

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Thursday, January 18, 2007 1:00 – 4:00 p.m.**

Members in attendance: Dr. Gary Dawson for Jon Allan, Vicki Webster for Mark Bertler, Steve Chester, Kurt Giberson, Chuck Hersey, Larry Merritt for Andy Hobbs, Mike Johnston, Ellen Kohler, Vincent Nathan, Del Rector, John Egelhaaf for Diane Rekowski, Bill Stough, Andy Such, Guy Williams, Paul Zugger.

DEQ Staff in attendance: Linda Albro Sparks, George Bruchmann, Andy Hogarth, Frank Ruswick, Jim Johnson, Duane Roskoskey, Liane Shekter Smith, Jim Sygo.

Guests: Brad Venman

Leadership Academy: Michelle Crook, Holly Gohlke, Byron Lane, Laura Verona

**OPENING**

Frank began the meeting by asking alternate members and guests from the Leadership Academy to introduce themselves.

**CURRENT ISSUES**

Director Chester indicated that the Department of Environmental Quality (DEQ) is proceeding with development of fee proposals and fee packages in eight program areas. Several EAC members are involved in work groups convened by the DEQ to help develop these fee packages.

Director Chester described efforts by the shipping industry to seek a legislative extension from legal requirements to obtain permits for the discharge ballast water into the Great Lakes. Director Chester convinced legislative leadership to provide the DEQ an opportunity to address the concerns of the shippers. The Office of the Great Lakes and the Water Bureau developed a proposal under which shippers who did not meet the permit requirement would be authorized to continue operation for one year under an administrative consent order, provided that they sampled discharges for invasive species. Since the vast majority of shippers using Michigan ports do not discharge ballast waters, this leaves only about four ships affected by the permit requirement. The DEQ had not yet heard back from the shipping industry.

A member heard a story on National Public Radio about the impending loss of funding in the remediation and redevelopment program and asked if the DEQ had issued a press release on the subject. Director Chester indicated that a press release had not been issued and that Bob McCann, the DEQ Press Secretary, had replied to an inquiry from the reporter.

## **DISCUSSION – DEVELOPMENT OF LAND APPLICATION RECOMMENDATIONS**

Frank opened the discussion by indicating the staff had prepared a listing of what the DEQ believes are the remaining issues for resolution. See Attachment 1, “Remaining Land Application Issues”. He proposed using this list to organize the discussion of the issues and the EAC agreed.

### 1. Language summarizing discussion of land application criteria.

The EAC discussed the language describing how generic residential criteria under Part 201 of the Natural Resources and Environmental Protection Act, 1993 PA 451, as amended (NREPA), would be used in the land application program. See Attachment 2, “Part 115 Inertness Criteria”. Frank explained that generic criteria would be used to set state-wide standards. However, different criteria could be used in an individual case based on site-specific circumstances, such as the naturally occurring background concentrations of a contaminant on a specific site. The EAC had not supported, and the language does not envision, using the current land use classification of a parcel to set site-specific land application criteria.

A member expressed concern that generic criteria may still be inappropriate in a specific case because the exposure assumptions behind the development of Part 201 criteria may not apply in the context of a specific land application. Frank indicated that the proposed language does envision the ability to consider exposure assumptions and pointed out the third paragraph of the proposed language. Andy Hogarth, Chief of the Remediation and Redevelopment Division, gave an example: If there is not potential for impacts to surface water because the location is sufficiently distant, the criteria used to protect surface water would not be relevant.

A member expressed a concern that the language of the third paragraph under discussion implied that groundwater sampling and other data gathering would be necessary by use of the term “monitor”. Frank indicated that this was not the intent of the language.

The EAC agreed to change the second sentence of the third paragraph to read “The ability to make this determination can turn, in part, on the probable long term fate of the material in the environment and the ability of the DEQ to ensure conditions that limit exposures remain in place.” to clarify its intent.

A member expressed concern that the assumptions about fate of a contaminant in the environment used in developing the Part 201 criteria did not necessarily apply to the fate of the contaminant when it is land applied. The member also pointed out that certain naturally occurring materials, aluminum, iron, and manganese, can exist in the environment at levels higher than the Part 201 criteria.

Frank indicated that draft Principle 7 envisions that contaminants can be land applied according to naturally occurring background conditions either at the site, or if existing at a statewide level. See Attachment 3, “Land Application Principles”. Frank suggested the EAC defer this issue until later in the meeting.

A member returned to the point about differences between the assumptions used in development of Part 201 criteria and the environmental fate of land applied material. Frank indicated that this point had been raised in previous work groups convened to develop administrative rules

governing land application, but that there was insufficient information to draw any firm conclusions. The member indicated that some information had been provided, but agreed that more work needed to be done, and in the meantime, Part 201 provided the best current decision-making tool. The member suggested that more explicit language should be added to the EAC's recommendation on the need for the state and regulated community to support development of better information on environmental fate of contaminants. The EAC agreed with this proposal.

A guest expressed his belief that, as written, the discussion of land application criteria would also apply to excavated soils. If those soils met the Part 201 criteria, they would be considered inert, and not solid waste.

## 2. How should "benefit" be considered?

Frank described the three issues concerning the concept of benefit provided by land applications. See Items 2a. – c. in Attachment 1.

A member asked if more risk would be allowed on a site-specific basis because of the amount of benefit provided by a particular land application. Frank indicated that the DEQ recommends this approach because of the difficulty of the DEQ determining what amount of increased benefit would justify an increased risk. He indicated that the focus should be whether the amount of risk was acceptable, not whether there was some "increased" benefit.

A member indicated that the practice of risk management might someday develop to the point of evaluating benefit. This is a good reason to include the statement about periodically revisiting the EAC recommendations to consider new information or developments.

