

Wetland Advisory Council Program Efficiency Subcommittee

Members: Jeff Auch, Don Uzarski, Mindy Koch, Tom Hickson, Chris Reidy, Joseph Rivet, Randy Gross, Liz Browne

Database Management (CIWPIS Update)

Subcommittee discussed need for updating database utilized by MDNRE for managing permits and making program decisions. Database was created during 1970's, obsolete and is increasingly difficult to update. The MDNRE database was identified as a priority need and would require approximately 2 million dollars for necessary upgrades. Subcommittee discussed upgrades improving movement of information and storing of documents (current system limited in this capacity). New database management system would make information more readily available to the public, permit applicants and MDNRE staff, allow projects to be more easily tracked, allow for digital access to permit associated documents (photos, reports, etc.), and provide more useful updates and program reports.

Recommendation to WAC: Support MDNRE grant proposals for database updates.

Recommendation to WAC: Recommend need to update database management system.

Technology Improvements

Subcommittee discussed technology improvements necessary for program efficiency (in addition to database management). Need for field equipment that can readily interact with database and/or remotely enter information. Subcommittee discussed benefit of field staff having access to technology for assisting landowners including potential for a field pad / notebook that might assist in permit process (inspect forms, maps, digital field guides, etc.). Cost benefit analysis of having staff collecting data in the field / transportation / importing data difficult to analyze of analysis as permit staff, in particular, are usually working on permits for several programs (critical dunes, submerged lands, wetlands, etc.) during a single day and even at single site.

**Further discussion necessary – possible MDNRE District pilot program utilizing technology and cost – benefit analysis.*

Training & Outreach

Subcommittee discussed training and outreach to improve efficiency; including working with partners outside WAC to improve public knowledge base. Efforts are beginning through the Michigan Wetland Association although participation largely from natural resource professionals and consultants. Subcommittee discussed efficiency for public largely associated with permit applications; with greater knowledge of program and permitting the public will more readily use Wetland Identification Program, provide appropriate project information and overall avoid enforcement actions which counteract program efficiencies. Subcommittee discussed part of outreach efforts should include making wetlands information on MDNRE website more readily available and user friendly. Subcommittee further discussed avenue to improve outreach including county networks (Hickson), drain commissions (Rivet), conservation districts (Auch), and universities (Uzarski).

Recommendation to WAC: Development of an outreach strategy to public and individual stakeholder groups.

Landowner / Project Assistance

Subcommittee discussed need to improve efficiency of permitting and need to improve completeness and understanding of permit process. Greatest benefit comes from one-on-one field assistance; especially for small project landowners. Wetlands Pilot Program will assist in helping answer some of these questions. Need for public and others involved in wetlands to become knowledgeable of MDRE wetlands program resources (Wetlands Identification Program, Wetlands Map Viewer, Wetlands Mitigation, Wetlands Restoration). Subcommittee agreed that navigation to wetlands site and knowledge of resources limited. Reiterated need for outreach because knowledge of resources would improve permitting and other program efficiencies.

Subcommittee discussed public notice related to open files and permit withdrawals. Withdrawal procedures would not allow applicant to work with MDNRE staff if deadlines were not met for completeness or other permit application corrections. Change would shift individual applicants out of the permit system and may lead to more wetland violations or greater permit processing times. The change relates directly to Part 13 and MDNRE recognizes benefit of having staff work with landowners; however legislation established deadlines which must be met or permits may automatically be approved. Deadlines established to benefit timeliness for of permit review but might also be a detriment for individuals that need greater assistance in permit process. Subcommittee agreed that there is a need to keep individuals within the permit system if general need for assistance. Noted difficulty of getting legislation passed related to changes in Part 13 and timelines.

- *¹ *Recommendations to WAC:* Permit Efficiency subcommittee to further discuss permit withdrawal procedures; with possible solution of using MDNRE administrative rules to create a waiver that is signed and agreeable to both parties (MDNRE and landowner) to extend timeline.
- *² *Recommendation to WAC:* Development of an outreach strategy to public and individual stakeholder groups; including website updates

Permits

Subcommittee discussed minor permits / general permits. Revisions are being completed under corrective actions MDNRE is undertaking as part of legislation and EPA program audit recommendations.

Subcommittee discussed USACE coordination and overlapping areas and permits. As part of revisions MDNRE is looking at duplications and will be forwarding permits to USACE for approval. Subcommittee discussed concern that in joint permit areas MDNRE was infrequently the cause in permit delays. USACE does not have a permit issuance deadlines and process can be delayed. Subcommittee agreed that forwarding permits USACE would alleviate problem of having MDNRE issue permits and having landowner initiate project only to learn at a later date that USACE had project corrections or issues with applications.

