

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Semi-Annual Environmental Permit Performance Report and Recommendations

Submitted to the Minnesota Legislature pursuant to
Minnesota Session Laws 2011, Chapter 4

8/1/2011

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Background:

The mission of the Minnesota Department of Natural Resources (DNR) is to work with citizens to conserve and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life. In accomplishing this mission, DNR implements a wide range of regulatory tools including environmental permitting. Many of DNR's regulatory authorities have been in place for decades; others have been enacted more recently to deal with new or emerging resource management issues and concerns. It is appropriate to review and adjust regulatory programs over time to ensure that they continue effectively address the needs of the state. This includes prioritizing efforts, taking advantage of new technologies and business processes. The DNR is committed to maintaining a modern, efficient and effective regulatory system.

In the last several years, there has been criticism of Minnesota's regulatory climate primarily focused on environmental permitting efficiency and timeliness. To address these concerns, Governor Dayton issued Executive Order 11-04 (EO11-04) on January 24, 2011. The order required DNR and MPCA to 1) establish a 150-day (from acceptance of complete applications) goal for permit decisions, 2) determine and notify applicants if their applications were incomplete within 30 days, 3) report on progress made and make administrative recommendations to further reduce decision times, and 4) report on further recommendations to improve and enhance the environmental review and permitting processes.

Environmental permitting was also a significant focus of the 2011 Legislative Session. The policy discussions were informed by the March release of Evaluation Report: Environmental Review and Permitting by the Office of the Legislative Auditor (OLA). The OLA evaluated the environmental review and permitting programs of the Environmental Quality Board, Minnesota Pollution Control Agency (MPCA) and DNR. The OLA made number of sound conclusions and recommendations. Much of the early 2011 legislative discussion focused on permitting efficiency and timeliness, and was largely framed as a business climate issue for Minnesota.

On March 3, 2011 the Governor signed Minnesota Session Laws 2011 Chapter 4, which codified much of the content of EO11-04 and provided additional detail on a number of issues. This legislation requires DNR and MPCA to each submit a permitting efficiency report on August 1 and February 1 of each year. The reports are to:

- Include statistics on meeting the 150 day permit decision goal
- Address permits that have not met the goal including
 - Reasons for not meeting the goal
 - Steps to be taken to complete action
 - Expected timeline
 - Days from initial submission to determination of application completeness
- Aggregate data for the fiscal year (August 1)

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- Assess whether program or system changes are needed to achieve the goal (August 1)

The DNR will use this report to develop a baseline understanding off the time needed to make key business related permit decisions. Clear data will help DNR manage and improve its permit processes as well as help the Legislature in its oversight of DNR.

Scope of Report: Environmental and Natural Resource Permits

DNR conducts a wide range of regulatory activities. Much of this responsibility is focused on management of recreational activities, such as hunting and fishing. While recreational use of natural resources are an important driver of tourism and related industries, the timing of recreational permits does not significantly impact business decisions in Minnesota. The Office of Legislative Auditor's March 2011 report Evaluation Report: Environmental Review and Permitting identified the following five DNR permit programs as "environmental permits" relevant to the business climate concerns of the Legislature:

- Public waters work permits
- Water appropriation permits
- Metallic mineral mining permits (ferrous and non-ferrous)
- Peat mining permits
- Endangered or threatened species taking permits

This report will address the permit programs listed above, plus the aquatic plant management permit (APM) program. While the vast majority of APM permits are for non-business and industry related activities, the APM program is closely connected the public waters work permits. Because of this close relationship, APM permits are included in this report. A description of permit programs are included in this report are summarized in Appendix 1.

This report will address permits applied for between March 4, 2011 and June 30, 2011. The Division of Ecological and Water Resources (EWR) modified its permitting databases to enable 150-day goal tracking for public waters work, water appropriations and aquatic plant management permits. Permits applications dates can now be readily be tracked back to March 4, 2011. As these permit programs account for the vast majority of permits included in the report, DNR will use March 4, 2011 as a consistent beginning point for tracking performance under the 150 day permitting decision goal.

As the reporting period for this first report is less than 150 days, there will be no permits that are documented to have exceeded the 150 day permit decision time frame. This first report is primarily a foundation for establishing the framework for subsequent reporting. Future reports will address any permit decision exceeding 150 days for applications received after March 3, 2011.

Summary Statistics for 150 Day Goal Attainment

Table 1: Summary Statistics for the Period of March 3, 2011 to June 30, 2011.

