

Wetland Advisory Council  
Michigan United Conservation Clubs, East Lansing  
September 22, 2011

Meeting Minutes

Council Members Present: Deena Bosworth, Dan Coffey, Sue Elston, Susan Harley, Jeff King, John Konik, Russ Mason, Erin McDonough, John Niemela, Scott Piggott, Joseph Rivet, Lee Schwartz, Steve Shine, Don Uzarski, and Todd Wyatt

Council Members Absent: Jeff Auch, Gary Dawson, Chris Reidy, Andy Such, and Grenetta Thomassey

Others Present: Kim Fish, Dina Klemans, Amy Lounds, Mike O'Malley, Kristin Schuster, and Dan Wyant

The minutes from the June 9, 2011, Wetland Advisory Council (WAC) meeting were approved.

Amy Lounds, Water Resources Division, Michigan Department of Environmental Quality (MDEQ), discussed the status of the minor project and general permit categories. The final categories were issued on August 12, 2011, after significant work with stakeholders. There still remain issues with Michigan Farm Bureau, Michigan Department of Transportation, drain commissioners, and utilities. The MDEQ has been meeting with these stakeholders; a meeting is scheduled for October 13, 2011, with utility representatives. Joseph Rivet indicated that drain commissioners will probably not utilize the categories because of the outstanding exemptions; therefore, they fail to see the value of the categories if they are not being utilized. The drain commissioners are currently content with the categories because the exemptions still exist, but that will change once the exemptions are removed. Joseph's concern is that ultimately there has to be a budget for the Wetlands Program and the exemptions have to pass through the Legislature. It is the charge of the WAC to review the categories after they have been implemented for a period of time. The categories are administratively issued but not administrative rules; therefore, if the WAC decided to amend them, the MDEQ would only be required to have another public notice and comment period. Kim Fish, MDEQ, agreed and indicated that the advantage of establishing the categories in this way allows changes to be made due to such things as technology improvements, adding categories, removing categories, etc.

Kim Fish gave the legislative update.

- There is a bill drafted to amend Part 13, Permits, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, that will extend permit processing deadlines, which the WAC recommended in its first report. The bill has not been introduced yet, but Senator Kowall will be the sponsor. Kim will provide more information when available. When the bill is introduced, WAC members should provide comments and contact their legislators and let them know they support the bill and that the bill is a recommendation of the WAC.

- To Kim's knowledge, House Bill 4303 sponsored by Representative Casperson regarding compensatory mitigation is not moving.

Lee Schwartz indicated that there is increasing buzz among some members of the Legislature to send the program back to the feds before the WAC's deadline.

Joseph is concerned about the legislation the WAC has to have passed to satisfy the United States Environmental Protection Agency. The WAC needs to get things moving in the Legislature because getting bills passed takes time. Exemptions need to be passed by the summer of 2012, which is also an election year. Joseph would like to know how many bills need to be drafted, where a bill is in the process, who the sponsor will be, have conversations with sponsors, etc. Kim indicated that the MDEQ shares his urgency but for the last nine months the MDEQ has been working on an agreement and consensus that the Wetlands Program should be saved; therefore, bill language has not been drafted. The MDEQ is currently having discussions with various constituent groups. The MDEQ recognizes that it's not as far as it should be, but it's a bigger issue than just developing bill language and finding sponsors. First, enough key legislators have to be convinced that the program should stay in Michigan, and progress is being made toward this. In Kim's perspective, the current Legislature is moving at a pretty fast pace with getting bills passed, but we are still behind.

Joseph feels the WAC should take more formal action, possibly create a subcommittee to draft the bill language or make concrete recommendations to move things forward. In order for stakeholders to talk to their groups about the exemptions, they need information. The WAC needs to decide how to proceed.

#### Subcommittee Status Reports

A WAC member brought up the issue of the new Office of Regulatory Reinvention (ORR) committee charged with reviewing all of the rules, guidance documents, procedures, etc. Is the ORR committee going to make recommendations on wetland rules? If so, should the WAC be concerned with whether their issues are the same or different? Some of the ORR recommendations do overlap with those of the WAC but some are different. Kim Fish has been participating in the ORR committee meetings involving rules of the Water Resources Division and has let them know that the WAC is working on the issues. Lee Schwartz indicated that we should not be too concerned with what comes out of the ORR meetings. The ORR has been given the responsibility of reviewing 18,000 existing rules within 120 days, and some of their issues will probably overlap with what the WAC does. We should only worry about what we control. There is no way to influence the ORR because their meetings are closed meetings.

