electronic delivery and internet presence
- Pilot program for MPCA projects
- Online, publically accessible portal for MPCA projects
- Based on pilot program, consider additional project types and RGUs



Simplified Process for Environmental Assessment

- To be used at RGU discretion
- Checklist format – used to limit assessment to specific areas
- Same 30 day review and comment period
- Same EIS Need decision
- Can be done administratively as a pilot with eventual rule revisions if needed



Revise EAW to Consider Broader Issues or Effects

- Climate change
- Carbon emissions
- Energy conservation
- Human health
- Socio-economic



Expand AUAR or AUAR Like Process

- Incorporation of land use planning and ER
- Target geographic areas where future projects are somewhat foreseeable
- Can be done under existing authorization, but eventual rule making may be needed for clarity
- Consider better alignment of AUAR and comprehensive planning





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PUBLIC NOTICE

EXECUTIVE ORDER 11-32 PROJECTS MOVE TOWARD COMPLETION

In November, the EQB is scheduled to make recommendations on environmental review improvements and improvements to environmental report card. EQB discussion will occur at meetings on September 19th, October 17th, and October 30th, with adoption on November 13th. **Resources and information are currently available for public review.**

[Executive Order 11-32](#) ordered that the EQB:

1. By November 15, 2012, evaluate and make recommendations on how to **improve environmental review**, given the chair's Auditor Environmental Review and Permitting Report. The [draft report](#) is available for public review from September 19, 2012. Please include "Environmental Review Improvement" in the subject line of the email;
2. By November 15, 2012, evaluate and make recommendations for **improved environmental governance and coordination**. Comments may be provided electronically at: jeff.smyser@state.mn.us Please include "Governance and Coordination" in the subject line of the email;
3. By November 15, 2012, prepare an **environmental and energy report card** that identifies metrics which the State of Minnesota will track as resources. Once initially established, the environment and energy report card shall be an annual report with renewed priorities.
4. By January 15, 2013, organize and host an [environmental congress](#) focused on the current state of Minnesota's environment.

All meetings will be held at:

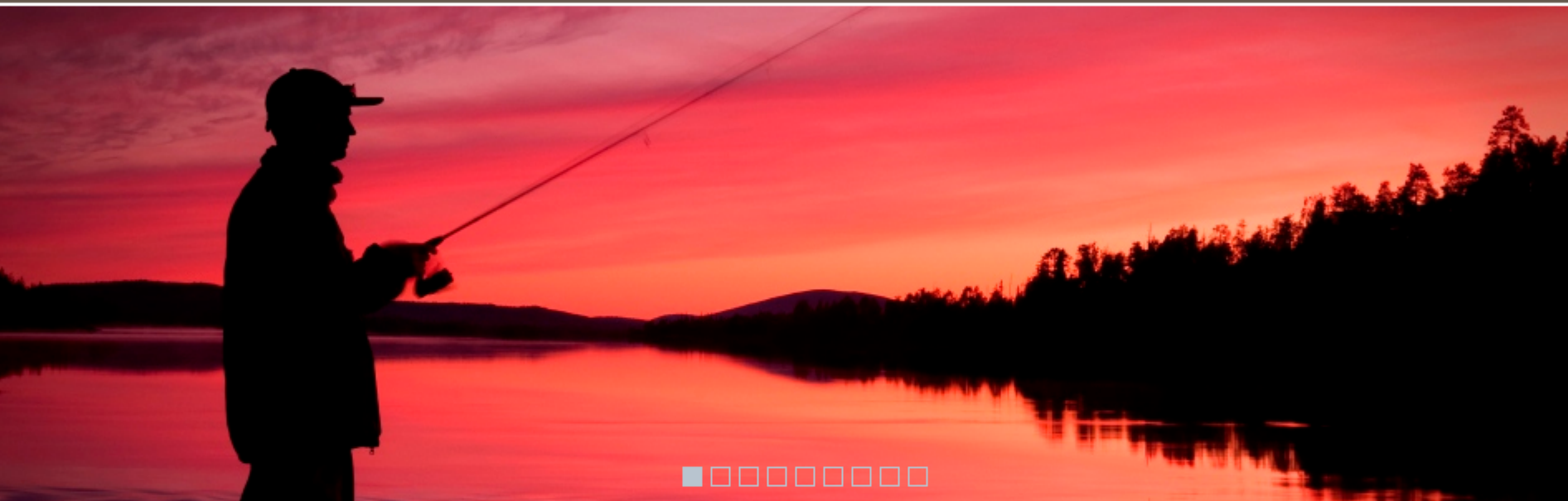


Minnesota Environmental Congress

Air • Water • Land • Energy: Our Voice, Our Future



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The Minnesota Environmental Congress is a unique gathering of many Minnesotans – including you – to help guide Minnesota’s state leaders in shaping our environmental and economic health, and creating a long term vision for clean air, clean water, and clean energy in our state.

MARK YOUR CALENDAR!

Citizen Forums around the State

- ✓ November 27 – [Rochester, Wood Lake Meeting Center](#) [9:30am – 12:00pm]
- ✓ November 27 – [Bloomington, Normandale Community College](#) [6:30pm – 9:00pm]
- ✓ November 28 – [Duluth, Lake Superior College](#) [5:30pm – 8:00pm]
- ✓ December 10 – [Worthington, Worthington High School](#) [2:30pm – 6:00pm]



Environmental Review: Getting Help

- www.eqb.state.mn.us
 - Select “Environmental Review” on the menu
 - Follow links for “Guidance Documents”
- Or call
EQB Environmental Review Line:
651-757-2873
- Or e-mail:
env.review@state.mn.us



Draft Environmental Review Report

“Evaluation and Recommendations for Improving Environmental Review”

- www.eqb.state.mn.us/documents/VI1.2-ER_Improvement_full_report.pdf
- Or:
 - www.eqb.state.mn.us
 - Follow link, under notices:
[Executive Order 11-32 projects move toward completion](#)



EQB Staff
Kate Frantz
Jeff Smyser
Bob Patton, Executive Director

THANK YOU!
QUESTIONS?

