

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Thursday, August 17, 2006 1:00 – 4:00 p.m.**

Members in attendance: Jon Allan, Andy Buchsbaum, Steve Chester, J.D. Lindeberg for Jim Frey, Kurt Giberson, Chuck Hersey, Glen Logan for Andy Hobbs, Mike Johnston, Ellen Kohler, Philip Korson, Lisa Locke, Vincent Nathan, Rick Plewa, Del Rector, Diane Rekowski, David Rinard, Andy Such, Tom Woiwode, Paul Zugger.

Guests in attendance: Scott Piggott (Farm Bureau).

DEQ Staff in attendance: Linda Albro Sparks, George Bruchmann, Andy Hogarth, Lynelle Marolf, Frank Ruswick, Phil Schrantz, Liane Shekter-Smith, Jim Sygo, Duane Roskoskey.

### **OPENING**

Frank welcomed members and turned the meeting over to Director Chester for the discussion of current issues.

### **CURRENT ISSUES**

Director Chester described the August 9<sup>th</sup> decision by Judge Collette regarding the Dune Harbor case. Dune Harbor is a sand mining operation that wants to develop the excavations that have become lakes with condominiums. However, in order to allow more development, they needed to reduce water levels and applied for a permit to construct a pipeline through the adjacent critical sand dune. Dune Harbor brought a contested case against the DEQ staff permit denial and the Administrative Law Judge recommended issuance of the permit. Director Chester disagreed with this recommendation and denied the permit. In the subsequent judicial appeal, Judge Collette affirmed Director Chester's action in all particulars. Most importantly, the decision supports the Department's interpretation of what constitutes a "structure" regulated by the Act and that a detrimental effect on the particular dune (as distinguished from the entire critical dune complex) should be considered. The development can still occur, although at a smaller scale, despite the permit denial. It is also possible for the Dune Harbor to find an alternative way to discharge the water from the lakes, such as through the waste water treatment plant. Director Chester wasn't sure if Dune Harbor will appeal Judge Collette's decision

Deputy Director Jim Sygo described an agreement that had just been reached with BASF to clean up the former Wyandotte Disposal facility in Wayne County. The site has been releasing significant levels of mercury to the Detroit River. BASF has agreed to construct a containment system sealing the contamination from the River and to dredge contaminated sediments from the River. The agreement was widely supported in a public meeting in Riverview on August 3. The project, which will take 2 – 3 years, will likely cost between \$20 and \$30 million.

Deputy Director Sygo described the just-released preliminary results of a University of Michigan study, spearheaded by Dr. David Garabrant, of the various factors affecting levels of dioxin (and related contaminants) in the blood of Midland/Tittabawassee River area residents. The study results can be found at [uofmdioxin.org](http://uofmdioxin.org). The study found that, on average, the blood dioxin

levels of area residents was 28% higher than a control group in Jackson County. The study described the relative affect of factors such as age, diet, use of the floodplain, and living on contaminated soils on blood dioxin levels. However, it is important to recognize that the study was structured to address the potential adverse health affects of exposure to dioxin. Nor did the study look at the impacts of dioxin exposure to children. The DEQ is reviewing the study's result to determine its implications for the effort to address dioxin contamination in the Midland/Tittabawassee River area.

Director Chester indicated that the DEQ had filed an appeal of the decision, in the Kennicott Mining case that administrative completeness determinations under Part 632 of NREPA are subject to contested case rights. The Department is concerned that, if upheld, the decision could significantly slow permit processing in the nonferrous metallic mineral mining program, as well as other DEQ permitting programs. A member indicated a similar concern, while a different member expressed the opinion that only Part 632 was affected.

A member asked for an update on the 21<sup>st</sup> Century Energy Plan. Director Chester indicated that the DEQ had provided a primary impetus for this effort through the EDGE2 Program. Public Serviced Commissioner Peter Lark has been charged with developing the Plan by the end of 2006. DEQ staff is playing a crucial role in the four workgroups undertaking that effort. In addition, the DEQ is continuing support of clean technology through EDGE2.

Frank distributed the EAC contact information list to members who were not at the July meeting.

## **DEVELOPMENT OF LAND APPLICATION RECOMMENDATIONS**

In response to a request at the July EAC meeting, Duane Roskoskey of the Waste and Hazardous Materials Division distributed and discussed a handout entitled "Wisconsin's Beneficial Use Program NR538" (See attachment 1). The Wisconsin program regulates land application, other than for nutrient purposes, through a system that provides a menu of protections for individual chemical constituents and specific uses. The level of risk resulting from any particular application of these variables is not clear. Frank suggested EAC members review this material and let us know if there are any further questions.

Frank indicated that staff had developed a series of different land application scenarios (See Attachment 2). He will lead a discussion focused on specific questions about these scenarios with the purpose of trying to reach some level of agreement on principles underlying an approach towards land application of waste-derived materials. In order to have such a discussion we will need to limit variables by describing assumptions involved in each scenario. Thus, the scenarios will tend to over simplify what happens in the real world. Later discussions will determine how real world complications may alter the principles. Members should therefore consider any agreements reached at this stage as very preliminary and subject to further discussion.

Based on these scenarios, EAC members discussed:

- The need to protect against nuisance conditions and over-application of beneficial materials.

- The effect of background concentrations of constituents and its relationship to risk based concentrations.
- The potential of the acceptable level of risk to vary with the benefit derived from land application, and difficulties associated with such an approach.
- The nature of benefits associated with land application that should be considered.
- The use of realistic exposure assumptions, how exposure assumptions can vary with circumstances, and restrictions on application to control exposure.
- The relationship between waste-derived materials and commercially available products.

### **CLOSING BUSINESS**

Frank indicated that he would attempt to encapsulate the EAC's discussion into, where it appears the EAC may be nearing agreement, a set of draft principles that could begin to form the basis of the EAC's recommendations and, where questions are still unsettled, a list of "parking lot" issues (See Attachment 3). He indicated that the next meeting will involve discussions on:

- The use of management controls in the construction context
- Differences, if any, between restrictions to prevent aesthetic impacts from health-based impacts.
- The relationship between monitoring and use of management controls and risk assumptions.
- Who bears the burden when future land uses are restricted?
- On-site and off-site management of materials presenting low risk levels.

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