

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, January 20, 2005 – 1:00 – 4:00 p.m.

Members in attendance: Jack Bails, Chris Bates, William Beckman, Janis Bobrin, Barry Cargill, Steve Chester, Wil Cwikiel, Chuck Hersey, Bill Murphy for Don Inman, Sara Lile, Steve Luzkow, Paul Murray, Pamela Pugh, Lana Pollack, Neil McKay for Debra Rowe, Scott Piggott for Wayne Wood.

DEQ Staff in attendance: Linda Albro Sparks, Eric Alexander, George Bruchmann, Susan Erickson, Dave Hamilton, Dina Klemans, Frank Ruswick, JoAnn Merrick, Amy Peterson, Ralph Reznick, Jim Sygo, Bob Sweet, Peter Vincent.

OPENING

Frank opened the meeting referencing last month's meeting during which two workgroups looked at ways to advance a systems approach in the department generally and watershed management specifically. Based on a review of the product of those workgroup, today's meeting will focus on watershed management issues.

Director Chester announced that Dow and DEQ had reached an agreement on a Framework to address dioxin contamination in Midland, the Tittabawassee River, Saginaw River, and Saginaw Bay. A press release announcing this agreement was distributed. Director Chester outlined the major purposes of the Framework as ensuring that certain actions are taken to address dioxin exposure at the highest priority sites, creating a defined process for addressing dioxin contamination in other areas, and providing a structure for Dow to resolve governmental claims arising from historical dioxin releases. Director Chester emphasized the role of various stakeholders, including governmental agencies, Native America Tribes, community groups, public interest organizations and others, in the steps that will follow. He emphasized that the Framework builds upon and does not replace the hazardous waste operating license for the Dow facility in Midland. The USEPA has expressed its support of the Framework in a letter to the DEQ.

Director Chester described that there are approximately 130 properties in Midland and 100 properties in the Tittabawassee River floodplain that will be addressed as Priority 1 properties under the Framework. Dow will work with the owners of these properties to develop appropriate means of limiting exposure to dioxin contamination. These include providing cover for exposure soil and house cleaning. Director Chester also indicated that the DEQ had identified several day care centers that will receive similar protective measures. Activities on these Priority 1 properties will take place by December 31, 2005. In addition, Dow will share educational material about how to limit exposure to dioxin contamination with a wider audience. Dow will also provide funding to limit exposure potential in a number of parks along Tittabawassee River. Dow will provide house cleaning services, if homes are flooded in the future.

The DEQ has committed to reviewing the results of studies being conducted by Dow to evaluate the bioavailability of dioxin in soils. The results of these studies will be reviewed by an independent panel of experts reporting to the DEQ.

Dow will be studying the need for removal of contaminated sediments in the Tittabawassee River and portions of the Saginaw River. The Framework contemplates a subsequent agreement to address ecological damages caused by dioxin, including damages to the Saginaw River and Saginaw Bay. This agreement would need to include other state and federal agencies, and tribal interests. A trust fund could be created under such an agreement to pay for various ecological improvements.

Director Chester indicated that he is aware of criticisms that the Framework does not set explicit deadlines. However, the Framework was not designed as a final settlement, since the community needs to be involved before such discussions can occur, and there is still a lot of information that needs to be gathered before specific dates for some actions can be set.

A member suggested that at some point the DEQ should review the entire dioxin issue, and determine what lessons can be learned from it. This does not suggest that the DEQ necessarily made mistakes; only that this is such an important and far reaching issue that there are probably insights to offer to a variety of people.

A member expressed displeasure that it has taken so long, and such an investment was necessary for Dow to commit to the activities described in the Framework. In the member's opinion, these are actions that Dow should have taken both under its hazardous waste operating license and as a good neighbor.

A member indicated that the agricultural community in the area would have a lot of questions about how the Framework might affect their farming practices. Director Chester agreed and indicated that the DEQ needs to follow up the agreement with a tremendous amount of outreach to affected interests.

A member suggested that the DEQ should have a website for the Dow project. Director Chester indicated that the DEQ has a specific web page devoted to the Midland area dioxin issue.

