

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, June 15, 2006, 1:00 – 4:00 p.m.

Members in attendance: Andy Buchbaum, Steve Chester, Jim Frey, Kurt Giberson, Chuck Hersey, Mike Johnston, Ellen Kohler, Phil Korson, Lisa Locke, Glen Logan for Andy Hobbs, Vincent Nathan, Rick Plewa, Diane Rekowski, Donna Stine, Bill Stough, Andy Such, Brad Venman for Del Rector, Guy Williams, and Paul Zugger

Guests: Joe Maki, Joan Park, and Lisa Hainstock (Leadership Academy participants) and Rebecca Yedlin (SEMCOG)

DEQ Staff in attendance: Jim Sygo, George Bruchmann, Frank Ruswick, Lynelle Marolf, Steve Sliver, Jim Johnson, Matt Campbell, Duane Roskoskey, and Karen Shaler

OPENING

Frank Ruswick began the meeting with introductions. He provided a copy of the background information on the land application program. During today's meeting, we will go through the matrix and see what questions there are or find other ways to provide additional background information. We are starting to block out where we are going on the recommendations for land application; focusing on the solid waste inertness program.

CURRENT ISSUES

Director Steve Chester thanked those who gave presentations at the Leadership Academy, where the discussion was candid and enlightening. Director Chester heard that the joint environmental committee of the Senate and House of Representatives plan to discuss beach grooming and a pilot project in the Saginaw Bay. The sunset was June 5, 2006. November 2007 is the sunset for other beach grooming activities. A recent study by independent scientists described negative impacts from beach grooming activities. The group Save Our Shoreline group raised questions about the study. They wanted to see the legislation extended. There were public forums in the Saginaw Bay and Grand Traverse Bay areas. Director Chester visited at the Saginaw Bay. While the June 5 sunset did occur and there is no longer a pilot area for vegetation removal, we have agreed to a work group to further study the issue. Guidance for staff has been provided in the interim. There will be further work done to determine areas of ecological significance that need to be protected and areas where beach grooming can occur.

Director Chester discussed the Carleton Farms Landfill that accepts Canadian trash and sludge and has been a source of odors for some time. It is part of the Wayne County Solid Waste Management Plan. Carleton Farms applied for a 15-acre expansion. If a landfill is approved as part of a county plan and unless there is a violation of state law, we have to grant the expansion. The landfill expansion moratorium has expired. Carleton Farms has a potential violation of state odor control requirements and submitted an odor control plan. The Landfill reached an agreement with the DEQ under which they will discontinue taking the sludge beginning August 1, undertake a number of upgrades, and in future again seek approval to accept sludge.

A member responded that municipalities are no longer treating sludge before disposal and it is unfair to blame Carleton Farms. DEQ staff acknowledged that municipalities were not treating the sludge prior to transporting, but indicated that problems arose at Carleton Farms partially because they were disposing of more sludge than they could properly manage. Carlton Farms has also agreed to make sure sludge is adequately treated before accepting more for disposal. In order to prevent similar problems at other landfills, the DEQ sent a letter to other landfills alerting them of the need to prevent problems arising from the disposal of improperly managed sludge.

Director Chester indicated that a number of months ago, several bills that would make it difficult to prevent environmental harm from concentrated animal feeding operations (CAFOs) were introduced. The DEQ worked with the Michigan Department of Agriculture and farming and environmental organizations to develop a compromise that would support farming while ensuring environmental protection. Unfortunately, the legislative sponsors are not accepting the compromise and will seek to move the bills. Director Chester is very concerned about the bills because they would exempt an entire economic sector from water quality protection requirements.

Director Chester said Kennecott submitted an application to mine in the Upper Peninsula. The DEQ determined that the application was administratively complete. Several parties opposing the mining requested a contested case hearing on our determination. The Administrative Law Judge dismissed that request, and the issue is now before the Ingham County Circuit Court. A hearing is scheduled for June 22. Director Chester was hopeful that the action will be dismissed because an opportunity to appeal an administrative completeness determination could create a significant delay in DEQ permitting decisions. Kennecott has asked to become a party to the proceeding. A member contrasted this situation to one in which the DEQ had recently opposed a citizen group's request to intervene in a legal challenge to a DEQ denial of a Land and Water Management Division permit. Director Chester indicated that he would review that situation.

