

Wetland Advisory Council
Constitution Hall, Lansing
Friday, April 8, 2011

Meeting Minutes

Council Members Present: Joseph Rivet, Dan Wyant, Dan Coffey, Gary Dawson, Sue Elston, Susan Harley, Jeff King (via conference call), John Konik, Erin McDonough, John Niemela, Steve Shine, Grenetta Thomassey (via conference call), and Donald Uzarski

Council Members Absent: Jeff Auch, Mindy Koch, Scott Piggott, Chris Reidy, Lee Schwartz, and Todd Wyett.

Others Present: Melanie Haveman, Russ Mason, Kim Fish, Amy Lounds, and Todd Losee

The Council voted and approved the minutes from the November 8, 2011, meeting with a slight correction.

Joseph Rivet, Wetland Advisory Council (WAC) Chair, began the meeting by explaining that because the WAC is an independent legislative appointed committee, ultimately any and all recommendations or changes in approaches that the WAC takes will have to be administered through the Department of Environmental Quality (DEQ), so it's important that the WAC move forward with a relationship with the new Administration and the DEQ. Joseph then introduced DEQ Director Dan Wyant.

Director Wyant discussed the new structure of Governor Rick Snyder's office, all the changes in the Legislature, including about 60 new legislators. One of the first issues the Legislature dealt with was the budget. As part of the budget discussions, the issue of the Wetlands Program came up. Director Wyant was concerned that the WAC would not finish their work before the Legislature decided what the future of the Wetlands Program would be. One option was to send the program back to the United States Environmental Protection Agency (EPA) because of Michigan's fiscal situation. However, it is the DEQ's proposal that it keep the program, let the WAC do its work, and come back with a recommendation on how we are going to run the program.

Director Wyant and Kim Fish gave a presentation on the Wetlands Program to the Senate Appropriations Subcommittee on April 6, 2011. The presentation went very well.

Director Wyant indicated that since the WAC has taken ownership of the Wetlands Program, then he needs to take ownership also, but made it clear that he is not taking over the WAC. The WAC was created by statute and has statutory responsibility, but if the work of the WAC is to be done right, the new Administration needs to stand behind its work. Because of this, Director Wyant plans to spend more time with the WAC.

Depending on the feedback Director Wyant receives, he indicated that he may push the WAC a little bit to get things moving forward. He stressed that the WAC may have to tie together legislative and appropriation schedules with some of the recommendations of the WAC. Director Wyant is unclear at this time about what pace the WAC will have to work, but the council may be asked for recommendations before the statutory timeline of the council is completed. The council may have to go forward with recommendations to the Legislature and Governor Snyder on the legislative timelines rather than the statutory timeline.

Director Wyant was asked is there has been a change or if he was anticipating changes in the budget in order to fund the recommendations of the WAC. Kim Fish indicated that the budget recommendation for next year is the same as current year; however, a request was submitted and approved by Governor Snyder and included in the proposed budget to increase appropriation of the restricted fee revenue for technology upgrades. Hopefully, the Legislature includes this appropriation in the final budget. If the budget passes with the funding in it, the DEQ will work with the Department of Technology, Management, and Budget (DTMB) to implement the database/software upgrades. In relation to this, the DEQ's Water Resources Division (WRD) has formed a Technology Liaison Committee, which has been charged with making recommendations for technology needs divisionwide and is combining those recommendations with the WAC recommendations.

Legislative Issues:

- Director Wyant was approached by a couple of legislative leaders who recommended the Wetlands Program be sent back to the federal government.
- We have been asking to give us two years to get the budget figured out.
- We don't know what we're going to get.
- There are 60 new House members who are not familiar with most of the state's programs. What they do know about wetlands is simplified, and often times they are uninformed. It is up to everyone on the WAC to educate the legislators about the Wetlands Program.
- Senator Mike Green is interested in incorporating conservation districts (prior to the WAC making any recommendations) and moving forward with their agenda items. It was questioned whether or not funding was available for conservation districts to run their programs. There are two proposed bills, Senate Bill 168 and House Bill 4303 that deals with road commissions and mitigation for projects for public roads, which includes city/village/county/state projects. The WRD is working with the Legislature on House Bill 4303.

