

**ENVIRONMENTAL ADVISORY COUNCIL**  
**Lansing, Michigan**  
**Wednesday, November 14, 2007 1:00 – 4:00 p.m.**

Members in attendance: Jon Allan, Sandra Batie, Steve Chester, Tim Faas, Brad Garmon for David Gard, Jeffrey Haynes, Larry Merritt, Vincent Nathan, Doug Roberts, Lee Schwartz, Andy Such.

DEQ Staff in attendance: Linda Albro Sparks, Liz Browne, Kim Fish, Martin Jannereth, David Hamilton, JoAnn Merrick, Frank Ruswick, Rick Schram, Jim Sygo.

**OPENING**

Frank Ruswick welcomed the EAC members to the meeting and indicated that we will continue our discussion about DEQ Land and Water Management Division (LWMD) issues.

**CURRENT ISSUES**

Director Chester informed members that today is the deadline under statute to take action on the mining, air, and groundwater permits for Kennecott Mining. However, it was brought to DEQ's attention that a key DNR staff person hadn't had a chance to review the mining reclamation plan. Therefore, Kennecott has agreed to allow the DEQ until December 14, 2007 to take action on DEQ permits and licenses, and to coordinate with DNR on the reclamation plan. We anticipate that the DNR will have Kennecott on their agenda for their January 10, 2008 Natural Resources Committee meeting.

Director Chester handed out a press release from SEMCOG titled "SEMCOG releases report on funding protection of Southeast Michigan's environment and the need for reform". Director Chester said that in SEMCOG's opinion the department can no longer rely on fees and is calling for a public discourse on fees. Director Chester invited members to go to SEMCOG's website to view their report. Director Chester distributed a World Resources Institute report "Charting the Midwest An Inventory and Analysis of Greenhouse Gas Emissions in America's Heartland".

Director Chester updated members on DEQ's budget situation. At this time, the legislature and Executive Office has approved a budget, that anticipates a \$17.5 million fee increase, but the supporting legislation is not yet in place. The DEQ must secure support for these fee increases by January 15, 2008. Similarly, the DNR also needs to secure support for \$8-\$9 million in fee increases by January 15, 2008. Director Chester told members that the department is currently in dialogue with several key interest groups regarding dedicated DEQ funding source, which is getting some serious consideration.

A member questioned Director Chester whether any fee program increases required legislative action. Director Chester confirmed that legislative action is required. Director said there are some critical fee increases for Air, Land and Water Management, and Environmental Services and Science Divisions, and that none of these fees can be raised through administrative action.

A member talked about the Climate Registry Stakeholder meeting that he recently attended which he thought had a good turnout, and that represented a fair cross section of industry. Director Chester encouraged members to contact Vince Hellwig, Chief, Air Quality Division directly for any further information regarding the meeting, or the Climate Registry.

Another member asked a question about the Midwest Governor's Conference and wondered if DEQ would have a representative there. Director Chester thought that Skip Pruss from the Governor's Office would be in attendance.

## **PRESENTATION: CONSTRAINTS AFFECTING LAND AND WATER MANAGEMENT PROGRAMS**

Liz Browne, Director of DEQ Land and Water Management Division distributed and discussed a handout titled "Land and Water Management Division Constraints" (see Attachment 1).

## **DISCUSSION**

There was some discussion among members and staff about recent DEQ workgroups that sometimes don't reach consensus and therefore whether the results were worth the investments of participants. A member asked about the workgroup process and does the lack of consensus mean that the workgroup issue is dead. Director Chester said that often times when we don't reach a consensus, the department proceeds cautiously; many times we stop the process and then start the process again. At times policy writing leads to an end product that you can't implement.

A member wondered whether the department should make a list of legislative priorities. Frank Ruswick responded that the DEQ annually puts together a list of legislative priorities.

There was a discussion about the contested case process for the department and a member questioned if a judge would see the DEQ staff person as the expert, making the department somewhat insulated from that type of review. Director Chester commented that many times a judge may favor an opinion given by a degreed person other than a department staff person, and there have been a number of LWMD contested cases that the department doesn't prevail in for this reason. Another member thought the department could be helped by accepting assistance from a university staff person prior to the contested case process.

A member suggested that instead of the department forming structured workgroups, present to the group how these individual programs operate, and then seek a balance between issues that science can address and those that are policy choices. Another member commented that the department should make decisions about critical sand dune issues without a workgroup. Another member suggested the department meet with the two legislative committee chairs to discuss department funding issues.

A member talked about the rules process, the Administrative Procedure Act and the deference that should be given to agency decisions. Other members indicated that the change in the authority of the Joint Committee on Administrative Rules has meant that interest groups are less willing to allow issues to be resolved through the Administrative Rules process. Frank Ruswick commented that there appears to be a lack of trust that the department can make a valid professional judgment, and that increasingly the statutes don't allow for rulemaking in the

department. Director Chester questioned the group how do we get out of this box based on what we can control? Frank Ruswick indicated that Part 13 was based on distrust of this department. Some members thought that the legislative leadership didn't understand these consequences.

A member was surprised to learn how the department has to scrimp on necessities such as supplies and materials. For example, the department is using disposable cameras instead of digital cameras and few GPS units because it can't afford these items. Director Chester indicated that additionally the department's ability to offer in-service training and mentoring has been severely hampered due to budget constraints, as well as restricted travel and purchases.

