

Wetland Advisory Council
U of M Biological Station, Pellston
Friday, August 27, 2010

Meeting Minutes

Council Members Present: Joseph Rivet, Susan Harley, Mindy Koch, Gary Dawson, Lee Schwartz, John Niemela, Todd Wyett, Grenetta Thomassey, Dan Coffey, John Konik, Don Uzarski, Steve Shine, and Sue Elston

Council Members Absent: Jeff Auch, Randy Gross, Tom Hickson, Jeff King, Erin McDonough, and Chris Reidy

Others Present: Scott Piggott and Kim Fish

Council discussed the Meeting Minutes from the July 12 meeting. A member requested a correction on page three, second sentence the word “year” should be “months.” With that correction the council voted and approved the minutes.

The Chair discussed the first council report. Because there will be many new legislators, the report should include a one-page introduction, listing of members, explanation of charges to the council, subcommittee reports with recommendations, and issues that need further review. The report should be short, approximately ten pages.

Members discussed strategy and ideas for communicating with legislators.

EPA Subcommittee

The subcommittee submitted an updated report to the council. However, there were some errors in the report.

The first section of the report lists the corrective actions requested by EPA that the subcommittee members believe are complete.

The second section of the report lists the corrective actions requested by EPA that the subcommittee is making recommendations on. The third item from the bottom of page two “Promulgate rules under Part 303 regarding proper use of feasible and prudent alternatives....” will be moved to the last list. It is not a recommendation but one of the points we are still considering.

The final section is what the subcommittee is continuing to work on and the bottom item on page three “Promulgate rules under Parts 303 and 301 that require staff to consider impacts to threatened or endangered species...” will be moved to the second list as it is a recommendation. Under this recommendation the subcommittee recommends that the DNRE provide the previous guidance on feasible and prudent alternatives and pertinent federal requirements. Council members and others may provide comments regarding desirable changes to the rescinded guidance to the DNRE and subcommittee.

The DNRE will work with the council to revise the guidance to meet the October 15 deadline set by PA 120.

The subcommittee chair asked council members to submit comments on the feasible and prudent alternative guidance.

Council members discussed each subcommittee recommendation.

Top of page 2 “Eliminate exemptions for tailing basins associated with iron and copper mining.....” Need to scratch off or cross out the (j) after Section 324.30305(2).

Last item on page 2, “Develop a method to screen minor and “walk-in” permits for Threatened and Endangered species impacts.” A council member stated that the term DNRE is used but it never references state law or threatened and endangered species, which is not identical to the federal law. There needs to be a reference that it still has to comply with state regulations.

The subcommittee chair will e-mail a corrected copy of the report to the council.

The chair asked if he could assure the Legislature that the due dates in this report could be met. The DNRE will send a confirmation letter to EPA with these revised dates and commit to completing each item.

The council discussed the drain exemption and the EPA program review findings. The chair stated that someone will need to draft proposed statutory language and the Michigan Association of County Drain Commissioners will review and determine their position on the legislation. A council member asked if the Attorney General issued an opinion regarding drain maintenance required in the EPA program review. DNRE staff was not aware of an opinion being issued.

A member read to the council the federal definition of drain maintenance:

“Maintenance means a physical preservation of the original as-built configurations of the ditch and impervious structures to restore the original function and the approximate capacity of the ditch. In many cases accurate historical records are not available to determine the exact as-built specifications of the original ditch. In these cases districts should work closely with their project proponent to establish an appropriate maintenance stats to restore the ditches original function and approximate capacity while meeting the spirit of the exemption and ensuring adequate protection of aquatic resources. Districts should allow maintenance of ditches to be performed to the level of current engineering standards where more graduated slide slopes result in greater stability so long as those modifications of the ditch will not result in the drainage, degradation, or destruction of additional natural wetlands or other waters of the United States as referenced above. Removal of material and recontouring of the ditch should be in accordance with the historical design and function of that ditch (i.e., the ditch must not be substantially deepened as to drain additional areas).

The last two sentences of this definition are problematic for all parties.

A member handed out documents with his impression of comments received at the west Michigan council public meeting, and written comments that were submitted after the meeting.