A member indicated that the program should not consider benefits at all. The only issue should be whether the material met land application criteria. If it did, it should be allowed to be placed anywhere for any reason since it presents no risk. Other members commented that the Part 201 criteria did not represent the concept of "no risk", but rather an "acceptable" level of risk given the countervailing cost associated with cleaning up contamination. In the context of land application, the countervailing interest when solid waste is concerned is in the benefit to be obtained from the land application. Therefore, there still needs to be some benefit derived from land application, but that the DEQ can consider the applicant's indication that a benefit will result to be legitimate and sufficient.

A member suggested that benefit could be derived from disposal costs avoided by the waste generator. DEQ staff pointed out that this would allow waste derived material to essentially be stockpiled anywhere in the state. The solid waste program has specific requirements pertaining to waste piles to prevent environmental and public health threats caused by waste piles and these requirements could be circumvented by this approach.

A member pointed out that the concept of benefit is important to conceiving the material as a product, rather than as a waste. Avoiding disposal costs did not transition the material to be considered a product.

## 3. Aesthetic Impacts

A member pointed out that some of the most significant concerns about the difference between assumptions used in development of Part 201 criteria and environmental fate in the land

application context apply to parameters with aesthetic standards. The members suggested that the discussion of aesthetic impacts contain the proviso concerning the environmental fate assumptions.

Frank cautioned against this approach since it technically would apply to all statements pertaining to use of the Part 201 criteria.

A member indicated that protection of aesthetic criteria for taste is very important to those who use private groundwater wells as their drinking water source.

A member commented that the recommendations as currently being discussed could limit the use of compost derived from waste products. While site-specific demonstrations of environmental fate are important, they are expensive.

Frank indicated that it is obviously important to be clear about the need to develop further information on the issue of environmental fate, and he would ensure the next draft would include explicit language on this point.

Member – summary of one thing that happened here is to protect water, but I think common compost exceeds your manganese standard or would you like to see it landfilled? Problem is if you test in 201 you're not going to be able to use it.

#### 4. Background concentrations

The EAC discussed the difference between statewide, regional, and site-specific background. A member asked what the DEQ would consider “naturally occurring”. Andy Hogarth indicated that it varies under Part 201. For example, some agricultural applications are not considered a “release” under Part 201 and so areas where those applications had occurred would not be considered a facility despite elevated levels of contaminants. Frank indicated that under Part 115 that term would mean without being contributed by humans.

Frank agreed to modify language to consider the effect of background concentrations to clarify how naturally occurring background levels would be used in land application decisions.

#### 5. Other unresolved issues

The EAC expressed its support of the DEQ staff recommendation about how to foster soil health and the need for information on sites where land application occurs. See Attachment 1.

Frank proposed that, based on today's discussion, staff creates a self-contained document that would include the EAC's specific recommendations. He further indicated that he would provide this draft document to the EAC prior to the next meeting and asked that members provide specific amendatory language to address any comments they would have. The EAC agreed with this suggested approach.

A member asked what would happen after the recommendations were finalized.

Frank indicated that the Waste and Hazardous Materials Division (WHMD) would develop draft administrative rules governing land application based on the recommendations. Affected interests and the public would have the opportunity to review and comment on the draft rules.

Liane Shekter-Smith, Assistant Chief of the WHMD pointed out that the EAC's discussions and recommendations did not address dredge spoils and so that material would not be covered by the rules that would be developed.

Frank indicated that he would provide a draft of the EAC's recommendations as quickly as possible. Since this topic has been under discussion for many months, he asked that members not raise new issues in commenting upon the final recommendations.

## **DISCUSSION – FUTURE TOPICS**

Frank indicated that the February meeting would be the last one for half of the EAC members and that new members would come on board for the March meeting. This provides an opportunity to consider the future direction of the EAC. Should there be any changes in size, composition, or other characteristics? He also indicated an interest in any topics the EAC might want to consider in the future.

Director Chester indicated that there are 25 members of the EAC including himself. Attendance at meetings varies. To some extent, attendance was commonly greater in earlier EAC meetings and that attendance has diminished over time. The DEQ has tried to have good geographic representation on the EAC. There have been members from throughout the state, including the Upper Peninsula. It is very important the EAC members come from different backgrounds, including, business, municipal, environmental community, and environmental justice representatives. This is an opportunity to reconsider the composition of the group, while still ensuring proper stakeholder representation.

The discussion among EAC members generally indicated:

The size of the EAC is appropriate.

Diversity in the interests and perspectives among members should be retained.

The DEQ should ensure that a potential member is committed to attending and participating in meetings.

The Director should reconsider retaining members in some circumstances, through reappointment or reconsidering the strict two year term.

There may be a need to base membership on the nature of the issue(s) to be considered during a particular term. There is a difference between someone who can contribute to a policy discussion versus a technical discussion. One way to do this would be to hold open "ad hoc" appointments that could be made for a short term why the EAC considers a particular issue.

The EAC considers itself to be working for the Director. He should take the lead role in identifying issues that are important to him for EAC consideration.

While work on a long term project is beneficial, the Director should also consider bringing discreet policy issues he is considering to the EAC for discussion and advice.

The EAC should consider primarily long term, strategic issues.

One way to identify issues would be to ask each member to suggest her or her top five issues for the EAC to consider.

Specific topics mentioned for consideration were compost, and stormwater permitting.

The Director should consider holding meetings in different locations throughout Michigan, especially when an issue affects a particular region of the state.

There are alternative meeting times that could be considered, but each of them would have some disadvantage.

During this discussion, members expressed their appreciation for the support and involvement of DEQ staff in the work of the EAC.

Frank thanked EAC members for their comments and suggestions and asked that any further thoughts be sent to him by e-mail.

Notes by Linda Albro-Sparks; summarized by Frank Ruswick.