Introduction & Purpose

Beth Lockwood

Housekeeping

- Introductions
- Handouts
  - PowerPoint presentation
  - Form for submitting streamlining suggestions (optional)
  - EQB Technical Representatives' Report (2007)

Agenda

1. Introductions & purpose
2. History of reforms
3. Streamlining examples
4. Causes of delays
5. Wrap up

Legislation

HF Ser.2123 Sec. 55. ENVIRONMENTAL REVIEW STREAMLING REPORT

- "By February 15, 2010, the commissioner of the Pollution Control Agency, in consultation with staff from the Environmental Quality board, shall submit a report to the environment and natural resources policy and finance committees of the house and senate on options to streamline the environmental review process under Minnesota Statutes, chapter 116D.

- In preparing the report, the commissioner shall consult with state agencies, local government units, and business, agriculture, and environmental advocacy organizations with an interest in the environmental review process.

- The report shall include options that will reduce the time required to complete environmental review and the cost of the process to responsible governmental units and project proposers while maintaining or improving air, land, and water quality standards."

- MPCA in consultation with EQB prepare report to Legislature.
- Consult with interested stakeholders.
- Include options to reduce time and cost while maintaining or improving the environment.
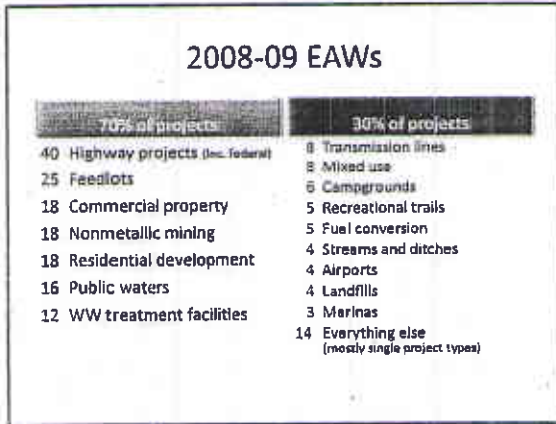
Report: Steps to date

1. Meeting with EQB, DNR, MNDOT, and Tech Reps
2. Gathered historical reports/data/statistics
3. September 7, 2009 – public notice of meeting and request for input in EQB Monitor
4. September 28, 2009 – EQB board information item
5. September 29, 2009 – public informational meeting

Projects by RGU
(2008-2009)

- City
- County
- MPCA
- MnDOT
- DNR
- Watershed District
- Township
- Others
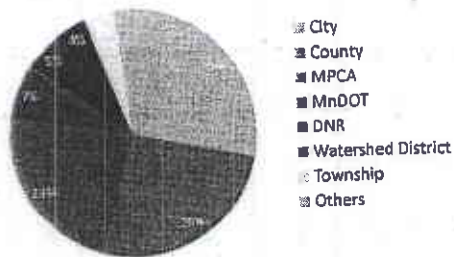
- Multiple RGUs
- 99 Total RGUs (3 state agencies; 96 non-state)
- 208 projects in this time period
- City and County conducted 55%
- MPCA conducted just under 25%
- State agencies combined conducted 35%

Beth Lockwood
Minesota Pollution Control Agency

2008-09 EAWs

70% of projects	30% of projects
40 Highway projects (inc. federal)	8 Transmission lines
25 Feedlots	8 Mixed use
18 Commercial property	6 Campgrounds
18 Nonmetallic mining	5 Recreational trails
18 Residential development	5 Fuel conversion
16 Public waters	4 Streams and ditches
12 WW treatment facilities	4 Airports
	4 Landfills
	3 Marinas
	14 Everything else (mostly single project types)

- The majority of EAW projects are not considered "traditional, big industrial projects" such as ethanol, mining
- The majority of the EAWs are: highway, feedlots, residential/commercial development, wastewater treatment plants
- Ethanol: Fuel conversion category
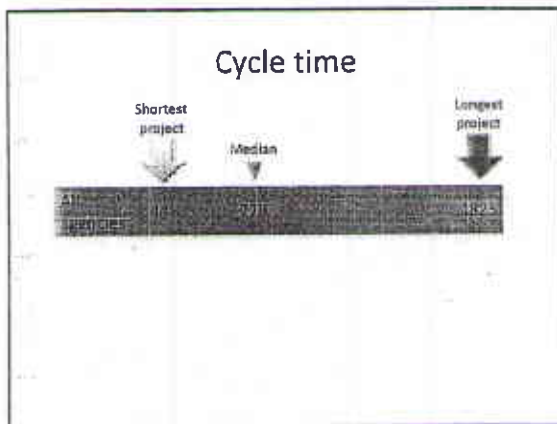
Cycle time

For all agencies, the shortest cycle time was 44 days and the longest, 1825. What is more telling is the median: 228 days. This means one-half of the projects were completed before the median - 7 1/2 months; one-half the projects were completed after.

only state agencies (MNDOT, PCA, DNR)
"½ projects" done in 7½
more or less; ½ took AOR
longer than that.

