

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, July 19, 2007 1:00 – 4:00 p.m.

Members in attendance: Sandra Batie, Steve Chester, Cathy Brubaker-Clarke, Tim Faas, David Gard, Chuck Hersey, Brian Jonckheere, Rick Plewa, Del Rector, Richard Rediske, Doug Roberts, David Rinard, Andy Such, Brian Beauchamp for Lisa Wozniak, Paul Zugger.

DEQ Staff in attendance: Christopher Adams, Linda Albro Sparks, Anna Baumgras, Roland Bowler, Jennifer Bunker, Liz Browne, Kim Fish, Tamar Gontovnik, JoAnn Merrick, Skip Pruss, Frank Ruswick, Jim Sygo.

OPENING

Frank Ruswick welcomed members, reviewed the agenda and introduced Liz Browne, Acting Division Director of the DEQ Land and Water Management Division (LWMD) and Kim Fish, Acting Assistant DEQ Division Director of the Land and Water Management Division (LWMD). Frank announced that Mary Ann Heidemann has resigned from the Environmental Advisory Council as she has accepted a new position as the Regional Land Use Educator with the Michigan State University Extension Office in Alpena. We wish her the best in her new position.

CURRENT ISSUES

Director Chester gave a budget update that the legislature has added an additional \$1 million over the Executive Office recommendation. The State of Michigan is constitutionally mandated to balance the budget. A member stated that there have been times in the past that state government operated under a continuing (temporary) budget because the annual budget had not been established by October 1st. Director Chester talked about his recent attendance at an ECOS meeting held in Nebraska. Many other states already have their budgets approved for next year, and some states are operating with a fund surplus. One of the items discussed at the meeting was Concentrated Animal Feeding Operations (CAFO's), with some states such as Nebraska, Iowa, Kansas and Missouri requiring CAFO's to obtain permits to operate. Agricultural interests in these states require supported permitting for CAFO's due to liability issues.

DEQ Deputy Director Jim Sygo gave an update on Dow. The United States Environmental Protection Agency (U.S.EPA) issued three separate Comprehensive Environmental Response Compensation and Liability Act (CERCLA) orders on July 9, 2007. U.S.EPA issued the orders because they were not happy with the pace of dioxin contamination hot spots on the Tittabawassee River. The methods Dow will use to comply with the orders had been previously worked out through the efforts of DEQ staff.

DEQ Deputy Director Skip Pruss discussed the Kennecott Mining case. This process was paused and the department has engaged in two separate inquiries, one was department internal inquiry, and the second was a geo technical engineering review of the existing information submitted by Kennecott. The DEQ consulted with both Kennecott and environmental groups on a list of acceptable geo technical engineers. Dr. Wilson Blake, a person on both lists, was retained. He issued his report supporting all subcontractor findings. He agrees both with a

critique of Kennecott's original mining plan and an analysis that concluded mining to a lower elevation, as proposed by Kennecott in a revised mining plan, could safely proceed. An update will be provided in the future.

A member asked Director Chester if the department had a reaction to the recent U.S.EPA proposed ozone levels. Director Chester stated the last time ozone levels were revised were in 1997. In the interim time health studies have been done. A review of these studies resulted that the ozone standard needs to be tightened. We are looking at what it would mean for Michigan.

A member asked for an update on implementation of the Part 201 workgroup recommendations. DEQ Deputy Director Jim Sygo said the department is looking at this internally and we hope to have an update sometime in early September.

EAC CHARGE: REVIEW OF LAND AND WATER MANAGEMENT DIVISION PROGRAMS

Director Chester briefly discussed EAC past accomplishments including development of the "DEQ Public Involvement Handbook", recommendations for an Environmental Justice Policy for Michigan, and recommendations of the EAC on the Land Application of Waste Derived Material. Director Chester presented the EAC a new charge to review the DEQ LWMD programs. Director Chester provided an overview of the LWMD. This division provides the department with some of its most significant and important functions, administering many of the programs affecting inland lakes, most notably wetlands, sand dunes, marinas, dam safety programs. It processes approximately 6,000-7,000 permits per year. Director Chester asked the EAC to provide him with concrete recommendations on what the department might do from a policy, programmatic, educational, and communication standpoint to improve LWMD programs.

CHALLENGES FOR SENSITIVE RESOURCE PROTECTION PROGRAMS

DEQ Deputy Director Skip Pruss has been charged with overseeing the LWMD for the past four and a half years. It is one of the most resource stretched programs in the department. Many of the resources that LWMD manage take place on private property which can result in increased tensions for involved parties. We look forward to sharing the LWMD presentation today and the critical importance this division has in the department. Demographics in this state are changing and development of Michigan's 11,000 inland lakes is creating more opportunity for conflict. The property rights movement has sensitized citizens to the nature of their property rights. LWMD receives approximately 3,200 complaints of illegal activities in protected resources each year. The work in LWMD is considered some of the most satisfying work for professionals in this agency; however, the division experiences a huge turnover that is largely related to the difficulties faced by the LWMD and the pressures it creates for staff. We are looking to the EAC to assist the department with mission strategies, as you begin to understand and appreciate the core issues of LWMD.

