

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Thursday, June 26, 2003 Meeting - 1:00 - 4:00 p.m.**

Members in attendance: Chris Bates, Skiles Boyd, Steve Chester, Sally Churchill, Wil Cwikiel, Marty Fluharty, Charles Griffith, Don Inman, Patrick Krause, Steve List, Frank Mortl, Corky Overmyer, Scott Piggott (for Wayne Wood), Lana Pollack, Del Rector, Janet Vail, and Paul Zugger.

DEQ Staff in attendance: George Bruchmann, Andy Hogarth, Linda Davaloz LeVeque, Frank Ruswick, and Jim Sygo.

**OPENING**

Frank Ruswick welcomed the Council and announced that he had heard from Chuck Hersey, Maureen Kennedy Templeton, Andy Hobbs, and Phil Davis that they would not be able to attend. Chuck had provided Frank with some comments on the draft recommendations that Frank will relay when that document is discussed.

Frank handed out packets of information from the Michigan Alliance for Mediation and Alternative Dispute Resolution. This organization was offering to make a presentation to the EAC on concept of alternative dispute resolution (ADR). Several EAC members said they were familiar with the organization and encouraged the EAC to take advantage of this offer. Frank asked the EAC members to review the materials provided and then to send him a note on whether or not there was interest in the proposed presentation.

An EAC member asked Director Chester for an update on the budget. The Director described the actions by the Senate on the various fee bills and the budget as a whole. The differences between the Senate and House versions will need to be resolved in Conference Committee.

**PUBLIC INVOLVEMENT RECOMMENDATIONS**

Frank explained that based on comments on the May 23, 2003 document entitled "Public Involvement Framework"; it did not appear that attempting to develop a consensus draft of that document would be the best use of the EAC's time. Accordingly, he had developed and provided to members another draft document entitled "Public Involvement in the DEQ" dated June 17, 2003. This document is more clearly focused on recommendations that were taken from those previously provided by EAC members. The EAC began a discussion of that document.

One member asked what was envisioned by the proposed principle of "equal opportunities for involvement recognizing that there are differences in roles" between a permit applicant and citizens. Frank explained that this was meant to recognize that applicants often had on-going discussions with DEQ staff concerning the details of a

proposal, often before an application is filed. Several members agreed that “equal opportunities for involvement” did not accurately describe how the DEQ should work with applicants and citizens given these differences.

There are other places where the draft discussed “equality” that also present some problems since it implies precisely the same number and/or type of interactions between the DEQ and various interested parties. Rather, the focus should be on transparency and access to information.

The EAC discussed the focus of the draft on applicants and citizens. It was suggested that the document should focus instead on the concept of the “public”. The public is described as anyone who has an interest in or could be affected by DEQ activities. Several members referenced the June 6, 2003 Environmental Protection Agency Public Involvement Policy as a model for discussing the topic of public involvement. It was suggested that the EAC’s statement should use that Policy as a template, and make adjustments as necessary to reflect the needs of Michigan.

The EAC then began discussing specific recommendations as follows:

One recommendation (A.1.3) suggests that the DEQ should “ensure that staff are visible in the local community.” The EAC recognized the value of staff being active in the community, but this can be very difficult given the large geographic area for which staff is responsible. The real interest is in accessibility. For example, there are problems currently because some staff have limited time that they are available by phone. A member also expressed concern that staff was not available because they were in Lansing for training.

Frank explained that the “phone day” practice was adopted in an attempt to balance the need for field work with the need for responding to phone calls. He also said that there are meetings commonly held in Lansing that are not training per se, but rather meetings to foster consistent practices by staff throughout the state.

The EAC discussed the various demands on staff time and how well many do in meeting those demands. These demands included interacting with members of the community in conferences and other informal settings, completing the day to day work load, undertaking training, and being accessible to the public through a variety of means. While the DEQ wants to meet all these demands, limited funding can present problems.

In the final analysis, the issue is one of balancing these competing demands. DEQ management needs to assist staff in understanding how to reach that balance.

A member of the EAC asked how limited funding should be factored into the EAC’s recommendations. Director Chester responded that the EAC should not factor that issue into developing recommendations, although it will become an issue for DEQ managers to consider when determining how to implement those recommendations.

A member of the EAC asked what the plan was for further discussion at this meeting. Frank said that he hoped to finish a discussion today that would allow the document to be sufficiently refined for it to be provided to DEQ senior managers for comment. This was agreed to as a goal for today's discussion and Frank was given the charge of modifying the draft after today's meeting to meet this purpose.

One member suggested that the document appeared to be a listing of issues raised by EAC members. It needs to be more tightly developed in order to emphasize the recommendations that are most important.

The EAC stepped back into a general discussion of what problems were to be addressed by its recommendations. This started with comments on the need to focus on "public" involvement and what current shortcomings in that regard are perceived to be. Members commented on the perception that the citizens had been previously cut out of the DEQ's process. It was suggested that there needs to be a clear indication from the DEQ of inclusiveness. A member commented that the timing of involvement is important since initial discussions between a permit applicant and the DEQ may involve proposals that are not yet fully formulated and could include sensitive competitive information. A member asked whether the public involvement process itself was deficient, whether the DEQ was just not applying it adequately, or whether the concern was merely that decisions were not made in the way that some perceived as appropriate.

