

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Thursday, September 18, 2003 – 1:00 – 4:00 p.m.**

Members in attendance: Chris Bates, Skiles Boyd, Dennis Carl, Steve Chester Sally Churchill, James Clift, Wil Cwikel, Marty Fluharty, Chuck Hersey, Andrew Hobbs, Steve List, Corky Overmyer, Scott Piggott, Donna Stine, Andy Such, Dr. Janet Vail, Wayne Wood, Paul Zuger.

DEQ Staff in attendance: Linda Albro Sparks, Frank Baldwin, George Bruchmann, Andy Hogarth, JoAnn Merrick, Rich Powers. Frank Ruswick, Jim Sygo.

Guest speakers: Craig Hupp, Cordree McConnell, David Gruber and Bill Weber from Michigan Alliance for Mediation and ADR.

**OPENING**

Frank Ruswick began the meeting with an overview of the draft schedule for consideration which was handed out to the members. (Attachment 1) The draft schedule has three major components of tasks to complete prior to a membership change in March. The three components are EAC Public Involvement Recommendations, EAC Statement on Public Decision-Making, and DEQ Implementation for Public Involvement Recommendations.

Frank indicated that we will begin the discussion on Public Decision-Making today. It will be the sole or primary agenda item for our next meeting. Frank has received a couple dozen comments so far on the draft recommendations. The initial responses have been positive and thanked the EAC for a job well done. DEQ staff will compile the comments and present them to the EAC at the November 14<sup>th</sup> meeting. The DEQ is also preparing an implementation plan for the recommendations. The first draft will be provided to the EAC in December. The DEQ will report semi-annually on progress after the plan is adopted.

The EAC indicated that the December 18 meeting should include a discussion of the first draft of the Public Decision-Making statement if time was available. The schedule was adopted as amended.

**PRESENTATION AND DISCUSSION ON ALTERNATIVE DISPUTE  
RESOLUTION**

Guest speakers from Michigan Alliance for Mediation and ADR (MAMA) gave a power point presentation (Attachment 2) and provided copies of “States Mediating Solutions to Environmental Disputes” from by the Policy Consensus Initiative.

An EAC member noted that the presentation referenced bringing two parties together, but that environmental issues often involve three or more parties. The members asked if MAMA has worked with multiple stakeholders. A Guest Speaker responded that in his work as a consultant he talks to all the groups individually to get an idea where they stood, what would the ideal relationship be, how we get from square A to square B, etc. This is a vehicle meant to bring

people together so that progress can be made and is not limited to two party situations. Another Guest Speaker agreed and indicated that he had received training in public policy dispute resolution with multiple parties with diverse interests.

Director Chester asked that the Guest Speakers share more information about MAMA.

The Guest Speakers explained that MAMA is a group of eight individuals with overlapping interests in promoting dispute resolution techniques in state government in general. It grew out of an interest in alternative dispute resolution (ADR) by the State court administrator's office and of several members which would later become MAMA. A Guest Speaker explained that ADR helps reduce time necessary to resolve disputes, and it can often be successfully used to resolve technical issues. ADR does not hurt accountability since the DEQ could establish criteria for when you would and wouldn't use it.

A DEQ Division Chief asked if DEQ staff could be viewed as neutral facilitators or mediators. A Guest Speaker responded that he has seen DEQ as good brokers in the past. This partly depends on the individual's skill and training. However, on highly controversial issues, it is doubtful that an agency person will be seen as neutral. A number of environmental agencies in other states have trained agency personnel in ADR. Oregon has a written policy as to when staff person and when outside resources must be used. A conflict of interest is addressed immediately.

An EAC member noted that use of ADR could cause budgetary concerns given the state's current fiscal situation. A Guest Speaker explained that there are a variety of ways to fund use of ADR including funding by the parties involved in the dispute, as well as funding by outside third parties. Some ADR services are also provided pro bono. A Guest Speaker also noted that studies from other states indicate that less money is spent on ADR than on administrative hearings and litigation. Reduced expenditures could result in putting aside more resources for ADR.

An EAC member indicated that the affected parties need to be convinced to use ADR. The member expressed reluctance to support one decision-making tool over others.

A Guest Speaker indicated that ADR could be very helpful with respect to very contentious permit applications, such as the proposed mining permit in the Stevensville area. An independent neutral party can be a great service in such cases.

Director Chester suggested that ADR could be another tool in the toolbox. The concern with its use might not be about dollars, it might be about delay, adding another layer of delay to process. Given this how would the DEQ convince those affected parties to voluntarily commit to process?

A Guest Speaker responded that surveys from other states indicate that ADR usually saves both time and money. ADR is meant to shorten the time for resolving issues by avoiding lengthy adversarial proceedings such as contested cases and litigation.

An EAC member noted that, if ADR is to be used, when it will be beneficial and when it wouldn't be beneficial would need to be considered on a case by case basis. Everyone should keep this in mind when considering the concept of ADR.

Frank thanked the Guest Speakers for their presentation and discussion with the EAC.

## **DISCUSSION OF CITIZEN DECISION-MAKING**

Frank proposed that the EAC consider this topic in the context of a specific proposal. This would facilitate discussion of the advantages and disadvantages of both the specific proposal and the concept as a whole. He invited the EAC to suggest the characteristics of a specific citizen decision-making model.

