

WETLAND ADVISORY COUNCIL MEETING
MUCC FACILITY
MAY 8, 2012
Meeting Minutes

Council Members Present: Susan Harley, Joseph Rivet, Sue Elston, Todd Wyatt, Dan Coffey, Gary Dawson, Grenetta Thomassey, Lee Schwartz, Deena Bosworth, John Connick, Andy Such, Stephen Shine, Dan Wyant, and Erin McDonough

Council Members Absent: Donald Uzarski, Chris Reidy

Conference Call Participation: Jeff King

Others Present: Kim Fish, Dina Klemons, Amy Lounds, Melanie Haveman, Todd Losee, Ken Sikkema, Shanon Draheim, Jason Geer, Mike O'Malley, Kristin Schuster, Maggie Cox, and Jamie Clover Adams

Meeting started at 1:10 p.m.

The shorter version of the January 23rd meeting minutes are still being worked on and will be distributed before the next meeting.

SB 744

744 passed out of the house committee about a week ago. It is now on to the floor, but have not heard about the floor vote. 744 is the recommendation that came out of this Wetland Advisory Council (Council) to allow applicants to extend the permit processing timeframes under Part 13. There were no house amendments.

A member asked if there was anything on 1052, Beach Grooming, and there hasn't been anything yet. However, it passed out of Senate Committee last week, passed on a party line vote. There have been no amendments. And yes, the department opposes the bill as written.

Report from Public Sector Consultants

Physical copies of final report were not distributed in advance. Public Sector Consultants (PSC) said that they looked at the history, function of the program, and the background as it stands today such as what are the other states doing? Bottom line is that most states are doing what Michigan is doing – they are funding their programs through general funds and fees. They looked at 11 different funding options; i.e., a substantial increase in fees, various license or permit increases, increasing real estate transfers, current option of bottle fund, increase in permit fees, general fund options, new bond proposals, increase or expansion of the severance tax, dedicating part of the sales tax or increasing the sales tax, and program funding for foundations. PSC thinks the one that has the best value, in terms of a sustainable dedicated source of funding to stabilize this program, is the one we now currently use. PSC's recommendation is that we use the unclaimed bottle deposits to fund the wetlands program. If policy makers do not like that one, they have a Plan B, which is to use the general fund. The current funding has a lot of value to it. You can take a piece of money that is dedicated to environmental clean-up and actually help stabilize and sustain this important environmental program in its entirety. We do marry that statement in that we think that there needs to be an

increase in user fees. It will come from the unused or unclaimed bottle fees, general fund, and increase in user fees. If policy makers don't embrace these suggestions, then go back to the general fund. The report explains how it gets from the unclaimed bottle fund to the various parts of the program.

A member asked about federal funding. The Department of Environmental Quality (DEQ) reported that that is an ongoing discussion. We first went to the Corp district, then EPA Region 5, and also EPA and the Corp's headquarters. The response was that they have a budget process that's driven through Congress and that they cannot just allocate money. We are now working through the Governor's Office and Michigan Delegation to try to get Congress to take a look at some funding options to provide funding to states who have assumed the 404 program. Right now the Governor's Washington staff is working to try to get a hearing scheduled and we are working through the Associated State Wetland Managers and ECOS in trying to contact states to come testify if we are successful in getting a congressional hearing scheduled.

PCS stated that if you get more money from other funding, there is flexibility in our recommendation that can be adjusted appropriately. The study includes all the pros and cons of each recommendation.

The current recommendation from the current administration is to use general fund money for FY13, which is included in the governor's proposed budget. PSC suggests that there ought to be an increase in fees. The level of fee increases that would be supported may depend on the improvements of the program. In Michigan customers pay one fee to go through all the steps to get a permit. In some states customers pay their state and the Corp, and then some states are different. It also depends on how much other states cover. If applicants were not paying it to the state, a fee would be paid to the Corp. However, there would probably still be a fee to the state for water quality 401 certification.

PSC did crude comparisons of the number of permits other states process and Michigan is at the high end. And where Michigan is compared with other states, we have more water and more wetland, and given that fact, we are at the top.

The Director complimented the group on how much they have accomplished. He would still like to get feedback from the group to move forward. The current budget recommendation supports the program through a one time general fund commitment because the Governor wanted to keep the program. He said a lot has happened to get us here today, and he thinks we are moving in the right direction.

A member talked about expedited fees in that if you are going to have an expedited fee, you have got to find a way that it gets done quickly without retarding the process for the others. A member asked about the expedited process and FTEs. Kim responded that we have a wetland identification model where the applicant pays an additional fee for a quicker turnaround. That means it is their request to go to the top of the pile. We also have a similar model with Part 41 with an additional fee for expedited review. In that program we get roughly \$4,000 a year in expedited requests, so there is not enough additional funds from the expedited process to hire another person.