- * *Recommendation to WAC:* MDNRE to provide updates related to permit overlaps through either Program Efficiency Subcommittee or Permit Efficiency Subcommittee.

Permit - Mitigation Sequencing

Subcommittee initiated discussion on mitigation sequencing with USACE requiring avoidance, minimization, and mitigation. MDNRE mimics this sequencing. Subcommittee discussed that a permit applicant may file mitigation plan with their application package and would still need to avoid and minimize impacts as part of MDNRE permit review process. A mitigation plan does not automatically allow for applicant to disregard avoidance and minimization requirement. Subcommittee discussed whether mitigation sequencing was part of rules or statute for state and federal regulations. MDNRE will provide Part 404 information on sequencing to the subcommittee.

District Boundaries

Subcommittee discussed possible changes in MDNRE District boundaries affecting field staff and efficiency of servicing applicants and landowners. Change is related to boundaries / responsibilities for regional directors and not directly related to district office locations. Subcommittee discussed current District offices and availability of field staff. More staff for permitting does not necessarily lead to greater efficiency; and not necessarily lead to more consistency within a District.

** No action necessary at this time.*

Permit Consolidation Unit (PCU)

Subcommittee discussed use of permit consolidation unit to increase efficiency. MDNRE value stream mapping recommended moving greater amount of work out to District offices. Shift to using District offices has largely occurred with field staff processing minor / general permits and all dune projects. Major projects (utilities & large scale developments) are still processed through PCU, and PCU office provides clerical support for public notices and assisting with completeness reviews. PCU staff do not have the on-the-ground knowledge so some completeness reviews cause time delays and the reviews may not be necessary from a field staff perspective. Subcommittee concurred that efficiency would improve utilizing field staff that actually issue permits. *(no consolidation)*

*^h *Recommendation to WAC:* Recommend to MDNRE utilize field staff for permit processing with assistance from MDNRE District to determine where these efficiencies might be accomplished.

Compliance & Enforcement

Discussion on compliance and enforcement inquiring about MDNRE status of staff hired as part of an EPA grant. EPA funded a pilot program for compliance & enforcement with staff available throughout the state to support District field staff. Originally 3 staff were hired covering 3 regions throughout state; Upper Peninsula & Northern Lower, Southeast Michigan, and Southwest Michigan. Intent of MDNRE to maintain those positions; however if funding no longer available duties will likely shift to District offices.

Subcommittee discussed cost of enforcement and structure of compliance - need to weigh the staff time required versus the natural resource damage. This is already taking place with "complaints" being prioritized - low, medium, and high (many low priority sites are not investigated due to staff time requirements). The biggest hidden cost for all enforcement, compliance, and complaints is the staff time. In most cases "after the fact permits" are issued and a very small percentage go to court.

Subcommittee discussed staff time required for contested cases. Administrative procedures impact staff time and slows permit processing times. Third party contested cases make up approximately 10% of the contested cases each year. Anyone that has legal standing (aggrieved party) has the right to appeal. Subcommittee discussed necessity of third party appeal process because State represents the public and fact that only 10% are contested by third parties. Subcommittee requested additional information on percentages of contested cases, clarification on Administrative Procedures, and contested case outcomes.

Discussion of utilizing a process by which an applicant / builder sign a document stating that the individual is "responsible to inform MDNRE of any violation of a natural resource Act." Need to use document / statement more as an education piece than an enforcement piece. Subcommittee discussed using DLEG or contractors license process to adopt statement - concern that might be additional layer for builders / developers.

**Further discussion necessary related to contested cases – possible looking at process other State departments deal with complaints and third party appeals.*

A Recommendation to WAC: Explore means to have developers / contractors assist in natural resource violations – educational process.

Wetland Restoration Permitting

Discussion of streamlining the permit process for wetland restoration projects - Nationwide 27 general permit, with NRCS making determination under Nationwide 27 provisions. All wetland projects, restoration or otherwise, are still part of the permit process and follow a basic set of requirements. Subcommittee discussed difference between states and fact that restoration projects are administratively viewed differently. Need to look at MDNRE administrative rules and recommend that restoration projects reflect Nationwide 27 permit process. Change would eliminate some permits from MDNRE field staff workload. NRCS will provide additional information to subcommittee related to Nationwide 27 and Restoration Work Group.

Recommendation to WAC: Ensure requirements for restoration projects comply and meet Nationwide 27 permit process and are not more restrictive. Change to administrative rules as necessary.

Break into Restoration and Enhancement.