

Presentation to the DEQ Environmental Advisory Council
Project Framework
May 21, 2009
Sandra S. Batie

Note: This document is a draft, composed without collaboration with others (although some comments have been made on the editing of this draft by some subcommittee members). It is designed with the intent of providing improved focus for the current EAC project on future environmental management needs and governance.

!. **What is the project purpose and goal?** The purpose of this project is to carefully consider the needs of future environmental management based on projected economic, environmental, and social trends. The goal is to be informed about what drivers are/will be/may be acting upon the structure and function of the DEQ, what they will entail, and how they will influence the ability of the DEQ to fulfill its mission: *“to drive improvements in environmental quality for the protection of public health and natural resources to benefit current and future generations”*¹. The provoking of appropriate discourse by the entire EAC to accomplish this purpose is a task undertaken by a small subcommittee of the EAC--Frank Ruswick, Sandra Batie, Jon Allen, Chuck Hersey, and Mindy Koch with the help of Julie Sims. The goal of this subcommittee is to marshal the necessary information, models from others, as well as experts to inform the discussion. There is neither intent nor desire to control the discussion.

There is considerable uncertainty associated with this project. Indeed, the subcommittee meets between every EAC meeting to discuss the next steps of the project and, to be frank, makes adjustments “on the fly”. Subcommittee discussions include many unresolved issues. These issues can be framed as questions such as; what are the **boundaries** of our project? Does it pertain to just issues and resources under the authority of the DEQ? DEQ and DNR? All Michigan environmental and landscape resources? How closely should we consider **constraints** to change? For example, should the very real constraints posed by federal and state law be considered fixed? Or should the discussion include the possibility that some of these federal and state legal constraints may change in the future, become more flexible, or allow for policy experimentation? How short or long a **time frame** should the discussion encompass? Should we only consider the next few years or something much longer?

The subcommittee recognizes that we are on a voyage of exploration, an exploratory process. The subcommittee is of a mind that the DEQ is better off proactively thinking about these drivers of change and contemplating potential responses to them rather than just be reactive to events as they appear. But as one observer has aptly noted: “Prediction is quite difficult, particularly about the future”. As a subcommittee, we are comfortable with such ambiguity and that we

¹ Or, as Frank Ruswick has stated, the mission of DEQ is to encourage wise environmental choices.

are exploratory. We hope that the EAC and the SMT can be comfortable with the uncertainty of an exploratory process as well. We think it is important, and that is why we are devoting so much time to it.

2. Why this purpose? The basic assumption driving this project is that the past will not be prologue with respect to environmental management. As a result, another assumption is that the current trajectory of the DEQ of incremental adjustments is likely not going to be able to react to the pace and size of change given the projected economic, social and environmental trends. Therefore, to be informed on these forces and potential responses to them would seem to be prudent.

3. How does the subcommittee defend this basic assumption? There is a fair amount of evidence that the characteristics of the types of problems, solutions, approaches, under which the current regulatory institutions have evolved, are changing in significant ways. (See attached material entitled non-agricultural environmental policy and agricultural policy).

Incredible progress has been made with the current DEQ regulatory structure in fulfilling its mission. These improvements over the decades include improved air and water quality, reduced generation of hazardous waste, better management of solid waste, and the development of programs to protect sensitive resources and address legacy pollution problems.

However, the new characteristics (see attachments), coupled with declining regulatory resources as well as remaining and largely unaddressed environmental issues (e.g. nonpoint sources, small businesses and households) pose huge challenges for the effective management of Michigan's environmental resources. These unaddressed issues are due to circumstances which are, for the most part, outside the control of the agency. The current state and federal governance structures in which DEQ must operate have not adequately addressed conflicting policy goals, provided adequate DEQ resources, nor do they evidence a political resolve to address these issues. However, even though much of this context is out of the direct control of the agency, it nevertheless frequently is the target of criticisms that it does not appropriately respond to these unaddressed environmental issues. Because of all of these circumstances, there is an assumption of the subcommittee that the current structure of the DEQ, including those employee tendencies and service delivery, which have served well in the past, will be significantly challenged to maintain this record of accomplishment in the future.

