

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, December 14, 2006 1:00 – 4:00 p.m.

Members in attendance: Jon Allan, Mark Bertler, Steve Chester, Jim Frey, Kurt Giberson, Chuck Hersey, Mike Johnston, Ellen Kohler, Lisa Locke, Vincent Nathan, Rick Plewa, Del Rector, Diane Rekowski, David Rinard, Donna Stine, Bill Stough, Andy Such, Tom Woiwode, Paul Zuger.

Guests in attendance: Scott Piggott

Department of Agriculture staff in attendance: Jim Johnson, Gordon Wenk.

DEQ Staff in attendance: Linda Albro Sparks, Frank Ruswick, Steve Chester, Andy Hogarth, Jim Johnson, Lynelle Marolf, Duane Roskoskey, Steve Sliver.

OPENING

Frank welcomed everyone to the meeting and took the opportunity to wish everyone a Merry Christmas and Happy New Year. The central topic of discussion today will be land application.

CURRENT ISSUES

Director Chester described the difficult budget situation that the DEQ will face in the Fiscal Year 2008 fee increases that the DEQ plans to pursue. The past four years have proven to be difficult from a budgetary perspective, but FY 08 looks to present the most challenges yet. The DEQ will need to pursue seven fees just to maintain the level of service we currently provide. This does not include program expansion or increased compliance assistance. The fees that will need to be increased include the air fee, consolidated land and water management division fee, groundwater fee, waste reduction fee, hazardous user fee, solid waste fee, and the onsite sewage fee. In total, the DEQ needs \$22 million in fees. Director Chester indicated that some EAC members may be contacted to participate in stakeholder workgroups helping to develop individual fee programs. Beyond the individual fees, we need a public discourse about how to fund environmental and conservation programs. The DEQ represents less than 1% of the budget of the entire state budget, yet we see a decrease in our general fund revenue because of the overall state budget picture. Continuing to replace general funds with fee revenue will presents increasing problems both for the DEQ and those who are asked to pay the fees. We need to find another broad-based funding source for these programs. As a first step in that process, the Natural Resources Commission is convening a "Conservation Summit" of a wide variety of parties interested in funding conservation and environmental programs. The Summit is scheduled for February 7, 2007. Some EAC members will be asked to be involved, and Director Chester will keep the entire EAC informed as this effort proceeds.

A member indicated that the state's budget problems have resulted in cuts to aid for local units of government. As a result, local governments have also had to increase fees. This has caused a problem much as it has on the state level.

The EAC discussed generally the direct and indirect costs associated with fee programs as a source of revenue and how the economic disincentive of a fee can encourage certain types of actions.

A member asked about the DEQ's opposition to proposed legislation, known as the "penny plan" that would assess a one cent transaction fee on most commercial transactions in Michigan over \$2.00. The revenue would be used to pay local programs to increase recycling. Frank indicated that the DEQ has been encouraging efforts to fund increased recycling for some time. However, the bill included provisions that would have prevented any expansion of the bottle bill, contained several technical problems, and did not include sufficient funds for the DEQ to administer the program. The DEQ had not been consulted in development of the bill and was not provided an opportunity to help address these problems prior to the bill coming up in committee in the waning days of the lame duck legislative session. Given the significant funding issues that the DEQ faces, we did not support rushing the legislation without a more considered approach to its implications.

A member expressed the contrary opinion that the bill presented a rare opportunity to fund the expansion of recycling and it is unfortunate that this opportunity was lost. While there was support among some members of the legislature for funding recycling through a surcharge on solid waste disposal, there is a lot of opposition to that approach from others. Therefore, the member thought it unlikely that the surcharge was a viable source of funding. The penny plan is already being considered as a funding source by interest groups who want to expand other governmental services besides recycling.

As an example of other funding needs facing the state, Director Chester indicated that there will be no funding for the cleanup program at the end of FY 08. We estimate about \$100 million per year is needed for this program. Director Chester asked Andy Hogarth, Chief of the Remediation and Redevelopment Division to describe the current effort to improve the cleanup program.

Andy indicated that the DEQ has established four multi-stakeholder workgroups to look at different aspects of the cleanup program: liability, brownfield redevelopment, program complexity, and program administration. In total, over 50 individuals representing groups affected by the cleanup program are involved. Each workgroup is to meet no less than five times before April and develop recommendations that can be considered by the full group.

