

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, January 17, 2008 1:00 – 4:00 p.m.

Members in Attendance: Sandra Batie, Steven Chester, James Clift, Tim Faas, Jeffrey Haynes, Larry Merritt, Rick Plewa, Richard Rediske, Del Rector, Mike Shriberg, Paul Zuger

DEQ Staff in Attendance: Lynda Jones, Liz Browne, Kim Fish, Frank Ruswick, Jim Kasprzak, Dave Hamilton

OPENING

Frank Ruswick welcomed everyone to the meeting and introduced Lynda Jones, LWMD Administrative Assistant, who will be taking meeting minutes for Linda Albro Sparks.

CURRENT ISSUES

Director Chester indicated that the DEQ was involved in litigation regarding the general permit for concentrated animal feeding operations (CAFOs), that was challenged by the Sierra Club. The general permit requires the farmer to develop a document called a Comprehensive Nutrient Management Plan (CNMP) within 90 days of getting coverage under the general permit. The Sierra Club maintains that this plan should be made part of the permit when submitted for public comment. The Court of Appeals issued its ruling on January 15, 2008, holding that the CNMP is an effluent limit under federal law, and consequently needs to be prepared and made available for public comment also. The department is considering whether or not to appeal this ruling.

Director Chester gave an update on Dow and dioxin removal from the Tittabawassee River, Saginaw River and Saginaw Bay. The federal government has discontinued discussions with DOW based on what they characterized as an unwillingness by Dow to ensure there would be adequate short term steps to protect the environment. EPA will be meeting with the DEQ to determine how to move forward. The Hazardous Waste Operation License has been the vehicle to work on corrective action and through it the DEQ has secured over 10,000 data points on levels of dioxin and other contaminants in the area affected by Dow. The state will be the lead in implementing the license and will work in partnership with the federal government. A member asked about publicized allegations by a Dow employee that some lab analysis had not been adequately controlled. Director Chester indicated that the DEQ has looked into the allegation and did not have any concerns with data quality.

FRAMEWORK FOR DISCUSSION

Frank Ruswick prepared a PowerPoint presentation to provide the committee a common framework for discussion. The main slide consisted of four pie charts: *Responsibilities*, *Objectives*, *Operations*, and *Resources*. All four of the pie charts are related to each other. The responsibilities drive the operations we conduct. The resources we have allow us to conduct operations. A copy of the PowerPoint Slide / Pie Chart is attached.

Responsibilities were defined as the various statutes LWMD administers: Part 31, Part 301, Part 303, Part 315, Part 323, etc.

Objectives (or outcomes) can be broken down into environmental protection, property use, and constituent acceptance. How we carry out our responsibilities affects all three outcomes.

Resources consist of:

1. Staff (How many staff and what type of skills do they possess?)
2. Tools (Quality and sufficient quantity of computers, databases, GPS, etc.)

Operations include activities such as: permitting, compliance and enforcement, management and monitoring, collaboration and outreach, and response and defense.

The *Process* (or how we do things) are affected by:

1. Efficiency (e.g., Value Stream Mapping - VSM),
2. Formality (an individual permit versus a general or minor permit)
3. Consistency (e.g., ensuring that permitting decisions are consistent)

The *Substance* (e.g., the guidance provided) should be:

1. Consistent
2. Effective

The *Input* (i.e. completeness or quality of the information that agency receives)

Frank Ruswick provided the committee a second slide with the same four pie charts. This slide reflected the four pie charts in a way that shows how items in each chart currently exist in the LWMD relative to each other. The *Responsibilities* portion of the pie chart has dramatically increased due to several factors (for instance Part 13). The *Resources* portion is significantly smaller as a result of less staff and outdated tools.

The slices of the pie chart for *Operations* change also. Due to Part 13, staff are devoting more time to permitting, and less on compliance and enforcement. Due to the budget, there is less time spent on collaboration and outreach. Due to

legislative inquiries and contested cases, we are also spending more time defending our decisions.

While one can always improve efficiency, in large measure our ability to have significant impacts to the imbalance between responsibilities and resources by working in this quadrant is extremely low.

DISCUSSION OF POSSIBLE RECOMMENDATIONS

Frank Ruswick began the discussion by asking the EAC if it was realistic to anticipate the ability to balance responsibilities and resources by increasing staff levels or eliminating one of LWMD's responsibilities. The subsequent discussion included the following points.

