

DRAFT
ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Wednesday, May 28, 2003 – 1:00 – 4:00 p.m.

Members in attendance: Chris Bates, Skiles Boyd, Wil Cwikiel, Dr. Phillip Davis, Marty Fluharty, Charles Griffith, Chuck Hersey, Andrew Hobbs, Don Inman, Patrick Krause, Steve List, Corky Overmyer, Lana Pollack, Del Rector, Andy Such, Maureen Kennedy Templeton, Paul Zuger.

DEQ Staff in attendance: Linda Albro Sparks, Frank Baldwin, Steven Chester, Hal Fitch, Andy Hogarth, Jim Sygo, Joanne Merrick, Frank Ruswick.

OPENING

Frank began the meeting with the announcement that Jim Sygo is the new Deputy Director for the DEQ. Previously Jim was the Division Chief of the Remediation and Redevelopment Division and prior to that the Division Chief of the Waste Management Division. As Deputy Director he will be overseeing the DEQ Remediation and Redevelopment, Air Quality, and Waste and Hazardous Material Divisions. Skip Pruss, the other Deputy Director, is overseeing the Water, Geological and Land Management, and Environmental Science and Services Divisions.

New security procedures have been implemented at the Constitution Hall front desk allowing members to proceed to the ConCon Room unescorted. If you encounter any difficulties, please let Frank know.

REVIEW

Members had requested development of a listserv instrument. This feature is not available through the DEQ internet system. Members can communicate to the entire EAC by sending an email to the DEQ-EAC@michigan.gov. Frank will forward the note to all EAC members.

We were able to secure office space for members that arrive early or stay late. It is located in the Waste and Hazardous Materials Division. The space provides phone and internet access. If you are interested, please sign a Telecommunication Device Acceptable Use Agreement form and return it to Frank.

EAC members requested during the last meeting information regarding the types of inquiries that come into the Environmental Science and Services Division. This was provided by Frank Baldwin and sent out as an attachment to an e-mail from Frank Ruswick. Additionally, a summary of the Water Division's public involvement opportunities was sent out to EAC members.

BUDGET PRESENTATION AND DISCUSSION

Director Chester made a presentation on the DEQ Budget. The DEQ Budget is about 18% general funds (GF), and the rest is restricted funds (RF). The focus is on the GF. We need to reduce GF funding by approximately \$9 million in Fiscal Year (FY) 04. The DEQ has proposed several fee programs to address this need.

The largest is for the Non-Pollution Discharge Elimination System (NPDES) program. This proposal is for \$7.2 million and would replace \$5 million in current GF and restore recent funding reductions for a total of \$7.2 million. Currently, Michigan has no NPDES fees; thirty-three other states do.

A second fee program would fund Phase 2 of the NPDES Storm Water permit program. There are currently no federal or state dollars for this program.

Another fee of \$2.2 million would fund the groundwater discharge permit. This is a state program with no federal counterpart.

The DEQ also proposed a solid waste surcharge of \$3.9 million. This amount includes \$1.3 million in existing base fees and \$2.6 million in GF replacement fees. This is a revenue neutral approach entailing no increase in overall program funding.

In addition, in order to obtain overall necessary GF savings, the DEQ recommended the elimination of four small programs: Septage, Campground, Swimming Pool, and Manufactured Housing. We hope that many of these programs will continue under the local health departments and Community and Industry Services.

Director Chester described DEQ efforts to inform interested parties of the details of the fee proposals and to obtain input. Over twenty-five meetings have been held with interested parties. Information is also posted on the DEQ web site.

Director Chester indicated that the House of Representatives had not included fee program funding in the DEQ budget, but had imposed an across the board 15% reduction in program funding and 30% reduction in funding of administration. This will have a negative impact across the Department and impede our ability to run any program well. The loss of GF this year will put \$14 million in delegated programs in jeopardy if matching funds cannot be restored.

The current budget situation must be put in perspective. DEQ GF in FY 02 was \$101 million; FY 03 \$53 million; and is now proposed for \$44 million in FY 04. Other states are facing the same problems and using the same approach. Fee proposals were approved in Ohio and Illinois; however, they were rejected in Indiana.

We are pretty lean with a Full Time Employee (FTE) ceiling of 1,451; we currently have 1,330. We are down 100 FTE's from FY 2002. We lost 120 employees to the early out retirement.

After Director Chester's presentation, EAC members discussed the fee proposals and overall budget situation. Several members indicated that they are not opposed to fees per se, but are concerned about the size of the fees, and hence overall program costs. Members also expressed concern about the cumulative effect of several fee programs and the fact that fees will eventually need to be passed on to citizens or consumers. EAC members expressed an interest in sunset provisions for the fee programs so that they would be reassessed after some period of time.

An EAC member pointed out that an adequately funded program is necessary to provide services for the regulated community. As an example, previous reductions had cut wetlands program staff by 30%. By the next budget cycle, the Michigan Homebuilders Association and the Michigan Realtors were asking for more staff to process permit applications.

A member suggested that the DEQ might need to find ways to do more with fewer staff. Another member suggested that we all keep in mind that it is less expensive to prevent pollution than to clean it up. There was a general discussion about state fiscal policy that may have contributed to the state's current budget situation. One member proposed a water use fee that would be paid by anyone who used the water resources; other members expressed concern with this proposal.

