

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Thursday, September 20, 2007 1:00 – 4:00 p.m.**

Members in attendance: Gary Dawson for Jon Allan, Sandra Batie, Steve Chester, David Gard, Chuck Hersey, Larry Merritt for Andrew Hobbs, Brian Jonckheere, Vincent Nathan, Rick Plewa, Del Rector, Doug Roberts, Mike Shriberg, Lisa Wozniak, Paul Zugger.

DEQ Staff in attendance: Linda Albro Sparks, John Arevelo, Liz Browne, Kathy Cunningham, Kim Fish, Dave Hamilton, Andy Hartz, Bill Larsen, JoAnn Merrick, Martin Jannereth, David Pingel, Frank Ruswick, Kathy Tetzlaff, Rick Schramm, Denise Sylvester.

Guest in attendance: Christopher Klaver, Staff Writer from Gongwer News Service.

### **OPENING**

Frank Ruswick welcomed the members to the meeting. Today's meeting will focus on an important series of discussions regarding Land and Water Management Division (LWMD) he hoped that members would find interesting and insightful. Frank Ruswick welcomed EAC member Lisa Wozniak from the Michigan League of Conservation Voters to the meeting.

### **CURRENT ISSUES**

Director Chester reported that Bulk Petroleum Corporation must pay the state \$2.4 million for failing to properly cleanup leaking underground storage tanks at a gas station in Hartland as a result of the recent Court of Appeals decision. The tanks leaked petroleum product during a period from 1986 through 1999 despite repeated efforts by the DEQ to compel the company to properly resolve the problem. This is the highest award ever paid to the DEQ in a cleanup program.

Director Chester updated members on the state's fiscal year 08 budget, including that the Governor has stated publicly she will not support a continuation budget unless there is an agreement on revenue. We could be looking at a government shutdown on October 1<sup>st</sup>, which will mean nearly all DEQ employees would be on temporary layoff.

Director Chester spoke about his recent attendance at an ECOS meeting where he met with his counterparts from other states. Climate change dominated the meeting and is dominating discussions nationwide. The U.S.EPA described how their Office of Water is establishing a discussion group about global warming. Midwest registry of states which now includes 39 states and a number of Canadian provinces are coming together working towards changing federal legislation.

Jim Kasprzak briefly updated members on the budget. The House of Representatives acted on the DEQ budget in April 2007 which resulted in a \$1 million increase over the Governor's recommendation. The House recommended a general fund increase of 16.4 million to replace additional fee revenue (6 fee increases and 2 new fees) of \$16.4 million. The Senate has yet to take any action on these bills. Jim Kasprzak discussed the DEQ fees with sunset dates on the last day of fiscal year 07 which occurs September 30<sup>th</sup>. Should these fees not get passed, this inaction could affect approximately 204 full time positions and could result in layoffs in fiscal year 08 which begins

October 1<sup>st</sup>. The department continues to work with the Legislature to pass this fee bill to continue to collect \$17.7 million.

Frank Ruswick talked about the overall state budget and that each individual agency must be given spending authority through specific appropriations bills.

A member asked what happens with delegated responsibilities that you have from the federal government in the event of a shutdown. Frank Ruswick explained that we would have to notify them that a government shutdown is in place, and depending on the shutdown period of time U.S.EPA may be able to cover emergency activities.

A member asked for clarification regarding temporary staff layoffs. Frank explained that the Civil Service Commission is scheduled to vote at their meeting next week on rules governing notification of employees. It is anticipated that insurance coverage, continuity of service, and other benefits would continue during a temporary layoff period.

### **LWMD Value Stream Mapping Process**

Liz Browne introduced Dave Hamilton of the Land and Water Management Division who will be talking about LWMD Value Stream Mapping Process. A handout packet was distributed which contained a Program Summary, Joint Permit Application Review Process, LWMD Permitting Team Value Stream Mapping Project, LWMD Value Stream Mapping Evaluation, LWMD Compliance and Enforcement Program PowerPoint presentation, and LWMD Contested Case Hearings PowerPoint presentation (Attachment).

A member questioned about how many LWMD permits per person are processed per year. Liz Browne replied that up to approximately 242 permit and complaint files per person are processed by field staff

A member asked the Director to define the charge to the group. Director Chester thinks there is a huge disconnect between what the LWMD has done, and what the Legislature and public believes that they do. Director requested that the EAC make recommendations on how we can do a better job in communicating, educating and informing the public about the work that's being done in LWMD.