A member suggested that the DEQ should develop a question and answer document to respond to questions on this issue as they arise. The Q & A document could be maintained on the DEQ website. Director Chester indicated that such a document has been used in the past, but the DEQ has to be very careful that responses are informative, fair, and accurate. This can create a substantial burden in preparing and internally reviewing responses, if questions are numerous.

Waste and Hazardous Materials Division Chief George Bruchmann described the role of the Community Advisory Panel in providing information to, and gathering information from the community.

A member indicated that it is unfortunate that the DEQ is criticized for doing its job in protecting public health and the environment. The EAC should think about ways to support the DEQ so it isn't perceived as wearing a black hat in such situations. A member commented that Dow is perceived as having a black hat on this situation as well. A lot has to do with how one communicates with the public to convey the message of why you are doing certain things. Frank commented that the DEQ is comprised mainly of scientists, engineers, and similar professionals who are not normally trained in how to convey a message in support of the DEQ's activities. This is something the DEQ needs to get better at.

A member commented on the costs that must have been incurred by the DEQ to develop this agreement. Especially during this time of limited budget resources, it is unfortunate that the

DEQ must devote extensive resources to having someone meet their legal responsibilities as defined in a hazardous waste license. Director Chester agreed that an extensive amount of staff resources are devoted to the Midland dioxin issue, and thus does take away from other activities the staff could be doing.

A member reminded the DEQ to work with hunting and fishing organizations as it moves forward to implement the Framework. Director Chester confirmed that such groups would be involved.

DEQ NON-POINT SOURCE PRESENTATION

Frank explained that at the December EAC meeting, the Watershed Management Work Group had provided a series of suggestions about how to improve watershed management activities in the DEQ. However, because of time constraints, this was done without benefit of a full briefing from the DEQ on the various programs impacting watershed management. Based on the list developed, it appears that the EAC might benefit from a fuller understanding of what the DEQ is doing in this area. Since the non-point source program is a focal point for much of the watershed management activities in the DEQ, Frank asked staff involved in that program to provide a briefing for EAC members. Frank introduced Dina Klemans, Chief of the Surface Water Quality Assessment Section in the Water Bureau to begin the presentation.

Dina explained that the non point source program is one example of watershed management being done by the DEQ. It provides financial and technical assistance for activities to improve water quality. Other watershed related programs include stormwater, permitting of discharges to surface water under the NPDES program, and Great Lakes programs including Remedial Action Plans and Lakewide Management Plans. In addition, the Land and Water Management Division provide funding and technical support for protecting wetlands under the coastal zone management program. She encouraged EAC members to keep these other programs in mind as the non-point program was discussed. Dina introduced Ralph Reznick, from the Non-Point Source Unit within her Section who made the presentation. See Attachment 1.

After the presentation, a member indicated that it provided excellent information on the non-point program, and requested a copy that they could in turn present. The member went on to indicate support for the work done by the non-point program, but also described a situation where competing mandates of reducing phosphorous and increasing wildlife habitat have created significant difficulties, and increased the cost of a stormwater control project.

Another member described a project that turned an industrial site into 37 acres of wildflowers and included 4 acres of ponds. This project was described as an excellent example of what can be done through the non-point program.

A member described an example of how the DEQ needs better coordination of its programs. The example involved an attempt to compost sawdust with chicken waste. The problem occurred when arsenic was found in the material, and expensive testing was required to find the source of the arsenic, which turned out to come from the chicken feed. The member suggested that these types of projects can result in many benefits, if the DEQ programs coordinate their purposes.

A member asked whether private parties are eligible to receive non-point source grant funds. Staff responded that local governmental units and not-for-profit organizations are eligible.

A member suggested that the term “non-point” presents a problem for the program. It is not intuitive and hard to explain. Wisconsin uses the term “polluted runoff” and maybe Michigan should consider something similar. In addition, there is a false distinction between non-point and stormwater management. Both programs have similar goals and should be administered as such.

RESPONSE TO WATERSHED WORK GROUP

Frank indicated that the DEQ has developed an initial response to the Watershed Work Group’s suggestions as developed at the December meeting. We will provide an overview of the response this month, and then have a fuller discussion next month after EAC members have had a chance to review the response. Frank introduced Susan Erickson, Chief of the Environmental Stewardship Grants and Loans Unit in the Environmental Science and Services to lead the discussion.

