

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, October 21, 2004 – 1:00 – 4:00 p.m.

Members in attendance: Jack Bails, Chris Bates, Jon Allan for William Beckman, Barry Cargill, Steve Chester, Wil Cwikiel, Chuck Hersey, Stephen Boyd for Terry Link, Steve Luzkow, Terry Miller, Lana Pollack, Allen Reilly, Debra Rowe, Dr. Janet Vail, David VanderHagen for Wayne Wood.

DEQ Staff in attendance: Linda Albro Sparks, Chris Alexander, Dan Dell, Vince Hellwig, Andy Hogarth, Diana Klemens, Amy Kohlhepp, Gary Kohlhepp, Pat Lawton, JoAnn Merrick, Rich Powers, Frank Ruswick, Gerald Saalfeld, Jim Sygo.

OPENING

Frank opened the meeting by summarizing the agenda: discussing the FY 05 plan for implementing the EAC's public involvement recommendations and discussing the DEQ's water management programs.

Director Chester gave an update on current issues. He began by describing a recent association meeting during which a speaker made negative, but general comments about the DEQ. Director Chester indicated that he is interested in improving the DEQ, and is willing to consider and respond to constructive criticism. However, this process can be helpful, only if criticism is based on specific factual situations. As a result, the DEQ is going to ask critics to provide specific factual details underlying general statements about DEQ performance. Director Chester believes there has been much improvement in the DEQ's performance, and does not believe general and unsubstantiated charges are helpful in identifying areas for further improvement.

A member indicated that some states set up an Ombudsman position to address complaints with agency operations. Perhaps this would provide an avenue to receive and respond to complaints with DEQ operations. This would both show an interest in improving the DEQ, and provide a means to fix specific problems. Director Chester indicated that the Ombudsman concept was discussed when the EAC was considering ways to improve public involvement, and rejected as a recommendation. He indicated that the Environmental Assistance Center receives and responds to approximately 45,000 calls annually, some of which are complaints about DEQ operations. Complaints are also received in other ways. The DEQ is considering providing a means on the website to allow the public to register concerns with DEQ activities. In addition, Frank Ruswick is helping address legislative complaints. The DEQ does not have funding to pay for a separate Ombudsman position. Director Chester indicated that he is concerned about stories involving the DEQ that get repeated over time and, in the end, have little basis in fact.

A member indicated that some people that interact with the DEQ are concerned that if they raise complaints about the actions of a specific staff person, that person will later create additional problems for them. Frank indicated that he has heard of this concern, but that in all of his years with the DEQ and DNR he has never once heard of a staff member acting in retribution for a complaint.

Director Chester reiterated that the DEQ cannot successfully address problems unless the public is willing to bring complaints directly to the attention of Department management. A member

suggested that perhaps the EAC could provide a forum for discussing problems raised by the public. The Director agreed that the EAC might be helpful in identifying a common thread to problems the DEQ is encountering.

A member noted that the DEQ is an agency charged with protecting the environment. That role is crucial, since the environment can't protect itself. While the regulatory role will always engender some criticism, it is clear that the public embraces environmental protection. The member expressed concern that the DEQ was being hamstrung in its role through budget reductions.

The Director described how his role is trying to publicize the good work the DEQ does. For example, a recent DEQ program was successful in helping Flint schools remove mercury, thereby avoiding potential spills and contamination. The DEQ needs to send more positive messages. A member indicated that the DEQ is working with a handicap because of its predominant regulatory role. When the environmental protection functions were combined with the resource management functions in the DNR, there were more overall good news stories. A member reminded EAC members of the environmental education curriculum the DEQ is developing in partnership with the educational community. This should be a good news story.

FISCAL YEAR 05 PUBLIC INVOLVEMENT IMPLEMENTATION PLAN

Frank asked the EAC to turn to consideration of the FY 05 Public Involvement Implementation Plan. Frank had provided a copy of the draft plan to EAC members in September. The Plan needs to be read in conjunction with the Report describing actions taken under the FY 04 Implementation Plan. The FY 05 Plan contains activities continued from FY 04, as well as several new items. Frank indicated that members of the Public Involvement Workgroup, who had developed the Plan, are here to assist in the EAC's discussion.

A member suggested that, as an additional item under A.3., the DEQ could develop and make available to staff, case studies describing the benefits of multiple perspectives in solving a problem. Frank agreed that suggestion would be added to the Plan.

A member questioned how the Plan is communicated to staff and suggested that it should be clear why implementing the Plan is an important part of DEQ staff responsibilities. Members of Public Involvement Work Group described the process followed in their division. Amy Kohlhepp indicated that in the Environmental Science and Services Division (ESSD) the Plan is transmitted to all staff members and then discussed between a manager and each staff person. Most staff have already reviewed the Plan since they are directly involved in its development. Dan Dell described a similar process used in the Water Bureau. Pat Lawton described that, in the Remediation and Redevelopment Division (RRD), the Plan is discussed at manager meetings as it is being developed and then rolled out to staff. Pat indicated that the RRD is developing a set of tools for staff to work better with the public.