A member inquired about the staff feedback on the VSM pilot implementation that was done in the Lansing District office. Dave Hamilton told them that generally the feedback from staff has been good, and he personally asked staff for feedback and not one of them told him that they want to go back to the original way of doing business.

A member asked about the length of the application period for determining administrative completeness. Staff responded that the department has a 30 day deadline for determining whether an application is administratively complete.

### **LWMD Enforcement Program**

Bill Larsen gave a presentation regarding LWMD Enforcement Program (Attachment).

A member wondered about how Bill Larsen's experience around the state has been with counties taking an active role in follow up and prosecution. Bill Larsen noted that Macomb County having their own prosecutor is a major asset, and there are many other counties that our enforcement staff has good relationships with. Another member questioned about how active the various drain commissioners were in engaging in the county prosecutor's office. A member indicated that it has been his experience as a Drain Commissioner that enforcement issues such as soil erosion would be handled through the County Prosecutor's office, and when they have wetlands issues they deal with DEQ LWMD. Bill Larsen added that the LWMD continually strives to build better relationships with the various drain commissioners.

A member asked about how many violations were made mostly out of ignorance rather than intent and whether the department does proactive education with realtors? Bill Larsen responded that they do training with local officials, and try to get voluntary compliance. Kim Fish responded that when staffing levels within LWMD are adequate the division does more training and presentations. LWMD continues to work with local health departments.

Another member questioned whether environmental permitting was part of real estate licensing training. John Arevalo responded that there are no legal requirements to advise people of any environment permitting statutes in conjunction with real estate sales.

Another member questioned what areas receive more complaints: Compliance and enforcement or permitting? Kim Fish responded that LWMD receives more permitting complaints. Liz Browne said many of the permitting complaints from citizens are regarding the speed of the permit process and the outcome.

Another member had several questions about the compliance and enforcement training manuals and whether these manuals were available to the public. Bill Larsen responded that these manuals are not proactively distributed, but are available upon request.

A member asked if there has ever been an attempt to resolve these issues using the alternative dispute resolution process. Bill Larsen commented that at times law judges have acted as mediators however; LWMD hasn't formally used an alternative dispute resolution process.

Presentation on Administrative hearing process (Attachment).

Bill Larsen noted that the LWMD spent over \$100,000 on Attorney and expert witness costs for contested cases last year. This does not include the costs for time and travel for LWMD staff working on these cases.

## **THE DISTRICT PERSPECTIVE – PANEL DISCUSSION**

This LWMD staff panel consisted of John Arevalo, DEQ Cadillac District Supervisor; Rick Schramm, Lansing District Supervisor; and Andy Hartz, Southeast Michigan District Supervisor. A summary of subsequent discussions follows.

John Arevalo opened the panel discussion by distributing two handouts: A chart comparing Southeast Michigan, Cadillac, and Lansing Districts that contained census information, permit applications, wetland impact requests; and a map entitled Antrim wells in Cadillac District.

A member had some questions about wells and the increase in oil and gas wells. DEQ Office of Geological Survey issues drill permits and the handout provided is meant to be informational.

John Arevalo described the amount of time traveling to meet with various parties and money that's being spent on contested cases, and gave an example of a DEQ hearing regarding a third party case that resulted in a contested hearing lasting 21 days. These positions in LWMD are very stressful and the division experiences a large staff turnover.

Andy Hartz described the Southeast Michigan District as one that has approximately four million people, including Oakland County which has 142 lakes, the largest number of lakes in the state. DEQ LWMD currently has one and a half staff persons dedicated to Oakland County. The Oakland County residents tend to be very educated and sophisticated, and they know about the property they've purchased as well as any changes they plan for their properties. The average Oakland County resident can afford to hire consultants and attorneys, and they know who their elected officials are. Andy Hartz described how important it is to prioritize staff time among all the demands. The Southeast Michigan District has incurred significant staff turnover since 1992 with 21 professional staff members leaving the district during that time. This figure doesn't include administrative staff. This large staff turnover presents challenging and frustrating circumstances with staff.

Discussion occurred regarding the use of conservation easements to protect sensitive resources. The DEQ has enrolled 7,000 acres into conservation easements in Macomb, Oakland and Wayne counties. Andy Hartz described how conservation easements can be incorporated into the permitting process. In response to a question, he indicated that the DEQ does not operate a wetland bank for wetland mitigation purposes.