Director Chester described the work group developing recommendations on addressing the impacts of phosphorus on water quality. There was widespread support from affected parties on for the work group. Paul Zuggger will facilitate the work group, which will consist of about 20 members. The DEQ will soon send invitation letters. Paul will follow up with each recipient to explain/answer questions. There is an aggressive time frame: 6-8 meetings with a report by early next year. The general consensus is that phosphorus is damaging to our streams, and we need to reduce phosphorus.

The DEQ plans to reconvene an expanded work group effort to recommend improvements to the Part 201 cleanup program in August. Participants in the initial work group thought the effort would be assisted by an outside facilitator and efforts are underway to secure funding for that service.

LAND APPLICATION PROGRAMS MATRIX

Frank began the discussion of a matrix prepared by DEQ staff that compares and contrasts the various programs regulating placement of waste material on the ground. This information was difficult to present effectively because of the number of programs and amount of information involved. Frank noted some noteworthy aspects of the information including:

- The statutory standard for land application decisions in the solid waste program relates to formation of a contaminated leachate. This has been interpreted as meeting standards under Part 201, although the current Part 115 administrative rules reference Part 201 standards that have since been revised. Materials are tested prior to receiving approval and then on a yearly basis. There is very little inspection of these sites. Part 201 standards are used to make cleanup decisions.
- The preventative criteria for biosolids are different. These criteria were developed by the EPA for this specific waste stream and land application. The remedial criteria are slightly different as well.
- There are 1.4 million septic tank and tile systems in Michigan and 203 million gallons of septage is land applied annually. Pathogens are the primary contaminant of concern although there are also protections against excessive loadings of nutrients.
- The DEQ does not have records of the amount of manure generated or where it is land applied.
- The groundwater discharge program covers a wide variety of situations and is consciously designed so that the most protections and regulatory attention are afforded to the types of discharges that present the greatest risk.

The land application of compost is considered in the context of regulation of industrial byproducts under the solid waste program. However, yard waste and compost derived from yard waste is exempted from most solid waste regulation. There are only 2 – 3 operations in the state composting materials other than yard waste.

A member asked about whether biosolids can be land applied. Jim Johnson responded that biosolids can be land applied at an agronomic rate. Staff described the ways in which the different programs address historical application of waste materials at a site proposed for land application. In the solid waste program, Duane Roskoskey recommends testing, similar to a baseline environmental assessment, to determine whether the land has been previously contaminated through land application of waste materials.

A member asked about the distinction between “preventative criteria” and “remedial criteria”. Frank explained that the DEQ was trying to distinguish between the criteria that are used to authorize an activity and those that are used to determine when cleanup is necessary. In most cases, these are the same, but do not necessarily need to be the same. The decision as to how conservative to be in preventing what is considered to be an environmental harm is a policy

decision. Lynelle Marolf explained the distinction between the criteria that determine whether a site of contamination exists under Part 201 (residential criteria) and allowable remedial responses (which may depend on the use of the land and different ways of controlling exposure to contamination).

DEVELOPMENT OF LAND APPLICATION RECOMMENDATIONS

Frank reminded the EAC of its charge to make recommendations on land application programs, focusing on industrial by-products and compost regulated under solid waste laws. He opened the discussion by describing why he envisions that developing such recommendations will be difficult. The regulatory decisions involve difficult choices about what potential for harm would prevent placement on the land and how does the potential benefit relate to potential for harm. These decisions are complicated by the wide variety of materials, regulatory provisions, and parts of the DEQ involved. Frank indicated that he would do his best to facilitate the discussion, recognizing that different members will be comfortable working at different levels of detail and degree of structure to the discussion.