Frank indicated that the DEQ will make sure that all staff is aware of the basis for the Public Involvement Implementation Plan when it is finalized and distributed. Director Chester indicated that he visits each district office twice per year and will also discuss the Plan during those visits.

A member asked about the availability of funding for staff training. Frank indicated that some of the FY 04 training activities were not completed because of tight funding. Director Chester

indicated that since the tight budget will continue in FY 05, this will continue to be a challenge. However, he did agree that training is important and described a recent in-service training as a demonstration of the DEQ's commitment to undertake training when possible. A member indicated that perhaps there are alternatives to traditional training techniques, such as developing case studies as training guides. The DEQ needs to continue its commitment to staff training.

A member noted that Item B.6. encourages improved coordination with local units of government. The member described situations when local units of government had given erroneous information on the ability to develop in wetlands which later caused problems for the landowner and the DEQ. Another member described similar actions by local units of government related to permits for culverts. Rich Powers, current Chief of the Water Bureau, (former Chief of the Land and Water Management Division) described a variety of explanations that can result in inaccurate environmental information from local units of government. Sometimes there may be a lack of information, but sometimes local officials just don't support the underlying requirement.

A member suggested that the DEQ provide a booklet on how to meet land protection requirements, such as wetlands, inland lakes and streams, for local officials to use. Another member pointed out the Michigan Manufacturers Guidebook that the DEQ had developed to assist in meeting regulatory requirements. Amy Kohlhepp indicated that ESSD updates that Guidebook every two years, and that it includes a chapter on land protection programs. A member described informational material developed for wetland protection by his organization. The member indicated that we cannot expect the DEQ to be responsible to ensure that local units of government provide good information. Another member suggested that providing the relevant information to local officials might encourage them to provide good information.

A member indicated that it will help if DEQ staff continues to build positive working relationships with local officials. It is particularly important for the Land and Water Management Division staff to have good working relationships with local planning officials and county drain commissioners.

Frank indicated that the DEQ will consider these ideas in finalizing the FY 05 Implementation Plan. The EAC confirmed that it supported the Plan and agreed that the DEQ should finalize it. A member thanked the staff who had been involved in developing the FY 05 Plan.

WATER PROGRAM OVERVIEW

Frank introduced the water program agenda item. He indicated that the original plan was to provide discussion of the water program over several meetings, but it became necessary to use only one meeting for this purpose. Rich Powers, Chief of the Water Bureau, gave an overview of the presentation. He indicated that because the time allotted for discussing water programs had been shortened, this would only be a general discussion, touching on just a few of the many things the Water Bureau does to protect water quality. Gary Kohlhepp and Christine Alexander provided PowerPoint presentations describing how the Water Bureau develops water quality standards, its monitoring programs, and the Total Maximum Daily Load (TMDL) process. See Attachments 1 and 2.

Frank described how the water program is changing. While it is still important to focus on individual point source dischargers as has been done in the past, the DEQ is now also being asked to consider all the contributions to water quality issues in a given water body, including

the effects of more diffuse sources. Since addressing diffuse sources may involve ways of encouraging beneficial behavior other than through regulations, the DEQ's role is evolving. He asked the EAC to consider how the DEQ can be more effective in this regard.

A member asked how regulatory activities and other activities fit together in the TMDL process and wondered if the DEQ provide emphasis to one over the other. As an example, Christine described how the process fits together in the context of e-coli.

Frank asked how the TMDL process worked when multiple parameters were causing impairments on one water body. How are the Water Bureau's activities coordinated? Christine provided an example of how staff coordinated to consider TMDLs for 3 different parameters on the Grand River.

A member described how a watershed perspective can alert us to what we are missing in improving water quality. The Rouge River was used as an example. Activities not regulated, including flow regimes, may be the biggest source of continuing problems. Urban and rural areas present different sets of considerations. The member indicated that local units of government are awaiting leadership from the DEQ, but the DEQ has not been equipped or inclined to be involved on these issues. The member questioned whether or not the current structure of state and local roles is the one that will best address these emerging problems. Determining the right set of roles will be important, especially as the current water pollution treatment infrastructure begins to reach the end of its useful life.

DEQ staff agreed that flow control issues are important and described how the non-point source and storm water programs are beginning to address these issues. A member agreed that the storm water program provides a means of starting the dialogue on the best structure for addressing emerging water quality issues. However, the DEQ will not be successful if it is only viewed as a regulatory program.

Director Chester indicated that the DEQ is interested in improving its capabilities in providing assistance to benefit individual and local action. In fact, one component of the DEQ's surface water permit fee proposal was funding for education and outreach on these issues. Unfortunately, that part of the funding was not supported and did not pass in the legislature.