Agenda

1. Introductions & purpose
2. History of reforms
3. Streamlining examples
4. Causes of delays
5. Wrap up

Gregg - 35 yrs w/ PCA

Environmental Review Streamlining
Part II. History of Reforms

History of Reforms

Gregg Downing
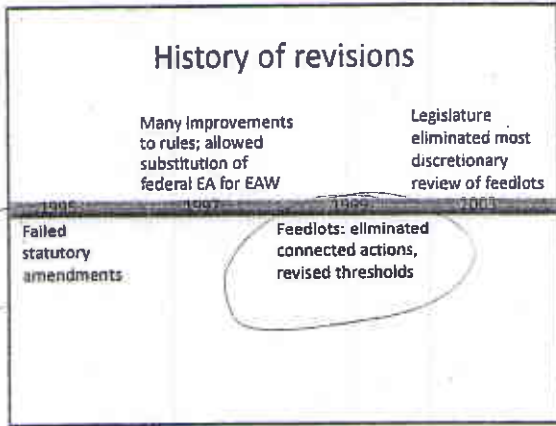
Jon Larsen

Environmental Quality Board

History of revisions

Original rules:
EQB does all
review &
makes all
decisions

Statutory
amendments

Partial
decentralization;
EQB still appeal
body

Rule
amendments –
major overhaul
to streamline
process

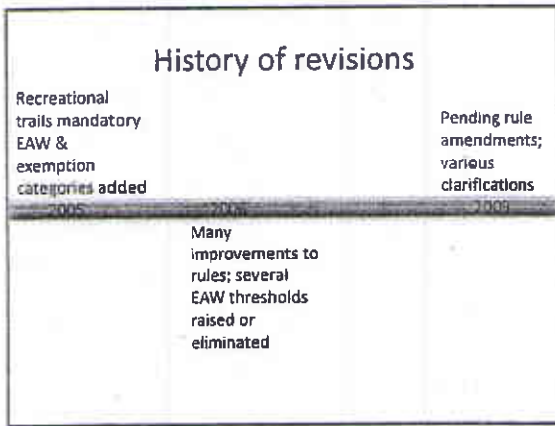## History of revisions

1980 statutory/
1982 rule
streamlining:

Minor
amendments

Many improvements
to rules; creation of
AUAR process

- EQB no longer appeal body
- Mandatory EIS categories
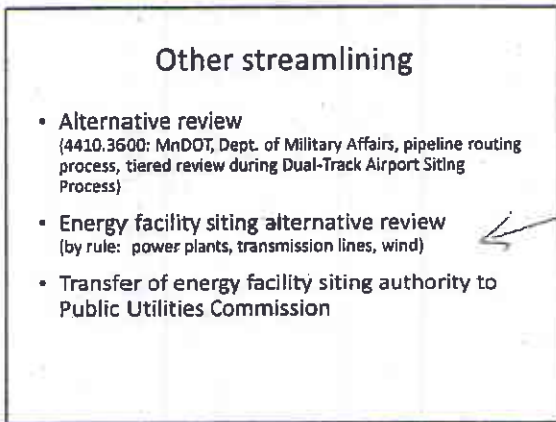- Petitions only for EAW (not EIS)
- Provided for substitute forms of review

MN ftps has an alternative review process

Gregg Downing, Jon Larsen
Environmental Quality Board

History of revisions

Many Improvements
to rules; allowed
substitution of
federal EA for EAW

Legislature
eliminated most
discretionary
review of feedlots

Failed
statutory
amendments

Feedlots: eliminated
connected actions,
revised thresholds

[handwritten notes in left margin:] shild are pub res. w/ + App instead of DH Ctls.

History of revisions

Recreational
trails mandatory
EAW &
exemption
categories added

Pending rule
amendments;
various
clarifications

Many
improvements to
rules; several
EAW thresholds
raised or
eliminated

[handwritten notes in right margin:] shoreland & adjusted thresholds for shoreland cumulative & contextual impacts clarification. Review ALJs report are on website.