A member asked if there were limits to where the legislature could reallocate the funds to anything other than the designated uses for that fund. The response was that the legislature can always amend those laws. The response was that PSC thinks it is very appropriate to use unclaimed bottle deposits for the wetland program. Yes they can change the purposes of how

these funds are used and they can change expenditures, but they would probably not take them for other than environmental purposes.

A member asked about what other states were using such as in-lieu fees, wetland grants, etc., and were regulatory issues looked at in this report. The response was that some states used wildlife fees, license plate fees, and bond funds.

A member asked about timelines, the process, when the Council could expect to get back together, and how is the Council going to come to a decision? The response was that the bulk of the work is on the agenda today. Beyond that, there's a requirement that the committees meet one more time. They thought the Council was at a point where this is the last thing we throw out and then meet again in 4-6 weeks, make decisions, and write it up. Concurrently, the legislative process is going.

A member asked if we are going to meet the legislative timeline. The Director said his take was that we won't affect the current legislative timeline, so we should have time. He thought we were good for the year and has commitments from the legislature and Governor. He anticipates the budget for this fall will be done this summer.

A member suggested that if this Council decides that the funding mechanism that makes the most sense is using bottle deposit money and an increase in fees; this Council should only say that this is a funding mechanism, not actually determine what the fee will be. It should be up to the legislature to do that. Another member said that there were already big changes made in the program and those should not be forgotten because we have made concessions. We just want to keep the program effective as well as efficient.

Draft Legislation

Copies of the draft legislation were passed out to the members. The Director wanted to thank Kim, Dina, Maggie, Amy, and Todd. We will go through the draft bill, what you like and do not like, what is in it that has changed, what did we miss?

Kim said that most of this language has been seen by the Council before and most of it is the same as what we passed out at the last meeting. LSB made some of their own adjustments and edits. We are having ongoing discussions with some groups that still have concerns and issues, the drain commissioners is one of those groups.

Amy started going over the draft legislation. First section are changes of Part 301 - Corrections to our program in response to EPAs audit. Page 2, line 11 - Maintenance of agricultural drains. Private vs. public by saying that it is not meant for residential. These drains are typically high up in the watershed. These are trying to get to those little drains that are maintained by the farmer, for the most part. We think it is broadening the language, so it can serve multiple property owners for agricultural purposes.

Page 3, line 8 is the county drain exemption. This takes the existing exemption and defines that it can be only for activities maintained as constructed, and the depth and location of the drain.

Page 4, line 25, fee fix in Part 301. We are trying to make fees consistent in all statutes and to also provide a minor project (MP) category fee under wetlands; currently there is no MP category fee under wetlands so they end up being \$500 for "any other projects." This legislation would have a general permit (GP) fee of \$50 and a MP fee of \$100.

A member had a question on Page 7, why was the definition for environmental area struck? It is still used in statute; it still needs to be included.

Page 12, line 19 - The department will basically be able to assist local governments in identification of potential mitigation banks, etc. The intent is that locals would do the planning and the department would help with technical assistance.

Top of page 13, language that says the department must submit revised administrative rules for wetland mitigation banking with a deadline. Line 8, a new funding mechanism with wetland mitigation banking that goes along with some state revolving fund legislation that is in discussion right now. This would provide a revolving loan program for local communities to build mitigation banks.

On top of page 14 - farming exemptions and ongoing farming activities. Started with federal language and made some improvements based on discussions with the Farm Bureau. Bottom of 14, the number of five years of crop rotation was discussed and we tried to provide a little clarity; this was also used by other states.

Page 18, deletion of an exemption - we needed to do as part of our corrections for the 404 program.

A member made a comment about page 19, nonreporting GPs, when you go to Section 30306 on line 8, except for one exception that it stands, the only way you can get a permit is to apply for a permit through the department. Another thing is that under the ORR report W5 which talks about nonreporting GPs which lists them in 301, 303, and 325. Under the schedule of the Office of Regulatory Reform, they were supposed to be addressed for 301 and 325 and have the rulemaking done by July. Have you anything in mind on W5 or should we start working on that here?

A member mentioned Wisconsin/St. Paul District and discussed how they handled their permitting with nonreporting GPs. A member said that the St. Paul District stopped doing nationwide permits so they are not as stringent as nationwide permits. There is a list of conditions that you do have to report, if these were similar. The member said that they have not looked at the Wisconsin GP recently so they could not discuss the details. Amy responded that she thought with utilities, what we have done, is tried to make everything exempt that can be exempt. Some of the things that you want nonreporting, can actually be fit in the exemptions.