A member requested that as we proceed through the presentations that the department show where the division pinch points are, and what the most important things that LWMD deals with are. Another member noted that EAC members may not know the right questions to ask.

A member wondered about the effect that court decisions have had on the regulatory authority of this program. Deputy Director Skip Pruss gave an update on a recent critical dune case that was litigated and resulted in a decision that will cost the department \$2.1 million. The department has established a stakeholder group involving the Critical Dune Program that is due to meet in late August.

Frank Ruswick distributed and briefly went over a handout titled DEQ's Request to the EAC, which included the proposed meeting schedule items for discussion that will begin with this meeting and hopefully conclude at our meeting on February 21, 2008 (see Attachment 1). Frank hoped there would be detailed discussions on what drives these programs, the program limitations, and where there may be opportunities. The EAC will continue to operate on a consensus basis. Frank invited members to discuss anything related to LWMD programs and issues that we don't discuss fully at that time we will come back to later. Our first four meetings will be educational meetings related to LWMD. Liz Browne and Kim Fish will fully participate in these discussions and provide feedback in an ongoing fashion.

A member suggested inviting prior department employees to join workgroups to advise the department, as they can see the programs from a distance and provide a different perspective.

Another member asked if we could get some data from other states on their land and water programs, and their success stories. Other members talked about interesting resource material that is available.

Another member requested that the department update the EAC once they respond to the recommendations. The member suggested that as we go through these presentations that department representatives may think of similar lessons that have been learned from other divisions. Another member requested copies of critical LWMD policies.

OVERVIEW OF LWMD PROGRAMS PRESENTATION

Liz Browne and Kim Fish gave a PowerPoint presentation and provided the following handouts: PowerPoint presentation slides, LWMD Program Descriptions, LWMD Organization Chart, Michigan Laws administered by DEQ LWMD, and Michigan Office of the Auditor General Report Summary released May 2007.

A member questioned the LWMD's staffing and percentage of workload for each of the programs. Kim Fish talked about the floodplain engineering program that currently has one engineer per district except for an engineer that is shared between the Jackson and Lansing Districts. The wetland program was also discussed. Several members talked about the FEMA website which includes maps that detail the states wetland areas. Another member advised going to their local unit of government or use your own surveyor for more detailed surveys. Kim Fish alerted members that wetland maps are being updated. DEQ has federal grant money and have some staff working on this project full-time. Kim Fish said that LWMD receives many calls regarding nuisance type issues, such as number of boats on a lake or jet ski operation concerns. There is a large industry dedicated to building seawalls so one of the most common DEQ applications is for a seawall, and pond applications are also very common. DEQ attempts to educate the public in this area, particularly the negative impact of filling in a lake and natural shoreline protection.

A member inquired if there was any overlap of programs with the Department of Agriculture. Kim Fish indicated there are some overlap areas, particularly in regards to drainage. Another member asked about overlapping programs between the DEQ's Water Bureau and LWMD, and wondered how the two divisions interact with each other. The two divisions do coordinate and work together on any permit requirements. Kim also added that most of the controversies regarding water faced by the LWMD relate to property rights issues, filling in of wetlands, and relocation of streams. The LWMD is chronically understaffed and does triage resulting in response to less than 50% of the approximately 3,200 complaints per year.

Director Chester discussed the DEQ's contested case workload and the fact that most are LWMD cases. There are currently 1,000 decisions that have been appealed to the contested case process. Two hundred of these appeals are currently underway. This results in a huge resource drain.

There was a discussion about management of the great lakes bottomlands, which are lands below the ordinary high water mark of the Great Lakes. There has been controversy regarding these bottomlands. Deputy Director Skip Pruss added that most of the DEQ programs call for a tremendous amount of professional judgment. He discussed an example of a case regarding public rights to walk on great lake beaches. The State Supreme Court decided that public has access along the shoreline up to the ordinary high water mark. We haven't heard of conflicts created by this right of access which, speaks to the civility of our citizens.

A member made a suggestion that within the application there should be bold statements regarding the application requirements should be apparent. Kim Fish agreed that at this time the application requirements are buried in the fine print.

A member commented now that they have heard the complexity of the LWMD perhaps if additional education was given to the public fewer complaints would be received.

Frank Ruswick hoped that this material will help the EAC to go forward with this project, and reminded members to keep an open mind. The next meeting will entail more in-depth discussions of several LWMD programs.

Summarized by Linda Albro Sparks.