Other streamlining

- Alternative review
  (4410.3600: MnDOT, Dept. of Military Affairs, pipeline routing
  process, tiered review during Dual-Track Airport Siting
  Process)

- Energy facility siting alternative review
  (by rule: power plants, transmission lines, wind)

- Transfer of energy facility siting authority to
  Public Utilities Commission

Environmental Review Streamlining
Part II. History of Reforms

Other streamlining

- Joint state-federal review
- GEIS
  (forestry, animal agriculture, Red River basin water resource projects)
- Revisions to EAW form
- Custom feedlot EAW form (1999)

Can be changed by the Chair of the EQB

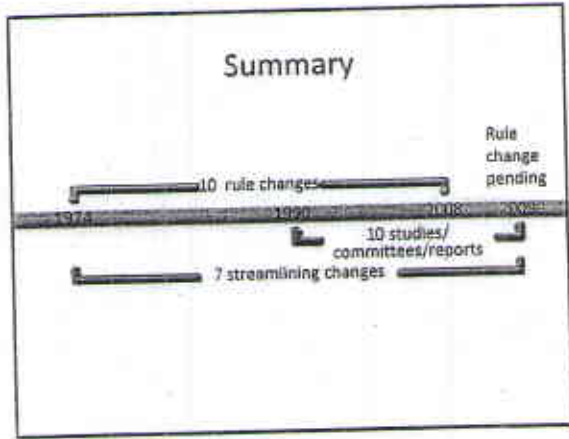## Reform studies/committees/reports (since 1990)

Technical Representatives report

Failed statutory & rule amendments; Advisory group (terminated without report)

EQB subcommittee report

Reform studies/committees/reports (since 1990)

EQB subcommittee (& PCA public forums)

Mandatory category streamlining study

2000   2001   2004   2007

Special Advisory Committee report

Technical Representatives report (handout)

Gregg Downing, Jon Larsen
Environmental Quality Board

Summary

Rule change pending

10 rule changes

10 studies/ committees/reports

7 streamlining changes

Environmental Review Streamlining
Part III: Example Streamlining Ideas Past and Present

Example Streamlining Ideas Past and Present

Jess Richards

(manager of biofuels sector to MPCA was in mining sector before that)

As you have heard, there have been numerous studies over the years to generate streamlining ideas. In response to the legislature's requirement that we prepare more options, the MPCA has reviewed all of the past studies and has conducted some limited brainstorming on additional options.

I will briefly discuss 5 examples of options that may streamline the Environmental Review process. These are presented as examples to facilitate our later discussion, and to generate more ideas, however the MPCA is not really advocating for any of these options. Each of these examples has numerous pro's and con's which cannot possibly all be discussed in this presentation.

Streamlining ideas

1. Undo decision link between EAW and EIS
2. Customize EAW forms to specific sectors
3. Early public engagement
4. Eliminate duplication between environmental review and permitting
5. Green-streamlining for existing facilities

This option would be to use the EAW as only an information tool. The EAW would provide consolidated information to the public and be used to inform permitting. In this scenario an EAW would look at the impacts, the regulatory framework and possible mitigation, but there would not be a determination made on whether there is a significant potential for environmental effect. Similar to an EIS, the only decision would be whether the EAW is adequate. Under this option and EAW could no longer lead to an EIS. Only the mandatory EIS thresholds would lead to preparation of an EIS.

Considerations: Requires legislation

Pro - Alleviates economic fear of EIS: Time and Money.

Con – Current EIS thresholds may be too high and may require changes (some projects that should have an EIS due to site specific conditions - won't).

Con -More information in EAW may trigger a longer EAW process to ensure information is complete.

Additional key consideration: while public comments could lead to collecting more information for a permit, it could not lead to the preparation of an EIS.

Undo the decision link between EAW and EIS

EAW is a stand-alone information document	Considerations
▪ Studies environmental impacts / mitigation	▪ Requires legislation
▪ Regulatory framework	▪ Alleviates economic fear of EIS
▪ Cannot lead to an EIS	▪ EIS thresholds may be too high

Jess Richards
Minnesota Pollution Control Agency

EAW's might get longer.