4. What are the major drivers that underlie the changing in these characteristics? There are many drivers that appear to be influencing these

changing characteristics and which create the need for changes in environmental resource management. These drivers include: (a) changing Michigan demographics such as aging of the population, declining average incomes, declining employment, and declining hunters and fishers); (b) changing structure of the Michigan economy away from manufacturing; (c) improved scientific understanding of the functions of ecosystems and landscape as well as connections to human health and (d) reduced public funding of the DEQ; (e) a changing appreciation for and understanding of the natural world by the general public, and (f) changing attitudes of the general public and businesses toward environmental management. (Environmentalism, for example, appears to be broadening into sustainability. Authoritative organizations are criticized as lacking collaboration and participatory mechanisms. Pollution control is no longer viewed as adequate; demands for restoration and prevention are taking its place among those advocating more environmental concern. At the same time, a recent Pew study found significant unhappiness with the current environmental regulatory structure as one that discourages innovation, or is viewed as ineffective or inefficient, without vision or too bureaucratic.) It has not escaped the subcommittee's attention that some of these trends are in conflict with or operate in different directions than others. Contradictory trends make prediction difficult; eventual outcomes are highly uncertain. To me, this situation raises the value of being as informed as possible about both the trends and alternative responses to them.

The subcommittee believes that the meaning of these trends for future environmental management needs should be part of the EAC discussion to inform any EAC proposals or recommendations.

5. So what does all this mean for the EAC discussion? If the past is not prologue for the future, then how should the EAC think about the future? Without the past to guide us, we are faced with decision making under uncertainty. For me, this situation suggests the need to explore alternative futures, principles for design of alternative governance models, and an examination of others' experiences with alternative approaches. As a subcommittee, we have just begun to do that work. Jon Allen is going to explore some alternative possible futures next on the agenda. The subcommittee is also seeking assistance in identifying and exploring others experiences with various governance models.

It is important to note that the DEQ is not the only agency nor is Michigan the only place struggling with these concerns of reprogramming. Also there is resource material. For example, one author², Daniel Fiorino, explores what he terms "new environmental regulation". He recognizes that some would like no or little regulation and others would like a strong regulatory and enforcement presence. He asks if there is some middle ground that accomplishes the same

² Fiorino, David. 2006 *The New Environmental Regulation*. Cambridge, Massachusetts: MIT Press. I report on Fiorino's suggestions, not to advocate them but rather to give an illustration of what such principles might look like.

or more environmental protection and restoration, but without being so reliant on strong regulatory presence. In this sense, he suggests principles to guide new environmental regulation (although he spends scant time talking about overcoming obstacles to implement these principles.)

In listing principles, he stresses that designing and implementing a new regulation does not mean that the old one should be done away with. Indeed, research and experience makes it abundantly clear that there is a need to have a system of “core normative standards” that place continuous pressure on industry and businesses for improved environmental performance. He notes that, even voluntary programs are only effective with some backdrop of regulation. But he also does not believe that merely fine tuning the existing programs at the margin will be adequate to meet future environmental management needs. He also strongly argues for transparency and accountability.

Fiorino argues that new environmental regulation approaches should reject the concepts of the old regulation. First, to be rejected is the assumption that the regulated community will act in society’s interests and protect the environment only under the threat of legal sanctions. He notes there is many factors that influence a firm’s behavior, and regulatory pressure is but one. Second, he rejects the assumption that adversarial relationships are inherently superior to collaborative ones and argues there is a need to switch from assigning blame and sanctions to searching for solutions. He argues that a strategy that relies on commands, controls, and deterrence should give way to a strategy based more on incentives, learning, and accountability. He also cautions that there are many differences among firms that need to be accounted for. For example some firms can be trusted and relied more on than others; so, all firms should not be treated equally. Fiorino argues that new regulation should concentrate on defining, measuring, and encouraging improved environmental performance in systematic, consistent, and comparable ways. That is, he advocates a focus on gauging progress relative to a set of core environmental indicators.

Fiorino concludes with six design objectives that follow from his arguments of the conceptual differences between old and new regulation: (1) establish and maintain legally enforceable demanding performance standards, (2) differentiate among regulated firms based on past and expected future performance, (3) incorporate mechanisms and incentives that promote continuous improvement in performance, including market incentives; (4) build a capacity for policy learning, (5) measure performance as the facility, firm, and sector levels, and (6) create mechanisms and relationships that build on trust (p. 199).

6. What are the next steps for the EAC project? The next steps are to be sure we are having, as a full committee, adequate discussion. Then, it is probably time to explore alternative possible futures, governance structures and models.