

**Environmental Advisory Council
Lansing, Michigan
Thursday, October 18, 2007**

Environmental Advisory Council (EAC) Members in Attendance: Jon Allan, Sandra Batie, Bill Bobier, Cathy Brubaker-Clarke, Tim Faas, David Gard, Chuck Hersey, Del Rector, Richard Rediske, Doug Roberts, Lee Schwartz, Donna Stine.

Department of Environmental Quality (DEQ) Staff in Attendance: Kimberly Fish, Elizabeth Browne, Frank Ruswick, JoAnn Merrick.

OPENING:

Frank Ruswick welcomed the EAC members and the invited panel members. The EAC members introduced themselves and the agency they represented.

CURRENT ISSUES:

DEQ Director Steven Chester updated the EAC members on the budget revenue agreement that failed to take into account the need for \$33 million in fees, \$17.5 million of which are for DEQ fee proposals. He indicated that the DEQ has been providing the legislative committee chairs information on what will take place if the fees or alternative revenue is not provided. Eight fees are involved. In fiscal year 2008 there would be major impacts in four programs: Air Quality, Land and Water Management, Groundwater, and Environmental Science and Services Division. Program reductions will be necessary unless budget issues are resolved by November 1, 2007. The director responded to several questions from EAC members.

REGULATED/CONSULTANT COMMUNITY PANEL:

Mr. Ruswick introduced the invited panel members and asked that they each describe their interactions with the Land and Water Management Division (LWMD), the strengths they see in the division, and how they would address areas for improvement.

Hal Harrington, Wetland and Coastal Resources, indicated his interactions with LWMD is mostly regarding wetlands and other regulatory programs. In his opinion, the LWMD Lansing and field staff differ in direction at times, but seem to be very dedicated employees. Pre-application meetings are very helpful to his clients. Permit processing time is a concern; some minor permits are taking as long as public-noticed permits and Mr. Harrington provided several examples of the issues that seem to hold up the minor permits. He also expressed concern for a lack of consistency between regulatory agencies for local permits; that mitigation plans are very costly for small areas; and building houses in critical dune areas is very expensive. He suggested that agencies should be more liberal in areas that do not really need protection since small issues increase the costs of permits to individuals. Mr. Harrington suggested permit by rule as a means to bring down costs and time related to permit decisions. He also expressed

concern regarding final orders by the director differing from staff decisions. Mr. Harrington suggested that LWMD should focus its energies on programs with public trust implications. He is concerned that condo units are being constructed on commercial marinas, which means the loss of public trust access to waters.

Don Tilton, Environmental Consulting and Technology, agreed that LWMD staff is highly dedicated and believes that the public supports the program. He provided examples of circumstances that erode the public's respect for the Department of Environmental Quality. One example is a city that received a notice of violation regarding work done without a wetland permit, when in actuality they had already been issued their permit. Another example regarded a prudent and feasible alternatives analysis for an unstable bluff where the department threatened a denial because it did not have the necessary staff expertise to evaluate the slope stability analysis done by several professional engineers. Mr. Tilton suggested training be made available to staff for specific issues and to help with consistency throughout the department.

Gil White, Whitehills Development Corporation, provided a private-sector perspective regarding the issuance of permits by the LWMD. Consistency and timeliness of department responses is of great concern. There seems to be a duplication of effort between the LWMD and with township ordinances on wetland issues. Mr. White indicated that with the budget restraints placed on state departments, there is a need to find common ground with builders. It seems that the building community understands the needs of the regulatory agencies, but the regulatory agencies do not understand the needs of the building community. Mr. White believes the state needs to do a better job of keeping the public as an ally in protecting the environment and continuing to build Michigan. He advocated for a higher level of communication and education to use land wisely.

Herman Van Eck, DTE Energy, explained that his responsibilities include obtaining environmental permits and making sure the company is in compliance with the permits. He indicated that he does work with LWMD on projects and that they are extremely helpful to him in keeping projects in compliance. One area he noted problems in is projects with pipelines that require inspection at specific times. There is a need to expedite permits for linear projects within different jurisdictions. He suggested a general permit for these projects. Mr. Van Eck indicated that better direction is needed on who to submit permit applications to in order to move the project forward faster, and he feels district and Lansing staff are providing conflicting information at times.

Jeff King, King and MacGregor, provided his opinion that LWMD staff exhibits professionalism at all times. He indicated that consistency in the application of standards is not necessarily what is needed because consistency sometimes means more detailed regulation. More direction may be needed for staff in the field on items such as the intent of legislation with resulting implications for how decisions are made. Staff is expected to do more with less and district supervisors are the key to

communications, although the supervisors do not always provide staff with consistent direction on what to do. The best way to solve most issues is to work at the lowest level possible to accomplish goals. District staff needs to be provided better direction on how to incorporate the opinions of other environmental experts into their decisions.

A general discussion was held after the panel members provided their opening comments. It was noted that some of the items discussed were organizational cultural issues, that there were many accolades for LWMD staff, and that there are concerns that staff may make decisions which have long-term ramifications. There is a need to address staff issues in a professional manner, and also a need to indicate if specific individuals are a problem that needs to be confronted in some way.

It was suggested that the program may need to be more outcome-based depending on the issues. A discussion was then held on how the state is divided into districts, how staff is dispersed throughout the districts, how training was provided in the past and currently for district staff, and how the districts/regions stay current and consistent on issues.