A member asked about legislation that would extend the date for coming into compliance with new requirements for ocean going vessels to prevent the introduction of aquatic invasive species to the Great Lakes. Director Chester indicated that the DEQ has sought information from advancing the legislation, but has not seen anything that would justify a delay in controlling the introduction of invasive species. The DEQ does not support the legislation.

DISCUSSION – DEVELOPMENT OF LAND APPLICATION RECOMMENDATIONS

Frank opened the continuing discussion of the solid waste land application program, but encouraged the EAC to think of the program as consisting of three components: the policy principles underlying the program, the administrative structure of the program, and the criteria upon which decisions are made. We have discussed the first two items at several previous

meetings. Today's discussion will focus on decision-making criteria. Frank indicated that the discussion of decision-making criteria is complex because it involves tools used to assess and manage risk. In order to aid the discussion, we will ask the EAC to focus on two very narrow questions: 1) Should the criteria used in land application decisions be the same, more restrictive, or less restrictive than the criteria used in the cleanup program? 2) If less or more restrictive, what is the basis to establish the degree of difference? The cleanup criteria are being used as a point of reference because we can provide specific information on risks are assessed and managed in that program.

Frank provided and discussed two documents to help the EAC understand how the decision-making criteria fit into the overall structure of the program. See Attachments 1 (Draft Land Application Principles) and 2 (Overview of Michigan Solid Waste Land Application Program). He then introduced Lynelle Marolf, Assistant Chief of the Remediation and Redevelopment Division. Lynelle gave a presentation on risk assessment and management, and how the criteria in the Part 201 cleanup program are developed. See Attachment 3.

Frank then facilitated a discussion among EAC members of the reasons for or against land application criteria that would be the same, less restrictive or more restrictive than cleanup criteria. The following points were raised:

Same

- Ease of administration.
- Creates a baseline approach with criteria that could automatically be reconsidered and updated through the cleanup program.
- Could use cleanup criteria as the presumptive land application criteria, but recognize the potential for exceptions. Such exceptions could include situations in which cleanup program exposure assumptions do not apply and when a person can demonstrate that the constituent degrades in the environment.
- Site-specific factors could be considered, but would affect how the necessary administrative structure of the land application program.
- Provides for consistency.
- Avoids creating the perception that the state accepts different levels of risk.
- May result in the same criteria being applied even though circumstances are different between the two programs.

Less restrictive

- Would create legal complications.
- Could be the result of demonstrating an increased benefit of a waste being land applied.
- Difficult to determine alternative system for assessing and managing risk.

More restrictive

- Could be used to improve soil health.
- Should be more conservative in a preventative program, use background concentrations as the baseline.
- Difficult to determine alternative system for assessing and managing risk.

The EAC's discussion also raised the following general points:

- The DEQ should administer the land application program in a way that fosters sustainability. Soil should be considered to be a resource and the DEQ should structure its program that results in improved soil health over time. Unfortunately, the DEQ does not currently have the capability to determine the extent to which a particular land application will improve soil health.
- It would be very difficult for the DEQ to evaluate a particular land application in terms of the amount of benefit it provides.
- The program also has to recognize differences between who obtains a benefit and who incurs the risk created by a particular land application.

Near the end of the discussion, a member proposed as a possible EAC recommendation that the DEQ use the cleanup criteria as the presumptive criteria in the land application program, but consider the factors that were raised during the discussion in determining how those criteria are applied in specific circumstances. Other members generally agreed with this approach with two provisos:

- 1) The recommendation should not be considered an endorsement of the Part 201 cleanup criteria per se; only the recognition of the need to foster consistency in regulatory approaches.
- 2) The DEQ should periodically reevaluate the appropriateness of using the cleanup criteria as the foundation for decision-making in the land application program.

Frank indicated that the EAC's discussion had been very helpful. The DEQ will attempt to capture the essence of the discussion in the form of a proposed statement on land application criteria. The DEQ will also delineate the remaining policy issues in the draft statement of principles derived from the EAC's other discussions on land application. Both documents will be provided for the EAC to consider at its January meeting.

Frank thanked everyone and wished members a safe trip home and happy holiday season.

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