One of the handouts contained comments regarding the use of federal guideline verse statute. A member asked if federal guidelines can be referenced in state statute or rule. The EPA representative advised the council that federal guidelines are regulatory, not just guidance. During the discussions, a member called staff from the Legislative Service Bureau and reported to the council that federal regulations can be referenced in state statute and rules.

Permitting Subcommittee

The Wetland Workinggroup was invited to come and talk with the Permitting Subcommittee on Tuesday (last week). Their recommendations were:

1. Improve the application form.
2. Continue to work on developing a general permit and minor projects that mirror the Nationwide 27.
3. Seek internal/external funding to support dedicated staff to review restoration projects.
4. Consider appropriate means and level of program funding and consider giving a waiver of permit fees for restoration enhancement projects.

A subcommittee member distributed additional comments from individuals that expressed the need to revamp the permit application form. Similar comments were heard from consultants at the west Michigan public hearing. In addition, a certification program for restoration permits and certification for delineations were discussed. The DNRE member cautioned that certification programs should have strong clear statutory criteria establishing requirements for certification, and strong criteria and a process for de-certification of individuals to prevent political interference.

Another member stated that the constitution requires establishment of an independent board to oversee a certification/licensing program.

Another member expressed the opinion that we should let the free market do the job of obtaining a certification.

A member expressed comments about the application process and the need to revise the permit form. A council member discussed the USACE's Avatar system which is an electronic person that walks you through filling out Indiana's two-page application. The DNRE currently has E-Z Guides on their Web site to assist the general public to fill out the application.

The council discussed fees for the program. The chair stated that the council is charged with evaluating program funding after the October 2010 report is submitted. A member requested that the DNRE try to provide better data regarding wetland program budget and costs. DNRE implemented coding for staff last October and at the end of

this fiscal year we will be able to provide better data for staff time working on wetlands, time spent on the support of the council, etc.

A member discussed his proposed change to the subcommittee report regarding extension of the Part 13 deadline. The member suggested a 120-day extension that would be at the applicant's discretion, and additional time only by mutual agreement. The subcommittee originally suggested removing the maximum 20% extension and replacing that with up to a year. Council discussed the pros and cons of both proposals.

A member asked for a presentation, after October 1, on the Transportation Unit funding model.

Program Efficiency Subcommittee

The subcommittee chair was not present at the meeting, but had submitted a supplemental report to the council via e-mail prior to the meeting. The supplemental report contained comments on several issues already discussed during this meeting (permit application form, certification, and wetland restoration recommendations).

Recommendation: To eliminate extraneous permit processing, the DNRE should ensure current requirements comply and meet Nationwide 27 permits and are not more restrictive.

A council member could not agree to the sentence as it was written because it was not clear.

The restrictions for Nationwide 27 were read:

Water quality certification CZM consistency for Nationwide 27 MDEQ granted certification based on the following conditions:

1. This Nationwide does not authorize alteration of wetlands that are of ecological types considered rare or imperiled.
2. Stream restoration projects are limited to pre-restoration maximum of 500 linear feet.
3. Excavation of wetlands to provide shallow water habitat for wildlife (i.e., pushouts) is limited to one acre and is not authorized in forested areas.
4. Placement of fill for construction of dikes, berms, and water control structures to reestablish original or natural hydrology is limited to a maximum of two acres.
5. Construction of a dike or berm that is six feet or more in height and impounds an area of five acres or more during a design flood is not authorized.
6. Enhancement of hydrology increasing water levels above original or natural levels is not authorized unless the DEQ considers that the wetland ecosystem to be enhanced is of low quality or degraded.

The state restrictions were added to insure Nationwide 27 complies with Section 401 certification and the Coastal Zone Management Program.

This will require further discussion and will not be cited as a recommendation in the report.

Council chair will draft the report for discussion at the next meeting.

The September 10 and September 24 tentative meetings are canceled.

The next meeting is scheduled for Monday, September 13, from 1:00 p.m. to 3:00 p.m. at the County Road Association of Michigan (CRAM) Office, located at 417 Seymour, Lansing.

Meeting was adjourned at 3:00 p.m.