An EAC member asked as a preliminary matter whether there is any chance that the Governor would create a citizen advisory board for the DEQ. Given that the Governor has said she would combine the DNR and DEQ, would she support a citizen advisory board for the DEQ at this time? A member indicated that whether or not the Governor is predisposed one way or the other on the issue, it needs to be aired and the discussion should be documented. Director Chester agreed. The Governor will look to the DEQ for its recommendations. This is a very important issue for all of us and there needs to be an open and honest discussion. A member asked whether the Governor has made any statements on combining the DEQ and DNR. Director Chester indicated that the Governor has been focused on budget and that there is uncertainty as to the wisdom of combining the departments. It does not appear to be a high priority at this time.

With this preliminary matter out of the way, a member suggested a particular public decision-making model: Balanced composition, background and policy perspectives; board members appointed by the Governor, confirmed by senate; four year terms on a staggered basis. The board would be able to hire and fire director, similar to the old NRC. The board would have final decision making authority, but could delegate decisions to the director and staff. The board would have final rule making authority, and could take public comment. It would provide an annual status report, similar to a board of directors for a corporation. This model was supported in a letter to the Governor that was signed by over 100 conservation and environmental organizations. These groups supported this model because they saw it as increasing transparency in the DEQ decision-making process, adding an opportunity for meaningful public input, providing a forum for open discussion scientific and technical issues, and restoring public trust in policy making issues.

The EAC discussed these outcomes as possible goals of public involvement generally. There may be other tools that address these goals. A member indicated that perhaps these goals should be added to those in the draft public involvement recommendations. A member also suggested that perhaps the EAC should wait on this discussion until it sees the progress that would be made in the DEQ's implementation plan for the recommendations. The EAC generally agreed that whatever model is adopted, a goal should be for it to last a long time, beyond the immediate improvements that might be made by the current administration.

A member asked that the concept of transparency in decision-making be explained. One member viewed it as being able to determine the steps in the decision-making process and how decisions get bogged down. Another member suggested whether one sees a brick wall or glass wall when viewing department activities.

The EAC began a discussion of the historical decision-making process involving the Air and Water Commissions. One member suggested that those Commissions were seen as providing

due process, but they caused substantial delays. Having Commissions did not enhance decision-making itself. Another member suggested that Commission decisions were sometimes based on emotions and feelings, rather than the technical merits of an issue. This increases potential for delay and accountability. Another member contrasted this experience with the experience without the Commissions: There were a number of times when decisions were made by DEQ management that were contrary to recommendations of technical staff. An EAC member said that technical recommendations can be overshadowed both with and without a commission; there might, however, be a difference in the importance of political influence.

An EAC member indicated that the same characteristic of a commission could be both an advantage and disadvantage. For example, having a single place to go to for an issue would be an advantage, but the delay that might result would be a disadvantage.

A member suggested that whatever is adopted will need to be supported by all interests, if it is to have long-lasting effect.

Director Chester suggested that it would be an advantage to have decisions made in a public forum. However, there is no guarantee of the types of decisions that would be made and some decisions might not be welcomed by the environmental groups.

The EAC discussed the concept of the commission as the final decision-making body. It was suggested that the board could delegate decisions to the director and department, retaining authority to decide controversial issues and issues on “appeal”.

A member suggested that a disadvantage of commission model is that generally commission decisions are less knowledgeable since commission members might not take the time to study and understand issues. Another member indicated that, for a state as large state as Michigan, access to the centralized decision-making body could be difficult.

The EAC discussed the concept of the commission appointing the agency director. The issue appears to be one of reconciling the interest in restricting “political” appointments with that of accountability to the Governor. EAC members discussed the Natural Resources Commission (NRC) as a model for citizen decision-making. It was noted that law dictates the partisan composition of the NRC and that there used to be rotation of the chairmanship. The NRC grew out of a concept that natural resource decisions should not be politicized. It was suggested that government is inherently political. The advantage of gubernatorial appointment of the department director is that the public decides at the next election if the governor has made a sound choice.

An EAC member suggested that the appropriate inquiry should not be to review what was done in the past. Rather it should be to look forward and develop a system that is right for now. Another member indicated that looking back helps in describing advantages and disadvantages. A member suggested that the EAC should review its goals for public involvement in light of the existing recommendations to determine whether something is still missing and, if so, whether a citizen board, or some other tool, might serve the appropriate purpose. Another member reminded the EAC of the importance of institutionalizing tools; what has been recommended so far is only good to the extent the DEQ director supports it, and this may change with a new administration. Director Chester said that the group should continue to discuss this topic. If the

EAC is going to evaluate the sufficiency of its recommendations, it needs to have a clear statement of goals.

EAC members suggested other goals that should be considered in this context. These include having an open forum to address emerging issues in front of the department, providing a forum for public debate on controversial issues, providing an educational forum, and providing advice and counsel to director.

The EAC discussed whether the goals related to a citizen board are different from those related to public involvement generally. It was recognized that these are interrelated issues. The question of a citizen board was put in the parking lot so that the EAC could discuss other issues surrounding the question of public involvement. It is now time to consider the citizen board question in light of the recommendations on public involvement generally.

Frank asked EAC members to consider the goals that were articulated in the public involvement recommendations prior to the next meeting and whether additional goals should be put on the table. Further, members should consider whether some of the goals are not adequately addressed by the current set of draft recommendations. Frank will send an e-mail to EAC members expanding on this request. He indicated that the long term, and perhaps most difficult goal will be to establish a public involvement framework that will not depend on personalities.

See Attachment 3 for a listing of points raised by EAC members at the meeting. This listing is taken from flip charts that were developed and posted to facilitate EAC discussion. It is not meant to be exhaustive, or to necessarily reflect conclusions reached by the EAC.

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