Frank indicated that, in his opinion, the public involvement process is often formalistic and rigid, especially for issues that are offered for comment as a proposed decision. The public tends to view such proposals as essentially decided upon, and therefore get frustrated with the process. However, he believes that staff does their best to work with the system they have in place to include the public and are honest in considering input and information they do receive. Unfortunately, there were apparently instances in the past when some members of the public had more access to DEQ decision-makers than others.

The Director indicated that the EAC should recognize both the perceived and real problems in the DEQ public involvement process. Recommendations may need to be structured to address both.

The EAC turned to recommendation (B.3.) that suggested that the public should be involved earlier in the decision-making process. The EAC suggested that the pre-application stage may not be the best time for public involvement, since the proposal is usually not sufficiently formulated. The DEQ should look at providing notice of applications received. It is also appropriate to encourage, but not require, project sponsors to meet with the community prior to an application being submitted (as is done in the hazardous waste program).

The EAC generally agreed with the recommendation of creating an ombudsman position (B.10) provided it was to guide citizens, not be an advocate. The EAC inquired whether or not this function could be conducted by several people (e.g., one in each district) or whether this would be a full time position. The Director said that he envisioned this as a full time position. The EAC should craft the recommendation as they saw appropriate and the DEQ would determine how best to implement it.

The EAC next discussed a series of recommendations covering ADR, post-denial negotiations, and the contested case process (B.11 - 14). The EAC expressed concerns that there is unequal access to appeal permit decisions through the contested case process and that permits that are denied are sometimes issued as a result of negotiations. These permits can get issued without further notice to the public that the DEQ is again considering the proposal and without further public input. The public fears that the DEQ will revisit the denial in order to save time and money that would be necessary to defend the initial decision.

A general discussion ensued about whether there is uneven access to the contested case process and, if so, whether the problem is limited to specific programs or exists generally. It was recognized that generally there is a limited opportunity to be involved in a negotiated settlement in a contested case, unless a person is a party to the contested case proceeding. Nonetheless, there is an interest in the public being notified that a contested case was filed and perhaps there should be an opportunity for the public to be aware of a proposed settlement itself. There also appears to be a concern that there is differential access for different segments of the public after a permit is denied, but before a contested case is actually filed. The goal is for the public to have a fair opportunity for involvement from beginning of the process to the end. It was agreed that further information was needed from the divisions on the contested case process and to what extent these types of issues arise in the various program. In addition, a member promised to send to Director Chester and Frank Ruswick decisions of the Administrative Law Judge which limited opportunities for the public to bring administrative appeals.

An EAC member suggested that the policy of what was to be released under the Freedom of Information Act seems to be very narrowly defined. Director Chester indicated that there had been a recent directive from the Governor on that issue and he would provide the information to the EAC.

The EAC returned to the issue ADR. This was seen as a means of resolving issues that have become highly controversial. EAC members expressed concern over the delay in a decision that might be caused by employing ADR. It was agreed that ADR should not extend the time frame for a decision, except by mutual consent of the involved parties. It was suggested that local governmental officials might be able to play a role in ADR. However, it was also noted that sometimes such officials are involved at some level in the issue and therefore, would not be unbiased as is necessary for ADR.

The EAC expressed concern about the “placeholder” designation given the issue of a public forum for deliberating and deciding controversial issues (C.2.). Since that item has not yet been discussed, it was decided to designate the issue as “Not yet discussed”, and place it at the end of the document.

An EAC member suggested two revisions to the “Next Step” section (E.). First, since review and comment by DEQ managers will be incorporated directly into development of the document, it does not need to be described in the discussion of implementation steps. Second, the member suggested that the EAC should offer these recommendations for public review and comment before they are finalized.

The EAC began a discussion of public interest in its activities, specifically what methods were currently being used to keep the public informed. Several members described how they are keeping their constituencies informed. Frank indicated that meeting agendas, material, and summaries are available on the DEQ web page. He also indicated that the documents that were being prepared for EAC consideration are public information and would be available upon request.

A member indicated that he had been contacted by the press about the EAC’s work and asked about how this should be handled. It was suggested that members should feel free to respond to press inquiries to the extent that they are comfortable to do so, but that press inquiries can also be referred to Frank.

The EAC agreed that involving the public in developing these recommendations would be appropriate. Ideas for doing this included placing material on the DEQ web page with a comment period and holding one or more public meetings attended by EAC members. It was agreed that members should consider this issue and bring suggestions for involving the public in further developing this document to the next EAC meeting.

### **Closing Business**

Frank summarized the meeting as being very productive. He will redraft the recommendations based on today’s discussion and provide the draft to DEQ senior managers for consideration. He will also ask that division chiefs attend the next EAC meeting in order to discuss their comments on the recommendations.

Frank reminded EAC members of two items: 1) Members should consider the material provided on ADR and comment to Frank on their interest for a presentation on the topic. 2) Members should consider ideas for involving the public in further developing the recommendations for discussion at the next meeting.

Meeting notes prepared by Linda Davaloz LeVeque, summarized by Frank Ruswick.