Staff discussed the requirements for wetland mitigation, and when conservation easements are appropriate if an activity is permitted in a wetland. A member questioned about the numbers reported on the handout chart and wondered if these were the total number of permits that are received in the division. John Arevalo stated the chart numbers reflect applications that are submitted, they may have also been withdrawn later and these numbers only represent three districts in the state.

Both John Arevalo and Andy Hartz added that both their districts represent all types of citizens and both districts have wetland consultants that provide services to their citizens.

Rick Schramm, as Lansing District Supervisor, supervises Ingham, Livingston, Genessee, Lapeer, Shiawassee, Calhoun, Eaton and Gratiot counties. The Lansing District handles a mix of files similar to the rural nature of Cadillac and the urban nature of Warren districts.

The LWMD employs staff with a wide variety expertise. The LWMD Environmental Quality Analysts hold bachelor's degrees in Botany, Fish or Wildlife Biology, Aquatic Biology, Ecology, General Biology or Zoology, Soil Science, forestry and Geology. Many have advanced degrees and doctorates. Rick Schramm described the many attributes LWMD is looking for in staff: good people skills; needs to have empathy; ability to develop a relationship; good listening skills; good conflict resolution skills; good at juggling demands; ability to coordinate with the Department of Natural Resources, local government, and drain commissioners; ability to handle a variety of phone calls from the public either directly or from upper management; needs to be detail oriented; possess good writing skills; and good decision making skills. When you put this all together, the ideal LWMD person needs to be an ecologist, botanist, soil scientist, hydrologists, engineer, surveying knowledge, understand law, interpret easements and other legal documents, riparian rights and public trust similar to that of a lawyer, social worker, counselor, and educators. Many times these LWMD jobs are thankless. The

DEQ must observe the law and issue permits, which at times means people may not be happy. Rick Schramm added that he has been doing this work since 1985, and despite its difficulties, he still believes that he has one of the best jobs in the department.

A member asked what percentage of wetland conversion is due to individuals who have full knowledge knowing in advance that they need a permit and are pushing the system versus those who own a cottage and just don't realize they need to go through the permit process.

Bill Larsen responded that a lot of people don't think they'll get caught; however, in general people want to comply. What the difference is as far as enforcement varies by county, and subsequent results vary.

Andy Hartz commented that different areas present different problems. Sometimes sharp developers know how to stretch the regulations. On the other hand, Oakland County has some of the highest numbers of local ordinances.

A member questioned how cumulative impacts factor into the permitting process and the amount of latitude the department has to consider this factor. Rick Schramm indicated that the review criteria under the wetlands law include cumulative impacts and it can be a factor in specific cases depending on the circumstances. Staff certainly can evaluate cumulative impacts on a smaller scale where development pressure is obvious, but it is harder to consider on a larger watershed scale as isn't always obvious.

A member asked what is allowed to consider as a mitigated wetland versus natural wetland. Andy spoke that the mitigation plan should provide for what was lost. There is a tremendous lag time from the time of mitigation to when it can actually function like a natural wetland. For instance marine wetlands can take 25 years, and forested wetlands we know won't fully function for 15-20 years.

A member asked about the data portion of the chart and how Michigan compares with other states regarding lost and gained wetlands. Kim Fish will try to get that information for members.

A member commented that they felt that their charge won't be easy, however, if there is one thing that the panelists could change what would it be?

John Arevalo said most importantly keeping the staff they have and filling vacant positions. Rick Schramm said that in addition to increasing staff, that they deal with a lot of jurisdictional issues that are on the fringes of the laws and that perhaps some amendments or rule changes to clarify things would be helpful. Andy Hartz reiterated that his district has turned over 21 staff since 1992 and he has spent a large amount of time on training, so hiring and retaining staff is a top priority. Andy also thought that staff spends a lot of time responding to legislative inquiries on very small issues within the program, when it is their duty to reinforce the law.

A member observed that if there could be more certainty and less ambiguity there would be a lot less stress, and suggested forming more partnerships and roundtables with outside groups.

A member asked how many times the Lansing central office has overruled the field office on a permitting decision. Andy Hartz replied that in approximately 1,500 permit decisions, he has been overruled only once.

Another member commented that this type of panel discussion was very candid and informative, and suggested that the department use this type of forum for key legislators.

Summary by Linda Albro-Sparks.