Rich agreed that working closely with local units of government is important. It is crucial to encourage wise choices that can guide development in a watershed. Often, once a watershed is urbanized, problems have already been created and are tougher to correct. Non-point source pollution problems are difficult because water quality literally depends on what people do in their backyards. The DEQ needs to be able to do more compliance assistance to help individuals understand this connection and make wise choices. Rich described how he is attempting to meld the traditional compliance assistance approach in the drinking water program with the more traditional regulatory role in the surface water quality program to develop an effective mix of the two.

A member agreed that the DEQ cannot take resources away from the point source control program. The member is really suggesting the need for an additional level of DEQ activity that will assist local efforts in watershed planning. The DEQ needs to consider how it can leverage its skills and resources to energize local watershed planning activities.

Rich indicated that the non point source program is now about 10 years old. It has been successful in what it has done, but he thinks there is room for improvement, and is undertaking

an evaluation of the program with a view to make it more effective. Some of the ideas presented today will be useful in that review.

A member agreed that encouraging actions by individuals is important. The member distributed educational materials developed by the Southeast Michigan Council of Governments (SEMCOG) including “Seven Simple Steps to Clean Water”, “Remember, you’re not just washing your car”, “Remember, it all drains to our lakes and rivers”, and “Remember, you’re not just fertilizing your lawn”. It’s not a substitute – people need to take ownership and custody on these issues. This information is also available on the SEMCOG website.

A member described how the Tip of the Mitt Watershed Council was founded 25 years ago on the premise of encouraging local action to plan for and protect watersheds. Both state and federal resources have been very helpful. By using these resources, the Watershed Council was able to encourage municipalities and other local stakeholders to form the institutions that facilitate watershed management. Local development of watershed management plans encourages buy in from stakeholders, which facilitates implementation. DEQ staff has been very helpful in this process. Now we need to look for additional ways to use current tools, such as the TMDL process, to help further integrate activities affecting water quality.

Christine described how the Water Bureau staff in Grand Rapids is integrating Section 319 grants with the TMDL process.

A member pointed out the great opportunities of intergovernmental cooperation with the watershed assessment process undertaken by the Department of Natural Resources Fisheries Division.

A member agreed with the general direction of this discussion that the command and control approach will not lead to further water quality improvements. The actions of individuals, such as relating to land use, really need to be addressed through other means.

A member described the benefits of illustrating tangible beneficial outcomes in encouraging beneficial environmental activities. The member distributed a booklet, developed by the Tip of the Mitt Watershed Council, describing successful environmental restoration efforts in the Great Lakes Region entitled “Restoring the Connections”.

Director Chester indicated that he is hearing a lot of agreement between the EAC, and the improvements Rich and his staff are pursuing. Director Chester asked the EAC if there is something the DEQ is missing in our efforts to pursue improvement.

A member suggested that there is still a need for a different perspective. The member is convinced that we have to find better ways of enlisting the active support of local government. The DEQ must establish trusting relationships with local decision-makers to encourage long term investment in watershed management activities. It takes time to establish these relationships, but it will pay off over time. The DEQ needs to determine if there are incentives it can offer for watershed management, and whether there are impediments it can remove.

Director Chester agreed that we need to engender trust among local officials, but recognized that sometimes the regulatory role the DEQ is also entrusted with can result in conflict. It is difficult for the DEQ to wear both hats effectively.

A member described a program under which federal and state governments exchanged staff in order to provide a different perspective and appreciation for the role of the other. The member suggested that perhaps the DEQ could consider such an approach with local government.

A member described how the involvement of an individual DEQ staff person on a watershed stakeholder group allowed them to see and appreciate that staff person in a different light than that of his traditional regulatory role.

A member asked to follow-up on a concern with Concentrated Animal Feeding Operations (CAFOs). The member asked what the relative roles were of the DEQ and the Michigan Department of Agriculture (MDA). Rich responded that the DEQ is the regulatory agency and MDA provides more of an assistance function.

The member described that CAFOs can cause terrible environmental problems. It is especially disconcerting that many CAFOs are owned by foreign corporations, and are here because the environmental regulations are too tight for them to operate in Europe. The member was also frustrated that CAFOs are coming to Michigan because the environmental requirements in other states are tougher than they are here.

Rich indicated that there have been only five applications under a newly required water discharge permit for CAFOs. The DEQ is also close to a settlement in an enforcement action against a CAFO that should set the bar for future compliance activities by CAFOs.

CLOSING BUSINESS

Frank thanked the Water Bureau for their presentation. He reminded EAC members that a discussion leading to specific recommendations for improving DEQ operations will begin in November. He requested EAC members provide him comments on the following: 1) What do you believe are the common themes underling the discussions we have been having on significant policy issues facing the DEQ? 2) What do you think the EAC might provide on those issues that would assist the DEQ in addressing them? Frank asked that these comments be e-mailed to him by November 1st.

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