A member asked how the group should take the Land and Water Management Division Constraints list even from an organizational standpoint. Where is the gap or pinch point? The member thought that the real problems were much bigger than what has been included in this list. Kim Fish stated they had difficulty coming up with the list; however, the biggest issue on the list is the lack of staff. A member asked Kim Fish where the biggest backlog in the LWMD is. Kim Fish responded that the issue isn't really a backlog, as much as staff not having proper time for applicant interactions. A member asked if this could be the source of the distrust issue. Kim responded that when staff time is being spent on applicant interactions, two to three permits aren't issued; and that LWMD is under constant pressure to process permits.

A member thought that DEQ has two basic problems; no clear supportive constituency, and a lack of support towards the DEQ efforts. Another member thought that DEQ was in an awkward position being both the decision-maker and facilitator.

A member stated that there is a strong perception that the department has created additional work for itself that isn't necessary, and the department is getting pushback from groups like Ducks Unlimited, a group where ordinarily their goals would be perceived as similar to the department's goals. The member suggested that DEQ won't be able to solve these issues across the board and suggested that it might be beneficial to look at an individual program. Dave Hamilton told members that LWMD did go through the value stream mapping process with the Lansing District.

Director Chester said Senator Garcia's Value Stream Mapping Team came up with a modest proposal which created some interest, however, it wasn't pursued in the Legislature. Director Chester added that to pursue the value stream mapping process you must dedicate time and consider it an investment.

A member suggested that Michigan form partnerships with other great lakes states as they have similar programs such as shoreline, dunes, and wetlands, and there may be some opportunities to split costs and share resources. Liz Browne spoke about one of the DEQ's current U.S.EPA grants that we used the same method that Ohio had used.

A member asked when the majority of complaints in LWMD occur, before or after a permit is issued? Kim Fish replied that complaints fall all across the board, some occur after issuing a permit, others deal with dissatisfaction that the permit wasn't issued quickly enough, and others occur at the end of the permitting process. Director Chester asked how much time was spent regarding individual residential homeowners vs. larger developments. Kim Fish thought the majority are smaller residential homeowners with smaller projects.

A member questioned whether LWMD staff would rather deal with complaints where a consultant had been retained. LWMD staff responded that this depended on the consultant's skill level, and that at times these consultants can be knowledgeable negotiators. There was further discussion among members and staff regarding consultants and whether they were better able to understand the Part 13 process. Staff said this was dependent on the consultant's experience level.

Frank Ruswick told members that four themes are emerging: decision-making, structural constraints, resources, and categorizing activities. Frank told members that the department hasn't been able to solve these problems with individual workgroups so we decided to go broader, and he asked members to consider these questions:

- What decisions is the department allowed to make?
- What are the constraints?
- Once decisions are made, the department has received some complaints. How can we minimize those complaints?
- When in the decision-making process, are we eroding the expertise that we bring to the process?
- Why is the department's credibility being questioned?
- Is the department being viewed as arbitrary and threatening?
- What is "success"?

A member responded when department is arbitrary in its decision-making, it's what everyone talks about. Another member wondered that once the department knows that it won't be receiving additional funding, when do you decide that you are going to due to funding issues operate within your current funding?

A member had heard criticism of the LWMD based on stories that three agencies, DEQ, DNR, and U.S.EPA had gone to the same site at different times. Another member thought the biggest problem facing DEQ was a public relations problem. It's not news when someone does their job correctly, its news if it isn't done correctly. Several members indicated that DEQ's largest issue is a perception problem, not about substance. Another member suggested that the department reach out to groups like Ducks Unlimited who are interested in protecting habitat. Staff reminded members that the DEQ is a regulatory agency not a resource protection agency and so might have a different focus than these groups. Kim Fish commented that many environmental groups view the department negatively as well because the department is considered permit providers.

A member thought that in most cases the general public views environmental protection as important, however, that doesn't translate into legislative funding. Another member thought that private landowners think that because they own land that they have the right to alter the land and that creates hostility.

There was a lot of discussion between members and staff regarding the DEQ's Public Hearing Process, including that the general public doesn't understand how public comment can be effective in impacting a permit decision. Many members thought that the public hearing process was more about theater rather than substance. A member suggested appointing a committee chair person at public hearings that could supervise the process. Another member said there is a general public misunderstanding that the DEQ is a participatory democracy, rather than a regulatory agency. A member suggested that the department issue a disclaimer regarding how

public comment does and does not influence the ultimate decision making. Another member stated that perhaps there should be restrictions on how the department considers public comment in the decision making process. A member suggested that the public hearing expectations need to be lowered. Director Chester agreed that the department needs to do a better job about managing expectations. Another member suggested using local communities as a first point of contact and that any disclaimer regarding the public hearing process or guidelines should be posted to the DEQ website. Martin Jannereth thought that a better time for the public to have an opportunity to bring forth their issues and make a difference in the decision making process would be early in the public notice period.

Frank Ruswick asked members to please do the following homework assignment “Given the constraints faced by LWMD and the current practical and political realities, how would you define or describe "success" for the LWMD programs?” As a small incentive, there will be a prize awarded to the individual whose statement most closely matches the agreed upon target definition of success. Frank Ruswick will be the sole judge for this result, but may seek input as appropriate.

Members asked what the end results would be if DEQ doesn't receive the fee increases prior to January 15, 2008. Director Chester stated that in the LWMD they would lose 34 positions and 11 vacancies, which amounts to approximately one-third of the division. Additionally, the state would be losing millions of dollars in project benefits because of delays caused by federal permitting.

Summary submitted by Linda Albro Sparks.