



Environmental Review and Permitting

Major Findings:

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

Key Recommendations:

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

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

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

Report Summary

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

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

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

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

This evaluation focused exclusively on projects proposed in the private sector. Between fiscal years 2007 and 2010, 229 notices of EAWs were published for

private projects. Numbers declined over those four years, with 99 in fiscal year 2007 but only 22 in 2010. Seven EISs for private sector proposals were also started during that four-year period.

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

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

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

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

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

The Environmental Quality Board (EQB) should on a trial basis examine the feasibility of allowing certain low-risk projects to bypass the EAW process.

Such projects would still be required to conduct all tests and plans for permit compliance. The trial would need evaluation and a measured approach to understand its outcomes and decide whether to continue it.

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

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

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

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

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

dates either for applications received or permits issued.

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

Improving environmental review and permitting requires measuring and reporting against timeliness standards on a continuous basis. Without ongoing monitoring of timeliness, the agencies hinder their ability to respond to questions or improve their processes. PCA and DNR should routinely compile complete and accurate information on environmental reviews and priority permits so they can report on agency performance, identify opportunities for improvement, and make changes.

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

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

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

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

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

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

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

The final phase for an EAW is deciding on the need for an EIS. PCA completed this in a median 35 days, DNR in 38; however, some projects took over 100 days. One reason was that PCA's

Citizen Board made some decisions, which adds time to the process. Another reason was that certain highly controversial projects generated thousands of comments that required responses prior to an EIS need decision.

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

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

Summary of Agencies' Responses

We received three response letters dated February 24, 2011. Environmental Quality Board Executive Director Bob Patton wrote that "it is reasonable" for the board to explore allowing low-risk projects to bypass the EAW process, but he suggested a simpler option would be reexamining the thresholds for mandatory EAWs. He said that local government inexperience with environmental review should be addressed but thinks identifying preferred service providers or local cooperative arrangements would be better than modifying the process for redesignating responsible governmental units. Pollution Control Agency Commissioner Paul Aasen pointed out that the agency has "significantly improved" its data systems to manage the "millions of data points" associated with permitting but agreed there is "more that we must do" in reporting timeliness data. Department of Natural Resources (DNR) Commissioner Tom Landwehr said DNR "has plans underway to improve the collection" of timeliness data and "establish standards for responsiveness" to proposers' EAW data submissions. He wrote that DNR will establish guidance on what constitutes a complete EAW data submittal and "will work to standardize" information on timeliness standards and department expectations—but only for routine projects. For nonroutine projects, DNR will continue using preapplication and ongoing communications with proposers. The commissioner only partially agreed with allowing low-risk projects to bypass the EAW process; he wrote that it would be appropriate to review the "categories of routine projects where the environmental review process could be abbreviated."

The full evaluation report, *Environmental Review and Permitting*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2011/envir.htm