1

Environmental Review Streamlining
Part III: Example Streamlining Ideas Past and Present

Customize EAW forms to sectors

Reasoning	Considerations
• Not one-size-fits-all	• No legislation
• Predetermines key sector	• Focuses on key issues

Currently the majority of EAW projects follow a one-size-fits-all approach by using the same EAW worksheet which covers all possible environmental scenarios. A possible streamlining option would be to create customized sector specific forms. These forms would be designed to ask sector specific questions to focus on the key environmental issues for that sector. This could streamline the overall review of those projects.

This is currently in place for feedlot EAWs. For example, this form focuses on the number of animal units and manure handling.

Other possible sectors that may benefit from this could include WWTF, residential development, and sand and gravel operations

Considerations: Can be done without legislation or rule changes – can be approved by the EQB chair.

Focuses attention on key issues for that sector.

[handwritten: water treatmt, sand + gravel, residential developmts.]

Early public engagement

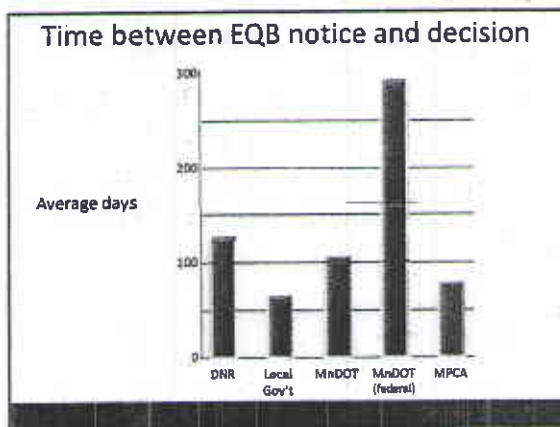| Options	Considerations
1. RGU: early public meeting	• May require legislation or rule change
2. Proposer: early public meeting	• More time upfront
3. Public communication plan	• Alleviate concerns
	• Allows proposer to adapt to issues

In our experience, the projects that receive the most public support (or least opposition) will ultimately have a more streamlined ER process. We have experienced many situations where the public simply feels that there has not been adequate information available for a long enough time. This can lead to long delays in the final stages of a project.

One idea to streamline the process as a whole could be to spend more time on the front end of a project to engage the public early in the process. Three examples of how this could be done include: 1) Require RGU to hold an early public meeting to provide information on the project and the process. 2) Require proposer to hold an early public meeting to provide information and answer questions about the proposal. 3) Require the proposer to develop a public communications plan as part of the project submittal.

Considerations: Each of these options may require legislation or rule changes at a minimum. May add time and resources on the front end. May alleviate concerns and facilitate understanding early in the process. If issues are raised early it allows proposer to adapt early and modify the project to meet the citizens needs.

[handwritten: helps to find a diff location, incorporate] *[handwritten: 1) Need enuf notice; Need adequate description of project]*

Time between EQB notice and decision

Average days

[bar chart with categories: DNR, Local Gov't, MnDOT, MnDOT (federal), MPCA]

The bar graph displays the average time between placing an EAW in the EQB monitor and the ultimate decision on the project per RGU type. It is important to note that the majority of EAW's conducted by the DNR and MnDOT are related to specific DNR and MnDOT activities such as parks and trails and highway projects. In these cases they are both the RGU and the proposer so it may not fall within the traditional streamlining discussions. The MnDOT start dates includes time to develop the project concept.

[handwritten: mitigation measures to reduce impacts to groundwater, air, surface waters etc.]

Jess Richards
Minnesota Pollution Control Agency

2

Environmental Review Streamlining
Part III: Example Streamlining Ideas Past and Present

Time from *start* to decision
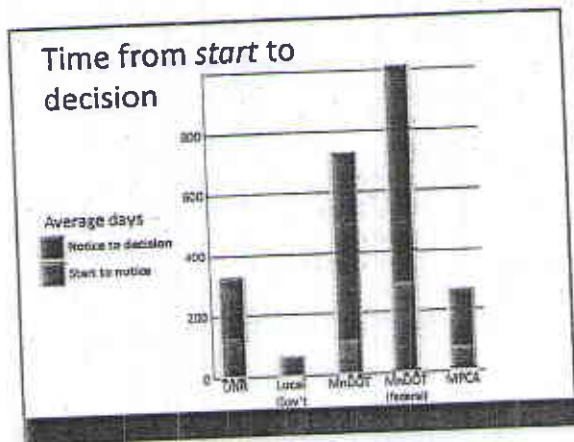
This graph denotes the average process time from the start of the project through the decision. Note that the Local Government bar does not contain process time from the Start to the notice of the project. Data does not exist for this portion of the projects where Local Government is the RGU. You can see by this graph that the majority of the process time occurs after the project is placed on public notice in the EQB monitor. It is possible that requiring early public engagement could help streamline the notice to decision time overall if it were to minimize public questions or concerns.