In response to the comment that the wetland program staff spends too much time on trivial issues, an EAC member asked for suggestions from the panel on how to address this problem. It was suggested that the department review the statute and rules and then basically determine whether a project would cause an unacceptable disruption to wetland values. Sometimes the wetlands being regulated do not have sufficient value to justify the time and effort invested by the applicant and the DEQ. The definition of "contiguous" wetlands was discussed.

An EAC member asked the panel what their recommendation would be if a consolidated permit included controls on a wetland activity that does not need a permit. A panel member recommended building in accordance with the permit even if the permit was not needed.

Panel members expressed concern that wetland permits are very time-consuming for the U.S. Army Corps of Engineers (U.S. ACE) to process. There could be lengthy delays for projects if the wetland program is turned over to the Detroit district of the U.S. ACE. Panel members indicated that it will be important for the DEQ to prioritize its activities if fees are not increased to adequately fund the program.

ENVIRONMENTAL/CONSERVATION COMMUNITY PANEL:

Mr. Ruswick introduced the following invited panel members and asked for each to provide a brief background of their agencies and their work with the LWMD.

David Brakhage, Ducks Unlimited, indicated one of their goals is better protection of wetlands and a process that makes it easier to restore wetlands. Even though state

laws are more protective than federal laws, Michigan continues to lose wetlands. He would like preventing illegal drainage and requiring mitigation to be priorities of the LWMD. With regulatory agencies being overworked, getting permits to restore wetlands can be a challenge. In addition to inconsistent understanding of regulatory issues, extensive time and money is needed to get wetland restoration permits. There is a need for better understanding between regulatory agencies and wetland restoration agencies. There is a need for LWMD to implement and support better wetland laws. Mr. Brakhage indicated his belief that the DEQ should automatically issue permits for wetland restoration by relying on the professional integrity of environmental specialists, which would free up resources to protect wetlands due to development.

Joanne Barnard, Barry Conservation District, works with private landowners to provide information and guidance to local citizens. Watershed planning and educational materials are used from LWMD for applicability of wetland laws. She also indicated that the DEQ Web site is a great tool and useful for the conservation community. Staff is excellent to work with, phones are answered and staff is available whenever needed. The Barry Conservation District Office helps individuals understand complicated environmental laws. The DEQ staff has always been very helpful in educating people and in providing help to organizations. Ms. Barnard suggested that the 79 conservation districts may be able to partner with the DEQ to get information and training out to staff and citizens. Reviews by the conservation districts could be helpful to the DEQ by saving staff time. Local government planning and zoning offices do not always understand what the DEQ's job is and sometimes expects the DEQ to save wetlands from proposed projects when the issue is really one of land use decision-making that should be done by the local unit of government. She also indicated her belief that all permits should put more weight on mitigation even though it seems to be of little concern for most projects and to assist in mitigation the DEQ should be providing information on suggested locations.

Bob Frye, Michigan Waterfront Alliance, indicated he has been lobbying for the DEQ fees. Statewide conferences were provided and worked in the past for distribution of information and consistency. Water resources will be impacted if LWMD fees are lost. There are good opportunities to let others help out, such as allowing aggrieved parties, via a policy decision, to enforce inland lakes and streams rules. This would help address issues that the DEQ cannot handle. Mr. Frye indicated that there has been a failing of best management practice philosophy. In the past, various parties all were in line with same theories about how to undertake various work; today, access to current and updated information is lacking and there are too many variables for effective agreement.

Jim Hazelman, U.S. Fish and Wildlife Service, helps landowners apply for permits for wetland restoration projects. It seems they conflict with the DEQ on restoring wetlands at times because of interpretations, which slows down the permit process. He indicated a need for more trust between state and federal agencies during wetland restoration projects. People do not want to go through a long permit process which ends up

discouraging wetland restoration. Mr. Hazelman suggested improvements to the program should include developing more trust between staff and developers, less staff reviewing each permit, and use of a notification process to speed up the process.

Jennifer McKay, Tip of the Mitt Watershed Council, indicated their goal is to protect the waters of the state, and that they work with the LWMD on dredge-and-fill activities. She noted that DEQ staff is committed, knowledgeable, and helpful and that EAC members appreciate staff as an ally. She is concerned that the LWMD may be more focused on issuing permits rather than on protecting resources and suggested that focus needs to be changed to that of a regulatory agency enforcing the law. Ms. McKay expressed concern that the beach maintenance general permit was issued differently than recommended by a workgroup. Workgroups are a waste of time if the recommendations put forth by the workgroups are not going to be instituted.

Ms. McKay suggested the following: improving communication between the public and the LWMD; reinstating the DEQ's mission as emphasizing environmental protection; support of staff by the front office when enforcing violations; and developing policies based on natural resources and not political pressures. To build trust with the public, the DEQ should adopt guidance/policy to commit to citizen involvement, better communications with the public, and sharing information.

One of the EAC members asked for examples of the difficulties in obtaining wetland permits. Panel members highlighted the time needed to get a permit and difficulties in applying the definition of wetlands. One member indicated that issues surrounding restoration do not seem to have been resolved, even after many discussions with high-level staff. Staff needs to be trained in rehabilitation because it seems that good public professionals are fighting among themselves. Some projects have been abandoned because of the time it takes to move through the permit process and individuals do not understand the process.

Further discussion was held on the role of citizen lawsuits, a recently released opinion paper regarding the Great Lakes being at a tipping point, and making restoration of wetlands a program priority.

CLOSING BUSINESS:

Mr. Ruswick closed by indicating that the EAC has been provided with several months of background information on the LWMD programs and the challenges it faces. Next month the EAC will begin focusing on solutions and recommendations.

Summary submitted by Vickie Plummer.