A member wanted to know what the difference was between a nonreporting GP and an exemption? Exempt means it is not regulated. Nonreporting means that somebody has made the determination that if you do this activity that is it going to be so insignificant that some kind of GP or nationwide permit is issued that you can do that. But if you do not meet the conditions of that nationwide or GP, it is a regulated activity. There are really a number of things that are nonreporting. I do not think this is subject to audit unless they go to a specific site and ask to see their permit.

A member wanted to know what kinds of categories would be appropriate for a nonreporting permit. Kim responded that we have asked the utilities for a list but we have not gotten anything yet.

A member suggested that we can get examples from other regions/other states to see what the differences are to have something to compare to. The response was that if you are going to

look at other regions and states, you need to make sure to look at all the states so one can make an unbiased comparison.

Page 20, line 15 – fixing the fees for MP categories.

Page 21, line 16. This would give the department emergency permit authority under Part 303, which we do not have right now and it is something that we would like to have. Kim said that this is the same language that is already in 301 that allows us to issue under lakes and streams before the Public Notice expires.

Page 21, took out parts of statute that were added in 2009; that has already been done.

Page 24, getting mitigation reforms. It has language that the department must modify its mitigation rules by a certain date to provide more flexibility in our mitigation requirements.

Page 25, is beach mowing language. There has already another bill in the legislature for beach grooming, and the department opposes it as written. The chairman on the committee knows our position and the Governor's position on the bill so now they can move it forward as they propose it or they can amend it.

Fee fix for 325 on page 27. On page 29, amendment gives us emergency permit authority under 325, which we currently do not have.

A member indicated two major issues for the drain commissioners; they do not understand the "sole" purpose of reducing moisture. The second issue is a practical issue for drain commissioners; they appreciate the date – "as constructed by." Kim responded by saying that was the issue that was talked about in the subcommittee and Stacy volunteered to try to come up with some language. We are waiting for her to provide us with some suggestions. Also, trying to figure out how to deal with the right-of-way issue. Occasionally there are circumstances when a drain should go back to where it was designed. The Drain Commissioner Association is working up some language.

A member commented that they had major concerns with both a and c on page 12. The MAHB has always opposed wetland ordinances. We believe the environmental regulation should come from the state and the state alone. One of the things that locals have to do in order to regulate the wetlands, they have to show that the wetlands have to fall in the category of public benefits if they are of a certain size. They have to prove that in fact that this wetland meets this criterion. If we are talking about allowing the DEQ to do the identification of the wetland benefits, I think it undercuts the locals. The other one is with c on page 12. The DEQ is not economical specialists. And now on page 22, we are going to throw that all away from this phrase; we are going to let you back in to the DEQ and we are going to let you determine what the economical benefits are for the cities, townships, or the counties. They have a real problem with that concept. A member responded by saying that the DEQ is not saying we are doing the planning; we are saying that we are going to provide local communities assistance to do the planning.

A member commented that local communities have no desire or expertise to get involved with wetland mitigation building. This should include qualified nonprofits or municipalities. They said that nonprofits are much more skilled on this than municipalities and they can leverage your money with private money. Is there something in the law that dictates you can only give to

municipalities? The idea was to carve out a funding program for mitigation banking that would be in the spirit of the existing law.

The Director said the bond or the source of funds we are using for this, we think, might have some restrictions on it. It is not that we do not think we should look at nonprofits. We need to take a look at the law to see if that can be done. There could be a partnership with the nonprofit and municipalities.

Subsection 6 is to apply to municipalities, and it was suggested to add a subsection 7 to apply to non-profits. Transportation Agencies and Drain Commissioners have actually been very interested in this and want to use Part 52 funds. (Drain Commissioners are considered a municipality). A member said that No. 7 could read something like, "The department could establish wetland funding program sources providing grants and loans and eligible nonprofits for the purpose of wetland mitigation banks."

A member said that her understanding was that the Farm Bureau has not taken a position as to where they stand on this as to whether the program should stay or go. Correct? They thought they were still working through that. If we are still wondering if we should keep the program with the state, then we are in a mess. The Farm Bureau said that if what they want is not put through in the legislative process, they would support sending it back. He said he has talked for years to work to incorporate a process he thinks they need, so from their standpoint, he will continue to work to incorporate the things in the bill so that we can keep the program. We are telling the legislatures we are working on keeping the program here, but if it goes back, then it goes back.

Joseph asked members to email comments on specific issues ASAP. Maggie explained that the legislative sponsor is now working on the bill, and has called a meeting with some stakeholders to hear their comments. The sponsor will now control the speed of work on the bill; he may have several meetings before introducing it or he may introduce the bill soon.

Group discussed meeting again soon to continue discussion of bill. Discussed meeting on May 21st, or other day that week. The DEQ will check schedules and notify members.

Meeting ended at 4:25 p.m.