Currently there are a number of areas in Environmental Review that overlap with the permitting process. This is particularly true in areas such as air risk/modeling, wastewater discharge, and stormwater management. In a revised set of statutes the state could keep most of the mandatory Environmental Review categories but change the focus to only cover issues that are not already covered in a state permit. This concept has been raised in the past. There are three implementation options that could be considered: 1)Pre-screening of EAW projects: - Essentially this would use a checklist or some method to analyze which issues are covered by the permit process. If the checklist determines that these issues are covered in permitting then they would not be included in the EAW.

Eliminate duplication between environmental review and permitting

Considerations:
- Project Review and decisions on the EAW would be limited to those items not covered in a permit.
- Steps would need to be taken to ensure the public has access to all information if it wouldn't all be in the EAW.
- This would require statutory change.

[handwritten note in left margin:] How was a bill at yr e envir erevu permitting

[handwritten note:] How would you do think permitting aspects aren't included? Permitting areas are areas that may have the most error impa

2) A second option would be to replace the EAW narrative sections with links to permit documents rather than new language for the EAW. This could save some time in the drafting of the EAW.

Considerations:
- This would utilize the same EAW worksheet, but simply have less narrative and more reference to other documents
- The items subject to decision on "significant environmental effect" would be the same as now
- No statutory changes would be required, however rule and or guidance changes may be necessary to implement
- Again providing public access to all of the information is a key issue

Eliminate duplication between environmental review and permitting

[handwritten note:] How would this be workable?

Environmental Review Streamlining
Part III: Example Streamlining Ideas Past and Present

Eliminate duplication between environmental review and permitting

Options	Considerations
1. Pre-screen EAW's	
2. Replace EAW narrative with links to permit	
3. Replace narrative with links and limit decision	• Same worksheet
	• Permit = no decision on impact
	• Requires legislation

3) The third option is similar to #2 in that it would replace narratives, with links to permits. The difference is that any items that are covered by a permit would not be subject to a decision on significant potential for environmental effects. The information would still exist in the EAW, but the decision point would not.

Considerations:
- Would utilize the same worksheet
- Would limit the scope of the decisions
- Fewer opportunities for public input on permit related issues. Depending on your perspective this can be a good or a bad thing.
- This option would require statutory change

Eliminate duplication between environmental review and permitting

Federal Regulations

The most common argument that the MPCA hears regarding duplication between environmental review and permitting is that permits are much different today then they were when MEPA was enacted. This slide illustrates just the federal EPA regulations that must be considered when preparing a permit. While it is clear that permits have changed significantly over the years, so has the complexity of environmental issues that are covered by ER document. This option has many pro's and con's that would likely lead to some lively debate regarding the purpose of ER vs. the purpose of permits if it were ever to move forward.

Green-streamlining for existing facilities

Options	Considerations
1. Green off-ramp from Environmental Review	• Incentive for improvement
	• Focus on key issues
2. New process for green expansions	• Public input
	• Difficult to design
	• Requires statute or rule change

Over the past few years the idea of a "Green Economy" or "Green Jobs" has gained much momentum. While the environmental review rules do provide certain exemptions, there is not a direct link to streamlining for green improvement to existing facilities. This green streamlining might be accomplished through 2 implementation options:
1) Language could be added to the rules that provides an incentive for existing facilities to design projects that further the environmental improvement goals of the state without triggering environmental review. In this scenario an existing facility may be allowed to expand beyond environmental review thresholds, without actually conducting environmental review, if it takes limits or makes other changes that are environmentally beneficial. 2) Rather than an off ramp, criteria could be developed at a state level to determine which type of projects hold the greatest potential for environmental improvement and thus a prioritized and streamlined environmental review process. In this scenario criteria would be written to ensure that the expansion project is reducing the overall environmental impact compared to the current conditions. While these projects would undergo some environmental review, it would only be designed for key issues that are not already covered by permitting and/or result in an increase in pollution. This scenario would require that the proposer take limits to ensure all other environmental impacts the same or reduced from the current levels.