Frank offered a starting point for the discussion: Partially as a matter of conscious decisions and partially as the result of how various program developed, land application programs have been structured to allocate resources (e.g., funding and staff time) according to the amount of perceived risk. This raises the questions of whether that model is appropriate and, if so, whether we have correctly assigned resources to risk. However, Frank considers those to be relatively abstract questions and suggest that the EAC not start the discussion at that point. Rather, he suggested that the EAC focus on the risk-based programs. He offered three questions to begin the discussion:

1. Is there an alternative to the conventional risk management approach used in the solid waste and biosolids programs?
2. If not, how should the level of acceptable risk be determined?
3. And are there circumstances in which we would accept more risk?

The following comments were made during the ensuing discussion:

- We should recognize that land application can provide a benefit to soils. In that sense, our focus should not be on protecting against a risk, but on improving the ecological health of the receiving soils.
- One of the benefits of a risk-based approach is that it provides a clear line for knowing what is allowable.
- We need to be able to consider risk to determine whether land application should be allowed at all.

- There are many uncertainties involved in the methods we use to assess risks, most notably associated with assumptions about how people are exposed to contaminants.
- Traditional risk assessment approaches are not the same as risk management methods which consider both risks and benefits of a proposed activity and its alternatives.
- Focusing on risks resulting from land application essentially evaluates the capability of the environment to dilute a contaminant. It would be better to focus on the benefits that can be created through material processing.
- It's best to have regulatory standards that present decisions as black or white. However, this encourages conservatism in the development of standards. The conservative standards developed in the solid waste program have discouraged innovation in the use of industrial by-products. We should also focus on the alternatives to the use of these by-products and the environmental impacts of those alternatives.
- The DEQ also derives conservative standards because it doesn't have the resources to oversee each instance of land application. Our approach should encourage the DEQ to place more consideration on benefits and industry to put more consideration on risk. This may entail developing a change in the DEQ's role.
- Companies that generate industrial-by-products already have a good understanding of the risk posed by their waste streams.
- There is a current discrepancy between how Part 201 allows soils to be managed on a site of environmental contamination and the more conservative approach that is taken under Part 115 if the contaminated soils are regulated as solid waste.
- We need more scientific analysis of what happens to contaminants in the environment. Initial concentrations of a contaminant when land applied may change over time.
- The Part 201 standards were developed for a specific purpose—evaluating how to manage risk when contaminants already exist in the environment. We should be careful about using the Part 201 in the context of authorizing material to be placed in the environment.
- Industry wants a predictable and uniform standard under which to make decisions. However, this drives the standard to be conservative so that it can be applied in all circumstances. We would be less conservative if we considered individual waste streams and individual land application circumstances, but that would mean less uniformity.
- Part 201 is a remediation statute, not a preventative statute. Defaulting to Part 201 is a convenience, not a necessary choice. It is not working for a variety of reasons. We

should consider breaking the issue into two elements: soil improvement products and industrial byproducts.

- There may be a difference between where beneficial materials are generated and where they can be beneficially used. In other words, there may not be a market for some otherwise beneficial by-products.
- We should recognize the uncertainties inherent in the risks we are discussing. We should consider a best practices-based approach as a means of addressing the potential for these risks.
- While Part 201 provides an exemption for a permitted release, only specific permits, not a class of activities authorized through a rule, would qualify for this exemption.
- In evaluating the use of industrial by-products, we should consider that it is allowable to use commercial products that might have as much if not more environmental impact as an alternative.
- But, if we are concerned about the effect on the environment, this may just mean that we should give more regulatory consideration to use of the commercial product, rather than less consideration to use of the industrial by-product. The public expects that the DEQ will make decisions about what is safe when it has regulatory authority.

CLOSING

Frank commented that EAC members seemed a bit frustrated by the lack of a clear direction in the discussion to this point. That is understandable given the complexity and difficulty of the issue. He will review the thread of today's discussion and propose a more refined focus for the next meeting. Members are encouraged to call or send an e-mail to him if they have insights as to how we should proceed.

Frank thanked members for their participation in the discussion and wished them a safe trip home.

Notes by Karen Shaler; summarized by Frank Ruswick.