The EPA Program Requirements and Federal Coordination Subcommittee gave a status report on their work. The subcommittee plans to continue their work with the recommendations outlined in November, including: drain commission issues, minor projects (MP) and general permits (GP), exemptions that Steve Shine has questions about, and agriculture exemptions that Scott Piggott has questions about. Two big items for the subcommittee to work on include the cranberry issue and feasible and prudent alternative under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act (NREPA).

Kim Fish distributed an updated draft of the feasible and prudent alternative procedure. The Department of Attorney general reviewed the procedure and provided comments; the updated version incorporates those comments. Kim asked the WAC to review the draft and submit any comments to Amy Lounds. Sue Elston reviewed the initial draft and provided comments. She still has an issued with "economic development as a component of project purpose." She is doing some further checking on this. Once all of the issues with the procedure are resolved, the EPA Program Requirements and Federal Coordination Subcommittee will take it up and make recommendations to the full WAC.

Joseph Rivet discussed the ongoing discussions by the drain commissions regarding drain exemptions. The Drain association has met with Director Wyant, and there is a meeting of the Drain Association's subcommittee scheduled for April 11, 2011, based on information that Todd Losee provided them.

John Niemela indicated that there have been discussions with the Michigan Department of Transportation on exemptions in regard to their projects. These discussions will continue.

Gary Dawson indicated that utilities have been approaching the exemptions as if the exemptions were going entirely toward working through a nationwide structure. He questioned if there are exemptions the utilities can work through for pipeline safety. They are particularly concerned with maintenance under emergency situations. Todd Losee indicated that the DEQ is going to maintain a maintenance exemption for utilities. It has been discussed about modifying construction of new pipelines to a directional drilling and directional boring, which would be a positive step for utilities. There would be one exemption for maintenance activities and one for directional boring. The DEQ is also proposing a GP for pipeline safety activities, which would be an expedited desktop review and the DEQ can work with utilities to negotiate timelines. The DEQ is also proposing an MP for utilities. The DEQ is moving closer to the nationwide but it's not there yet. Sue Elston noted that there are federal exemptions for maintenance. Similar to the drain commission, as long as utilities stay within the bounds that have been set, the EPA doesn't have any problems. Kim Fish indicated that in regards to provisions for emergency situations, right now the wetlands statute doesn't have any provisions for emergency permitting, but there is such a provision under Inland Lakes and Streams and maybe the WAC would want to take a look at it. Under the Inland Lake and Streams statute, permits can be issued under emergency circumstances without waiting for the public noticing. The project will still have to be public noticed to protect public health, safety and welfare, but the permit can be issued before a public notice is expired. This is something that would be helpful in the wetland statute.

The Permit Processing, Efficiency, and Program Structure Subcommittee gave a status report on their work. The subcommittee is charged with identifying potential long-term changes in program structure, including:

- Scientific methods to achieve more consistent and accurate determinations of wetland functions and values for reviewing applications for permits, watershed planning, conservation plans, and other purposes.
- The appropriate role of local units of government and conservation districts in the administration of this part of the statute.
- A certification process for wetland professionals.
- The definition of wetland and wetland delineation methods and the role of hydric soils as a factor in wetland delineation. Evaluate the differences in the state and federal wetlands program.
- Method to assist individuals proposing a use or activity for their personal homesite and nonprofit organizations in successfully obtaining permits in a timely manner.

The subcommittee will continue its work and will be making recommendations to the full council to review.

Kim Fish announced that a bill was just introduced dealing with Part 13 permit processing times and putting limits on the DEQ for the numbers of times staff can ask for additional information. The DEQ has not reviewed the bill yet.