Jess Richards
Minnesota Pollution Control Agency

Environmental Review Streamlining
Part III: Example Streamlining Ideas Past and Present
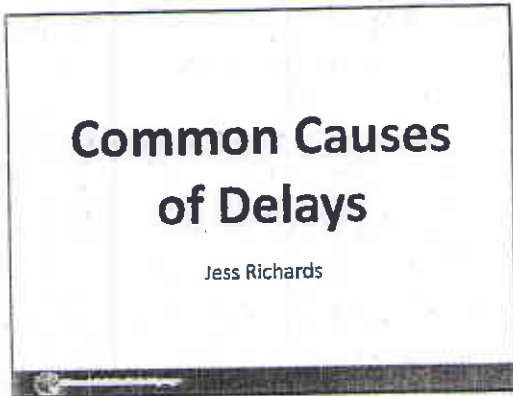
Considerations:
- Both provide an economic incentive for environmental improvement
- Focus would be on the key environmental issues
- An off ramp may limit public input on a project
- It would be difficult to create and implement a screening process to ensure fair application of the off ramp or streamlining
- Both may require changes to the statute or rules at a minimum
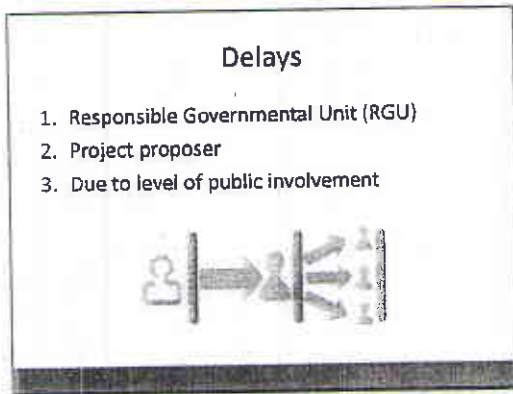
Streamlining summary

- Undo decision link between EAW and EIS
- Customize EAW forms to specific sectors
- Early public engagement
- Eliminate duplication between environmental review and permitting
- Green-streamlining for existing facilities

Jess Richards
Minnesota Pollution Control Agency

1

Common Causes of Delays

Jess Richards

2

Delays

1. Responsible Governmental Unit (RGU)
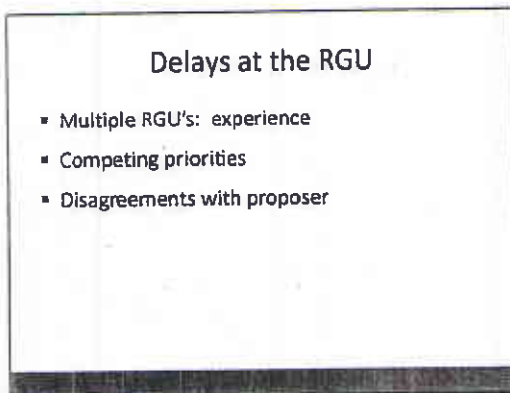2. Project proposer
3. Due to level of public involvement

Delays can occur for a variety of reasons during the course of a project. We will briefly discuss some common reasons for delay at the RGU, by the project proposer, or due to the level of public interest in a project. These are the areas that can create the most variability in the review process. These areas may provide us with additional opportunities for streamlining beyond statute or rule changes.
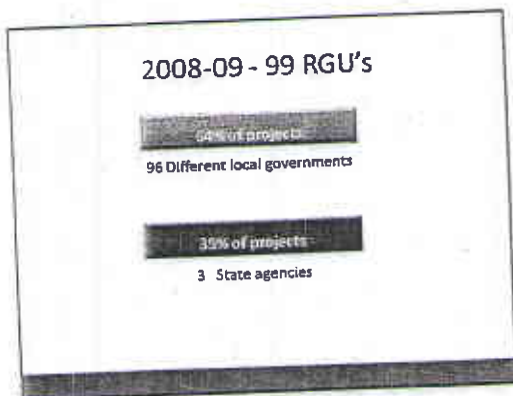
3

Delays at the RGU

- Multiple RGU's: experience
- Competing priorities
- Disagreements with proposer

Multiple RGU's: Between 2008 and 2009 there were 99 different RGU's that processed one or more EAW's. While some organizations routinely process EAW's, many are doing one a year at most or possibly even their first one. Inherently this can lead to a slower process as new RGU's navigate their way through the EAW process.

Competing priorities: This can occur on many levels. Many RGU's do not have staff dedicated to conducting Environmental Review and therefore they must prioritize the ER work with the other commitments. For example the ER staff in a county may also be the solid waste officer and a zoning official. They wear

multiple hats. There are also competing priorities for staff resources at the state level. Staff time on EAW and permitting projects must be prioritized and there will always be some projects that are not immediately processed because other projects take a higher priority.