Susan began by indicating that Dina Klemans and Bill Creal of the Water Bureau and Dave Hamilton of the Land and Water Management Division had assisted in developing the DEQ response. She then described that the DEQ believes that an initial step to address the Work Group’s ideas is for the DEQ to form two teams: One team would be inter-divisional and look at the various programs in the DEQ that impact watershed management for purposes of improving consistency and coordination. A second team would be interdepartmental and include representatives from other agencies and organizations that are involved in watershed management. This team would look at ways of improving coordination among all these parties. Susan then summarized a handout that categorized the various ideas presented by the Watershed Management Work Group into issues to be addressed by these two teams.

A member questioned how the DEQ would need to change in order to take a more systems approach in the case of a specific action. The member cited an example where conflicts between requirements in different programs prevented the consideration of an innovative alternative for meeting water quality objectives. The member then asked when the DEQ required the development of a watershed plan. Susan indicated that a watershed plan was required to be eligible for funding under either the Clean Michigan Initiative or Section 319 of the Clean Water Act.

A member suggested that local agencies and organizations may be encouraged to undertake watershed based planning, if the DEQ provided additional benefits for taking that approach.

Susan agreed and described a personal experience in which she was working with the DEQ as a private citizen in support of a local road project involving a county drain. It was difficult to obtain the necessary DEQ approvals because the local unit of government did not have a watershed plan describing how various parts of the project fit together. As a result, staff in different parts of the DEQ only considered the project from their program’s limited perspective. In response to a question, Susan indicated that she thought the project would have gone much smoother, if there was an overall plan that various staff could consider as a whole.

A member indicated that a major impediment to taking a watershed approach is that programs evolved separately. It is not that people don’t want to do the right thing; it is that their perspectives are restricted by the limited focus of the programs they administer.

A member indicated that it is very positive that DEQ staff is considering how to change this program limited perspective. We need to identify and change the impediments to a watershed

perspective, even though that means that some things within the DEQ and how it does its work will be different.

A member described a situation where the DEQ was able to act quickly on a proposal to remove a dam because the action was described and supported by a watershed management plan. Another member indicated that development of the plan can bring communities together in furtherance of common goals. This can encourage beneficial projects at the local level.

Dave Hamilton asked about some of the problems being cited by EAC members and then asked this question: Was the problem just that the issues did not get elevated to the proper places in the DEQ for resolution? A member responded that the program conflicts can be grounded in federal law, and may not be resolvable even though staff is diligent in trying to find a way. A member cited limitations on how to solve Combined Sewer Overflow and Sanitary Sewer Overflow problems as an example.

In response to a question, Susan indicated that the votes indicated on her handout included votes by both EAC and staff participants in the Work Group. She cautioned, however, that these votes were taken after several EAC members had left the Work Group meeting. In addition, there was not a lot of time for analysis and deliberation on the various items before the vote was taken. Thus, the votes should only be considered a rough indication of the issues that most interest Work Group members.

A member suggested that to be really helpful, the discussion needed to include a clearer indication of why there is a perception of a problem. Thus, there should be a description of why a given item is on the list of potential actions. This would be a much more of a systems approach to addressing the issue.

Dina agreed that this step had been missing from the Work Group's discussion. She suggested that perhaps the next step is to assess what the current condition is that led to Work Group's ideas. A member supported the concept that more information is needed before good recommendations can be made. This information would include a description of the issue, the proposed outcome, a list of actions steps and timeline.

Frank indicated that we have to organize the work consistent with the time available. A complete review of watershed activities within the DEQ could take a substantial amount of time. However, we are trying to bring a portion of that total effort to the EAC for consideration so that members whose terms will be expiring after the February meeting can have a role in starting the process. There is not sufficient time before the February meeting to do all the analysis some members are requesting. What we are proposing is to set forth a course of action as a first step. The DEQ would then come back to the EAC at a later date with the results of that first step, including the type of information members are now seeking. The DEQ will bring a more specific proposal to the EAC at the February meeting.

CLOSING BUSINESS

A member indicated that she will not be able to attend the February meeting when her term expires. The member thanked Director Chester, Linda, and Frank for their efforts. Director Chester also expressed his appreciation to the member for her participation.

Notes by Linda Albro Sparks. Summarized by Frank Ruswick.