The General Permitting, Program Funding, and Public Outreach Subcommittee gave a status report on their work. The issues that this subcommittee has been charged to deal with include appropriate means and level of program funding, minor project categories and general permits, promotion of the development of wetland mitigation banks, and ways for the public and interested parties to advise the DEQ on a continuing basis concerning the administration and enforcement of this part. Jeff Auch, Subcommittee Chair, met with the DEQ regarding funding

and requested quite a bit of information. Kim Fish indicated that there is a pilot that deals with wetland banking in Oakland County (Oakland County volunteered to be a part of this pilot), so the subcommittee needs to hear the report from Oakland County to see how things are going. Director Wyant indicated that funding for the wetland program needs to be taken serious, needs to be a priority, and needs to be dealt with in a creative way. In the short-term fees is not the answer to the funding for the wetland program. There needs to be public relations and education. General funds, restricted revenues, dedicated revenues, and fees all need to be considered.

Director Wyant has reviewed the WAC member list and will follow-up on vacant appointments because it is important to have a full council in order to move forward. Andy Such will be replacing Randy Gross to represent the statewide association of manufacturers; however, an official appointment is needed. Deana Bosworth will be replacing Tom Hickson to represent the statewide association of local units of government; however, an official appointment is needed. Mindy Koch has retired and Russ Mason has been appointed to represent the Department of Natural Resources; his appointment is effective May 1, 2011. There are also a few members who have not been participating in WAC activities on a regular basis. Director Wyant will look at the statute to see who is responsible for making the appointments and contact them to get the official appointments made.

It has been Director Wyant's experience that councils are formed, they do the work to get the recommendations done, and then the completed work is handed over to the Legislature. The Legislature has no insight into all the effort and discussions that go into making the recommendations. Director Wyant suggested doing some education and outreach activities, such as giving presentations and including legislators in WAC meetings. The WAC agreed.

Joseph Rivet reiterated that the subcommittee names were changed to the names indicated in the November 8, 2010, meeting minutes. All tasks and charges remain the same. Some changes in subcommittee members occurred. Changes will be made to the subcommittee list and sent to all WAC members.

It was suggested that agendas and minutes for the various subcommittee meetings be sent to all WAC members so they can participate if desired.

Andy Such suggested that as the subcommittees establish their priorities for their work in 2011 and recommendations to the entire group that it be done in terms of outcomes; clearly state what the desired outcome is that the subcommittee wants to accomplish. When you think in terms of outcomes, it makes it easier to focus on what resources are needed to get it done, and it makes it a lot easier on staff to know what the accomplishment is.

The newly reorganized Department of Licensing and Regulatory Affairs (formerly DELEG), has a new office, Office of Regulatory Reinvention, that has been charged with reviewing Michigan's regulatory rule set within two years (there are approximately 19,000 rule sets). One of the first three sets of rules they will be reviewing is environmental rules. Panels will be established and include stakeholders, department staff, and public citizens.

Kim Fish distributed an updated spreadsheet of the WRD Strategy for Response. Recommendations have been assigned to staff, some recommendations have been completed, and the remaining recommendations are ongoing. The spreadsheet will be sent out to all WAC members.

Todd Losee gave an update on the proposed MPs and GPs. The proposed categories for MPs and GPs for activities wetlands, inland lakes, streams, and the Great Lakes are currently on public notice until May 16, 2011. The MPs and GPs are established administratively through a

public noticing process instead of through administrative rules; therefore, it gives the DEQ the flexibility to be able to continue to update the categories and make changes. The proposed MPs and GPs can be found on the DEQ's Web page at: http://www.michigan.gov/deq/0,1607,7-135-3313_3687---,00.html.

The WAC discussed presentation ideas for future WAC and/or subcommittee meetings. Some ideas include: update of the wetland banking pilot in Oakland County, wetlands protection in other Great Lakes states, introductory presentation for new members, and a presentation on accomplishments. All presentations that have already been presented to the WAC are available on the Wetland Advisory Council's Web page at: http://www.michigan.gov/deq/0,1607,7-135-3313_3687-229608--,00.html.

The next WAC meeting will most likely have some introductory activities for new members. The WAC will hopefully be able to reach out to some legislative staff or key legislators and do some educational activities prior to the actual meeting.

Meeting was adjourned at 1:50 p.m.