	Number of application and amendment requests received during the reporting period	Number of application and amendment requests deemed complete during the reporting period for requests received after 3/3/2011	Number of final permitting decisions made during the reporting period for requests received after 3/3/2011	Median number of days to permit decision, where decisions have been made		Number of application and amendment requests where the files have been deemed complete for more than 150 days with no decision	Number of Application or Amendment Decisions made during the reporting period that took more than 150 days
				New Permit	Permit Changes		
Water Appropriations	153	101	86	29	10	NA	NA
Public Waters Work	179	103	86	31	11	NA	NA
Aquatic Plant Management	2,201	2,176	2,110	3	NA	NA	NA
Endangered Species Takings	18	16	16	13	NA	NA	NA
Mine – Iron Ore and Taconite	1	0	0	NA	NA	NA	NA
Mine – Non-Ferrous Metallic Minerals	0	0	0	NA	NA	NA	NA
Mine – Peat	2	1	0	NA	NA	NA	NA

Data reported only includes permits applied for on or after March 4, 2011. Work on permits that were applied for prior to March 4, 2011 is not reflected in the summary statistics. The result of this timing and the structure of data availability is that there are no reportable permit decisions that have exceeded the 150 day goal. Future reports will address specific permits applied for after March 4, 2011 that exceed the 150 day permit decision goal, should that occur.

DNR Actions and Planned Actions

The DNR Commissioner has made permitting efficiency a priority. DNR is pursuing several efforts to improve the timeliness and effectiveness of its environmental permitting and environmental review programs.

1) Permits Transformation Task Force

A Permits Transformation Task Force was established in 2010 and was sponsored by EWR. The Task Force issued a report in April 2011 that identified 13 short to long term options for system changes to improve the natural resources outcomes associated with permitting programs. The options and analysis of the task force are being used to enhance permitting efficiency and effectiveness.

2) Compliance with EO11-04 and MN Session Law 2011 Chapter 4

Electronic Submission of Permit and Environmental Review Data: DNR has and will continue to accept submission of electronic documents for environmental review and all permit programs addressed in this report. Electronic copies of forms are available online for: Public Waters Work (PWW; joint form for Wetlands Conservation Act and US Army Corps of Engineers wetlands permits), Water Appropriation and Aquatic Plant Management. All applications forms are available as PDFs and additionally the PWW application form is available as a MS Word Document. DNR will continue to work on enhancing the usability of electronic forms and web based formats.

Some of the recommendations of the Task Force focused on improving and developing the DNR's web-based permitting system. Clean Water funds are to be made available in Fiscal Year 2012 that will allow the DNR to begin to streamline water use reporting (a requirement of all Water Appropriation Permits) and to provide for online payment of fees. Currently, the DNR is forced to collect permit application and water use fees via a slow, complex and expensive paper billing system. It is proposed that a new system be developed that will allow for electronic payment, similar to the DNR's current hunting and fishing license system. It is also proposed that additional funds be set aside that will allow for the development of an online application system for all water-related permits that will also guide applicants through the permitting process in an efficient and more consumer friendly way.

Information Management for Permitting Efficiency Reporting: EWR has modified the APM and water databases so that 150 day goal performance can be tracked. Data collected now includes the date an application is received and the date the application is complete in addition to the date of decision on the application. Permits to mine and endangered species taking permits are low volume (but high complexity) permitting programs that are tracked by spreadsheet rather than a database. Those program staff now track application dates to ensure notices of incomplete application are sent and to track performance under the 150 day permit decision goal.

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Notice of Incomplete Applications: As of July 1, 2011, the Divisions of EWR and Lands and Minerals (LAM) have commenced issuing letters of incomplete application within 30 days of initial application. An overarching definition for application completeness has been established as: “When all required fees have been paid, when the applicant has provided all information required by the applicable rules and statutes, and when required site inspections have been conducted the application will be considered complete.” Program specific guidance for applicants, which will better define what is needed for a complete application is also being developed or updated.

Permit Decision within 30 days of Environmental Impact Statement Approval: Direction has been provided to DNR Environmental Review staff to ensure compliance in cases where DNR is the responsible governmental unit (RGU) and where DNR is a reviewing agency but also has some permitting responsibility for a project. The key steps are focused alignment on permitting process and EIS process as the situation allows and to request data and analysis in the EIS sufficient to make permitting decisions within 30 days.

Project Proposer May Prepare Draft EIS: No applicable EIS, where DNR is the responsible governmental unit, has been initiated since the adoption of Minnesota Session Laws 2011, Chapter 4. For full implementation, the Environmental Quality Board will have to update MN Rules Chapter 4400.

3) DNR Senior Manager and Program Staff Permitting Efficiency Teams Established

The DNR Commissioner has appointed a Senior Manager level team to develop recommendations and strategies to accelerate environmental review and permitting time lines and improve efficiency. The Senior Manager team has identified high level strategies and appointed a staff team to further develop the specific recommendations. The teams will:

- Review thresholds for mandatory environmental review and permits
- Review potential for general permits
- Review potential for elimination of duplicate regulatory structures including federal/state duplication.
- Review duplication between environmental review and permitting
- EAW form redesign
- Alternative ER process including integration into permitting process

The first priority identified for enhancing permitting efficiency is the expanded use of general permits within the water appropriation and public waters work permit programs.