Lee Schwartz presented the status report of the EPA Program Requirements and Federal Coordination Subcommittee (available online). The subcommittee is satisfied with where they are. The feasible and prudent alternatives standard was completed and issued. One big issue going forward is the cranberries. Scott Piggott provided a one-page summary on the importance on cranberries (available online), and an economic impact of expanded cranberry production prepared by Michigan State University (MSU). There are special provisions in Public Act 120 with respect to permitting and actions on behalf of the MDEQ. There is currently 300 acres of

cranberries in Michigan, and there is room for growth and economic potential. According to the MSU report, with the expansion of 2,500 acres of cranberries, it would expect to create an economic impact of \$29 million and create 383 jobs. Therefore, cranberry production is an opportunity for economic development in Michigan, which is why it was a focus of the legislation and why provisions were put in place with respect to not having to address certain facets of feasible and prudent alternatives or no-cost preapplication visits by the MDEQ. Scott will continue to work with the EPA Subcommittee and cranberry growers. To date, no expansions have occurred in Michigan. Kim Fish indicated that the MDEQ has not received any requests for a preapplication meeting regarding cranberry production, but did receive an e-mail from someone who indicated they might be interested.

Jeff King presented the status report of the Permit Processing, Efficiency, and Program Structure Subcommittee (available online). In regard to the task of evaluating a certification process for wetland professions, the subcommittee recommends that a certification process not be established. Establishing such a program could require significant financial investment to establish a certification protocol as well as a possible long-term annual investment to provide a unit with the DEQ to ensure proper compliance with the certification. In regard to the task to evaluate the definition of wetland and wetland delineation methods, the subcommittee has been unable to reach consensus. The subcommittee would like to have more discussions on this with the WAC. The 2- and 3-parameter approaches for wetland delineation were discussed. Both approaches have the same results 99% of the time, but the current 3-parameter approach is more costly. It would take a lot of time and effort to change the legislation back to the 2-parameter approach.

Jeff Auch, who resigned from the WAC effective September 19, 2011, was absent from the meeting but provided the WAC with a status report of the General Permitting, Program Funding, and Public Outreach Subcommittee (available online). At the last meeting of the subcommittee, a significant amount of time was spent discussing funding. Joseph Rivet contacted Public Sector Consultants (PSC) to see if they would be interested in creating a funding strategy for the WAC. The PSC submitted a grant proposal in the amount of \$10,060 to assist the WAC in evaluating options for wetland regulation funding, and the Erb Family Foundation has indicated a willingness to fund the PSC study. The study will take approximately 90 days to complete; therefore, in order for the WAC to have any influence on the state's fiscal year 2013 budget, the grant request needs to be approved and funded as soon as possible so PSC can have a product to the WAC before the end of the year. The WAC should do whatever it can to support a request for expedited funding. The study and report will be funded by the Erb Family Foundation with Michigan United Conservation clubs acting as fiduciary. Director Wyant suggested making direct contact with John Erb or the foundation liaison in the Governor's office to get the grant request approved and funded as soon as possible. A motion was made to move ahead with the PSC grant proposal.

## Program Funding

Director Wyant asked the WAC what would happen if funding for the Wetlands Program isn't found. Sue Elston indicated that the program would go back to the United States Army Corps of Engineers (USACE). Two years ago drain commissioners formally asked the USACE what would happen if there was not a state program. The USACE

refused to comment until there actually was no state program. According to John Konik, the USACE was instructed not to devote any time, resources, or effort to provide information on this issue. Director Wyant asked what resources the USACE would have to run the program. John Konik indicated that the USACE will have fewer resources next year than they do now. If the USACE were to get the program, they would have to make do with what they currently have. They may be able to get a couple more staff, but things would definitely slow down.

Joseph Rivet is very concerned with necessary legislative changes that need to happen, specifically with exemptions. The exemption bills need to be approved by the end of July 2012, and the WAC report is due August 2012. If the WAC is to meet these deadlines, bills need to be drafted for review by stakeholders. If legislation is not passed, the program will go back to the federal government.

Director Wyant indicated that this is a process and we need to engage stakeholders that are going to have an interest in the program, and we need to get as much consensus as possible. He has until the beginning of 2012 to include in the budget recommendations in February a recommendation on how to solve the Wetland Program funding issue. At the same time that the budget gets introduced, the Legislature will be implementing legislation that the WAC will recommend. It then becomes the Governor's recommendation, not the MDEQ's. The Governor will find a sponsor.

Director Wyant committed the MDEQ to put together strawman legislation to bring before the WAC for review and for the WAC to review with their stakeholders. Meetings will then need to be held between the MDEQ and utilities, drain commissioners, and transportation to discuss exemptions.

#### WAC Appointments

Senator Randy Richardville will be appointing Andy Such to the WAC to represent the statewide association of manufacturers, and Deena Bosworth to represent the statewide association of local units of government.

Jeff Auch's position needs to be filled. Until that time, Joseph Rivet will serve on the General Permitting, Program Funding, and Public Outreach Subcommittee.

The next WAC meeting was scheduled for November 7, 2011, 9:30-12:30, at the offices of the Michigan United Conservation Clubs. Joseph Rivet would like the subcommittees to meet before November 7 to look at the statutory charge of the WAC, flush out recommendations that have been made and need to be made, and review the time frame to get recommendations to the full WAC.

Meeting was adjourned at 3:03 p.m.