Several other potential funding sources were proposed by EAC members including use of fines and penalties from enforcement actions and charges to those who use septic tanks to treat sanitary wastewater.

One EAC member indicated that the DEQ needs to be careful that the administration of fee programs does not replace the actual environmental work that staff need to do.

One member suggested that the overall funding structure for the DEQ should be a long-term issue for EAC consideration.

In summary, the Director is interested in a continuing dialogue with interested parties about DEQ funding and fee programs and encourages EAC members to participate in that effort.

PUBLIC PARTICIPATION DISCUSSION

Frank began this discussion by inviting further comment on the Public Involvement Summary member comments. There was a general agreement that the Summary provided an accurate distillation of member comments. Members recognized that implementing some recommendations would require funding. One member indicated that we must be ready to change the culture on how DEQ has done business. This includes everyone – even those who have been here 20 years.

It was suggested that any recommendations the EAC makes should be tied to a problem that is being addressed. Director Chester agreed that he would like to see the EAC provide a list of specific recommendations tied to specific issues with the current DEQ public involvement activities.

There was a general discussion about the comment that the DEQ should have a role in establishing permit conditions beyond those explicitly authorized in a permitting program. Members recognized that the DEQ is bound by law. One member indicated that the Michigan Environmental Protection Act provides broad authority to do what is necessary to protect the environment. Another member indicated that the staff should not narrowly interpret legal authority as an excuse for failing to address community issues. It was also suggested that the DEQ could facilitate discussions between an applicant and the community. These discussions could result in negotiated controls that could not have been unilaterally imposed by the DEQ. An EAC member expressed concern that DEQ staffs not interpret such a role as allowing unbridled activities outside the scope of the agency's authority. There was also a concern that such negotiations become a slippery slope and what are negotiated conditions today, could become imposed conditions tomorrow.

There was a second general discussion about who is the "public" and the relative needs of members of the public. The EAC recognized that the "public" can mean both interested citizens and regulated parties. Hence, proper use of terms in this discussion is important. A member pointed out that although the regulated community is part of the "public", there is a difference with citizens. Citizens often don't know how to participate in the development of public policy or on individual decisions. These individuals have different needs than the regulated community. There should be an ombudsman to meet these needs. In general there should be a level playing field for the regulated community and individual citizens. In response, an EAC member indicated that there might be a role for an ombudsman to assist citizens, but not to be an advocate for a particular position. The role of the Environmental Science and Services Division in assisting both the regulated community and citizens was discussed. EAC members indicated that there is a need for training DEQ staff on how to successfully assist citizens in working with the Department.

Frank offered the following framework as a summary of the EAC's discussion:

Who is the public? The public is anyone affected by DEQ decisions; however, there are times when we talk about segments of the public. We should use terms like regulated community or citizen in the proper context.

Level playing field – Is that something we agree on as a goal?

What is the nature of the "playing field"? What is the decision-making process involved? We should be aware that the DEQ expects to make decisions based on the criteria given to us by law; however, citizens are sometimes not aware of the criteria and get frustrated when their indications of preference are not embodied in the decision. This is a fundamental dilemma of department and government – how do we react when the public says, "no, this isn't a good idea", but the decision-making criteria do not include community preferences? We need assistance on what is our proper role in reacting to this dynamic – how far can we go and how far should we go in terms of authority?

Role of DEQ in terms of:

Authority: Are we authorized to respond to the comments we receive from the public?

Culture: What is the DEQ's culture toward public involvement? If the culture is inappropriate – how should the DEQ change?

Costs: There are costs associated with time spent, uncertainty, and molded decisions. What are the implications to all stakeholders of any given recommendation?

Recommendations: What is necessary for the DEQ to improve its public involvement activities?

The EAC continued their discussion of the Public Involvement Summary. It was suggested that there be a glossary of terms at the beginning of the Summary to better understand it. The EAC then began discussing specific concepts, terms, and how ideas are presented in the document. This evolved into a discussion of the nature of the Summary itself and how it should be used. EAC members generally agreed that the Summary could assist in discussion, but should not be developed further as a consensus discussion of the issues. Rather, the focus should be on the recommendations, and the areas that need to be changed. The goal should be to develop a document for the Director regarding policy recommendations for public involvement in Michigan that can, in turn, be broadly shared with all interested parties.

An EAC member suggested a format for the final report. First, there would be a description of principles governing public involvement. For example: How can you tell if system has public involvement process in place? Is there equal access? Are there training systems in place for potential participants? The document should focus on the future, not the past. Second, the document should provide the following recommendations: What are specific recommendations? How will the DEQ implement them? There was general consensus to develop a document based on this approach.

CLOSING

Frank asked that EAC members send him suggested language on the guiding principles and/or specific recommendations by Friday, June 6. He will provide the revision to the EAC by Friday, June 20. The next EAC meeting is June 26. Please note that some member e-mails did not get through to Frank. If you send something to Frank and do not receive an acknowledgement, please follow up with him. Frank's phone number is (517) 373-4797.

Meeting notes prepared by Linda Albro Sparks, summarized by Frank Ruswick.