4) General Permits

General permits are standardized permits established to cover more routine and lower impact projects and activities. General permits require applicants to comply with standardized conditions and mitigation as appropriate. The standards are very specific and time frames for issuance of the permits are very short. The other benefit of general permits is that DNR hydrologists can focus time on

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activities with greater environmental return, such as proactive water management or more complex or high impact projects.

DNR has effectively used general permits in the past. The immediate focus for permitting efforts is to develop additional general permits for several water permits within the next six to twelve months.

- Agricultural Irrigation: The primary action needed is database modification to ensure that water use and payments can be tracked by individuals under the general permits.
- Dewatering General Permit: An existing general permit for construction dewatering of up to 50 million gallons is set to expire this fall. This is a very important business related general permit. Hydrologists are looking at options for permit expansion, including both the size of the appropriation and activities that could qualify.
- Erosion Control Projects in Public Waters: Several options and opportunities are being evaluated. Considerations include how to integrate local government partners into the process.
- Local Government Bridge and Culvert General Permits: These projects constitute about 30% of public waters work permits issued. Development of one or more general permit is in process. The use of one state wide or four regional permits is being considered.
- Section of Wildlife: EWR and the Division of Fish and Wildlife are working on the details of a general permit to be issued to the Section of Wildlife for wildlife habitat enhancement projects designed by the Section of Wildlife.

5) DNR Participation in Multi-Agency Coordination

The Dayton Administration is implementing a multi-agency coordination business assistance structure to support development in Minnesota. This collaborative expands the Green Enterprise Assistance Program established in MS 116J.438. The effort is led by the Department of Employment and Economic Development, but also includes the Pollution Control Agency, the Iron Range Resources and the Departments of Agriculture, Commerce, Transportation and Natural Resources. This coordination structure will institutionalize interagency cooperation and coordination in working with businesses. For DNR, it will enhance early coordination with development projects subject to environmental review and permitting. It will also be a vehicle for coordinated delivery of state assistance to these projects. The process has been successful in the context of renewable energy, water treatment and other industries identified as "green" in MS 116J.438.

Appendix 1: Permit Program Description

Public waters work permits

Minnesota Statutes 103G

Minnesota Rules 6115

This program, begun in 1937, regulates water development activities below the ordinary high water level in public waters and public waters wetlands. Examples of development activities addressed by this program include filling, excavation, shore protection, bridges and culverts, structures, docks, marinas, water level controls, dredging, and dams.

Aquatic Plant Management permits

Minnesota Statutes 103G

Minnesota Rules 6280

The purpose of the aquatic plant management program is to protect the aquatic habitat and quality of public waters, while providing riparian landowners with access to open water and enhanced recreational use. Permits can be issued to provide riparian access, enhance recreational use, control invasive aquatic plants, increase storage and discharge from storm water ponds and protect or improve habitat.

Water Appropriation permits

Minnesota Statutes 103G

Minnesota Rules 6115

The program purpose is to conserve and utilize the water resources of the state in the public interest. Use or diversion of ground or surface water in excess of 10,000 gallons per day or 1,000,000 gallons per year requires an appropriation permit.

Metallic mineral mining permits (ferrous and non-ferrous)

Minnesota Statutes 93

Minnesota Rules 6130 (ferrous mining), 6132 (non-ferrous metallic mining)

DNR regulates various activities related to mining including siting, construction, operation dust suppression, and ground vibrations from blasting, mining waste management and storage, reclamation and closure to control possible adverse environmental effects of mining, conserve natural resources and encourage the planning of future land utilization.

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Peat mining permits

Minnesota Statutes 93

Minnesota Rules 6131

DNR regulates peat mining operations larger than 40 acres in size. Permits address various activities related to mining including siting, mine design, reclamation and closure to control possible adverse environmental effects of mining, conserve natural resources and encourage the planning of future land utilization.

Endangered or threatened species taking permits

Minnesota Statutes 84.0895

Minnesota Rules 6212 and 6134

The law and rules prohibit taking, purchasing, importing, possessing, transporting, or selling endangered or threatened plant or animal, including their parts or seeds, without a permit. For animals, taking includes pursuing, capturing, or killing. For plants, taking includes picking, digging, or destroying. The law and rules specify conditions under which the Commissioner of the DNR may issue permits to allow taking and possession of endangered or threatened species.

Appendix 2: Cost of Report Preparation

LEGISLATIVE REPORT – Cost of Preparation

NAME OF LEGISLATIVE REPORT – Semi-Annual Environmental Permit Performance Report and Recommendations

Based on: Legislatively mandated report

Minnesota Statute Reference: Minnesota Sessions Laws 2011, Chapter 4, Section 1.

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Description of Cost	Further explanation if necessary	Amount
Staff Time		
Project Staff	Approximately 215 hours (17 staff) to compile and provide data quality assurance and to prepare and review report.	\$15,480
Duplication Cost (includes paper)		\$20
TOTAL TO PREPARE REPORT		
<i>(Note: Right click on amount cell and choose update to complete)</i>		\$15,500.00