Disagreements with proposer: This can be a major source of delay to a project. This happens when the RGU and proposer disagree on the interpretation of a rule or standard or on the level at which an issue needs to be addressed in the ER document. Example: single source for air permit

4

2008-09 - 99 RGU's

64% of projects

96 Different local governments

35% of projects

3 State agencies

5

Delays by the project proposer

- Project is not clearly defined
- Starts and Stops: Responsiveness
- Poor public engagement

Project is not clearly defined: It is a common occurrence, in the MPCA's experience, that a project proposer has not thoroughly researched or defined the extent of their project. Proposers will often choose the location of the project based on important economic factors such as rail access or proximity to customers, however, they may not consider important environmental factors that affect the bottom line during environmental review. One example of this is site that need groundwater for their process and the fact that the quality of the groundwater varies greatly across the state.

Starts and Stops: Responsiveness Down time may be one of the single largest causes for delay in a project. For a project to keep moving both the RGU and the proposer must ensure that they are responsive to questions and data needs. Multiple starts and stops can add weeks or months of delay as proposers collect data, make decisions on options, or redesign the project entirely. Multiple starts and stops can also occur due to a lack of proper funding for the project by the proposer.

Poor public engagement: This is another factor that cannot be overstated. While some projects will always receive public opposition, it has been our experience that the proposers which engage the public early, are transparent with information, and build strong support in their communities, will usually experience a quicker ER process in the long run.

6

Level of public involvement

- Public opposition
- Identify significant issues
- Stall tactics

Public opposition: This can range from a few individuals to organized opposition groups. Some projects receive very little public interest and the result is a shorter process overall. Others receive extensive public opposition ranging from concerned neighbors to formally organized opposition groups. When there is significant public opposition the project will take longer. Opposition usually results in significant numbers of comments which must be addressed and can also lead to litigation over the project.

Identify significant issues: Public comments on a project have the potential to identify significant environmental issues that have not been addressed in the ER document. If this occurs, it will lead to a delay because the RGU and proposer will need to collect and analyze data and information regarding the issue prior to making a decision on the environmental effects. Example: An energy project in NW MN. Some members of the public and the USFWS identified an issue regarding a specific wetland which had not been studied. This is the point of public comments, but early public engagement may have resolved it sooner.

Stall tactics: The vast majority of public input is geared toward helping the process and obtaining information. However, there will always be instances where the NIMBY approach takes effect. In these cases the public may use the ER process to create delays and to stall the RGU's decision making process. In these cases, no answer by the proposer or RGU is adequate in their eyes and they will use all possible options to slow or stop the project. This situation can cause significant delay. This situation can sometimes be mitigated by a strong public engagement effort by the proposer.

More involvement by RGUs proposer

NIMBY effects, ① examples?

g

7

Cycle time
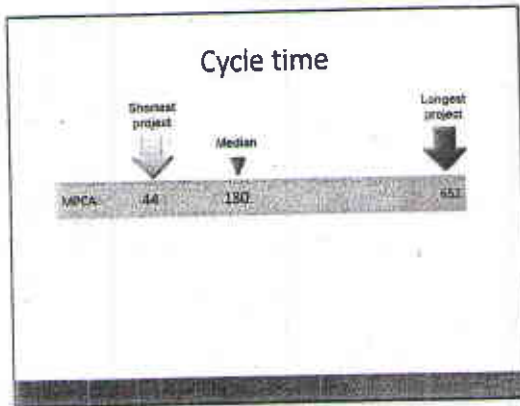
Describe chart. Median – range. The standard process at the MPCA takes 6 months. This is consistent with the message we relay to all new proposers. Clearly there is variability and it is likely that that variability is caused by one of the 3 factors for delay that were just discussed.

8

Cycle time by RGUs
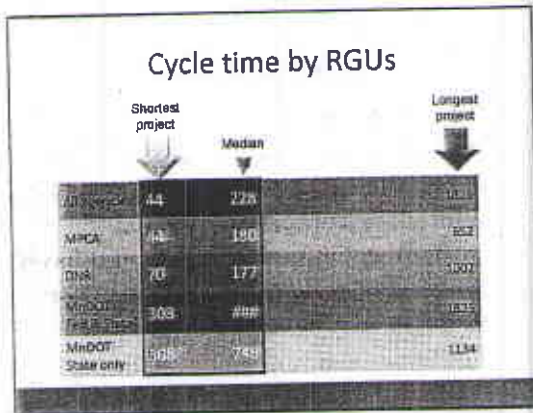
Note the median number of days. Half of all projects are completed by the median!