The LWMD is dealing with a much different constituency than the other divisions in DEQ. Generally, LWMD is dealing with individual property owners rather than business people. This means that LWMD is working with individuals who do not have experience with the regulatory process, nor established relationships with the DEQ.

One of the members indicated that Legislative involvement and inquiries are significant because the LWMD directly regulates how individuals can use their private property.

Kim Fish explained that Legislators become involved as their constituents request their assistance. Legislators agree that the LWMD needs to enforce the laws, but want to negotiate for permit applicants or resolve violations. It is not unusual for a legislator to think they have the technical knowledge necessary to make decisions in LWMD programs, for example, to determine if there is a wetland on a piece of property.

One member stated there was a need to focus on the middle pie charts and redefine the goals. We need to shrink the property use portion of the pie and increase the environmental protection portion.

A member suggested that LWMD's permit applicants should have involvement in the process early on. Staff can assist developers in the process of managing the development of property that will provide continued environmental protection.

Another member wanted to see local planning commissioners informed on how to protect wetlands. Developers and local builders first step in the process is the local planning commission. The commission can provide the first line of defense against development on wetlands.

A member asked if certain activities or types of sites could be exempt from regulations, therefore, focusing resources on projects that have a larger impact to the natural resources.

Dave Hamilton indicated that the division has streamlined the permitting process by implementing the VSM recommendations in one of the districts and with the development of a new category of Part 301 General Permits (GPs). VSM recommendations cannot be rolled out to other districts without funding support for necessary staff.

One member suggested that the LWMD should have more interaction with local unit of governments. Providing information and partnering with others are two critical issues. All of the LWMD programs deal with local land use. Would it be possible to front load the decisions through the local unit of governments?

Kim Fish indicated that the LWMD has continued to do local outreach and send pamphlets to building departments and local township offices. Regarding the issue of delegating, the wetland statute will not allow DEQ to delegate any authority for permitting or enforcement due to federal oversight. The sand dunes statute allows the local townships to administer the statute, but the local governments do not want to take on the permitting or compliance activities. They are short on staff and resources also. The LWMD is currently holding meetings with a Critical Dunes Stakeholder Group to discuss the statute. The stakeholders are supportive of the local unit of governments being involved, but they do not want the liability issues.

Resources

Frank Ruswick asked the group, "To take a significant attempt to rebalance, do we affect the size of the *Resource* circle? Is there any potential for us to increase the size?"

In general, the committee does not see an effective approach of increasing resources in the short term, due to Michigan's current budget situation. Increasing the resources available to the LWMD should be part of the long term strategy for addressing the needs of the LWMD programs.

Responsibilities

Frank Ruswick asked the group, "Should we rebalance the *Responsibilities* circle by removing one of the pieces of the pie? If so, what criteria should we use?"

One of the members did not see reducing the responsibilities as a viable solution. He recommended against broad, sweeping changes and advocated pursuing incremental or step wise improvements.

Another member indicated that returning the Wetlands Program to the federal agencies will still provide oversight and wetland protection under federal law. Currently Michigan and New Jersey are the only two states that have wetland authority.

A member asked if the department could look at activities that are regulated and rather than seeking statutory changes look at possible changes in the rules to further streamline program commitments. A second member felt that re-examining the statutes may result in the Legislator opening the statute to additional amendments that would end up adding responsibilities.

Kim Fish indicated that the rulemaking process is laborious and time consuming; therefore, with a limited number of staff, LWMD has to weigh the effort of making the change versus the time it will save.

Frank Ruswick indicated that his sense of the EAC's thinking as a result of this discussion is that raising new revenue is not likely to be a viable short term strategy, the legislature is likely not to support eliminating a whole program, and that the best currently available approach is to look for opportunities to reduce staff workload by focusing on specific activities or types of sites regulated, while maintaining attention on those that present the most risk to ecological integrity.

The EAC generally agreed with this summary, but a member indicated that it assumed further erosion did not occur in the resources available to the LWMD. If such erosion did occur, then the issue of returning the wetland program to the federal government should be reconsidered.

Frank Ruswick will draft a document that attempts to encapsulate the EAC's discussion. This will be discussed at the next EAC meeting.

Meeting adjourned at 3:55 p.m.