9

Summary

1. Delays at the RGU
2. Delays by project proposer
3. Level of public involvement

By focusing on these areas of delay we all may be able to minimize the variability in the process and achieve a more engaged public and predictable process in the end.
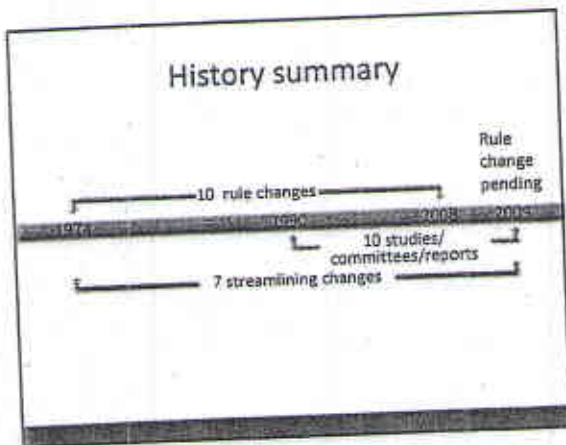
Environmental Review Streamlining
Part V: Informal Discussion and Wrap-up

Informal Discussion & Wrap-up

Beth Lockwood

Cycle time

Shortest project

Median

Longest project

| All agencies | 44 | 228 | 1825 |
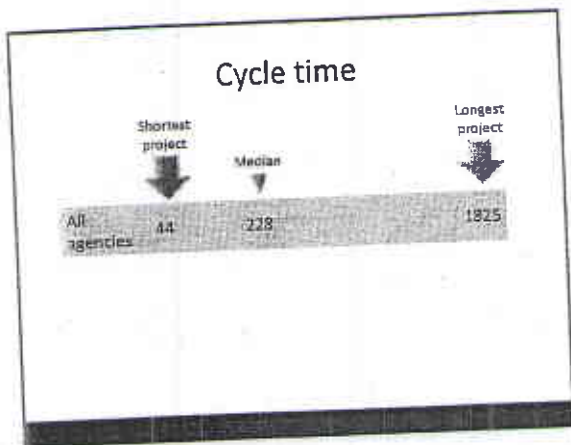
Reminder: this slide depicts cycle time for EAWs in state agencies only (DNR, PCA, & MnDOT)
The median: 228 days (1/2 projects completed before; 1/2 completed after)
Clearly there is variability and it is likely that the variability is caused by one of the 3 factors for delay that have been discussed

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History summary

Rule change pending

10 rule changes

10 studies/committees/reports

7 streamlining changes

Env. Review Program has undergone numerous program improvement efforts over the years:
10 rule changes
10 streamlining studies/committees/Governor Task Forces/reports
7 streamlining changes

Beth Lockwood
Minnesota Pollution Control Agency

Streamlining ideas summary

- Undo decision link between EAW and EIS
- Customize EAW forms to specific sectors
- Employ early public engagement
- Eliminate duplication between environmental review and permitting
- Utilize green-streamlining for existing facilities

Cause of delays summary

1. Delays at the RGU
2. Delays by project proposer
3. Delays due to level of public involvement

Environmental review process summary

Not bad

BUT

We continue working to improve!

1. Multiple RGUs – seldom do EAWs
   Competing priorities/multiple hats
2. Project not well defined
   Starts and stops
   Poor public involvement
3. Opposition to the project for many reasons
   Identification of important issues late in process – easier to deal with earlier

Environmental Review Streamlining
Part V: Informal Discussion and Wrap-up

Report: Next steps

- October 14, 2009 – written options due
- Incorporate written options into report appendix *(at a minimum)*
- Finalize report by mid-November
- November, 2009 – EQB Board information item

Informal discussion
(Facilitator: Ralph Pribble)

- Discussion among stakeholders *(not Q&A to MPCA or EQB)*
- Purpose
  - Valuable to hear others viewpoints/experiences
  - Opportunity to share & hear diverse opinions
  - React, respectfully, to different viewpoint

Reminder: Written streamlining options due October 14th by 4:30 pm to Susan Heffron.

There is a form provided in your packet for submitting options. You don't need to use the form, but the ideas must come to us in writing.

Beth Lockwood
Minnesota Pollution Control Agency