

Wetland Advisory Council
House Office Building, Lansing
June 9, 2011

Meeting Minutes

The Wetland Advisory Council (WAC) held a legislative meet and greet prior to the regularly scheduled meeting. Representative Frank Foster and Representative Eileen Kowall attended. The purpose of the meet and greet was to let the Legislature know what wetlands are, why they are important and valuable, and the role and objectives of the WAC. There was an open dialogue during the meet and greet. Department of Environmental Quality Director Dan Wyant suggested going around the table so the WAC members could introduce themselves and say a few words. Some of the comments made by members include:

- It's amazing to see everyone on the same page.
- We need to keep the Wetland Program in Michigan but funding to run the program needs to be acquired.
- Wetlands are important.
- The WAC hopes to educate legislators on wetlands.
- Would like legislators to really listen to the WAC.
- There would be a funding issue if the Wetland Program went back to the federal government.
- WAC members are open and honest.
- The work the WAC has done is hard and is getting harder.
- Impressed with participation and support of Director Wyant.
- Appreciate Legislators' time today.

Representative Foster indicated he was glad to see so many different areas represented by the WAC and he is looking forward to working with the WAC.

Representative Kowall indicated she was looking forward to working with the WAC and Director Wyant and learning about wetlands.

The WAC regularly scheduled meeting began at 12:10 p.m.

Council Members Present: Joseph Rivet, Jeff Auch, Dan Coffey, Gary Dawson, Susan Harley, Jeff King, John Konik, Erin McDonough, John Niemela, Scott Piggott, Lee Schwartz, Steve Shine, Grenetta Thomassey, Donald Uzarski, and Todd Wyett

Council Members Absent: Sue Elston, Russ Mason, and Chris Reidy

Others Present: Dan Wyant, Andy Such, Deana Bosworth, Brad Wurfel, Kim Fish, Dina Klemans, Todd Losee, and Amy Lounds

The minutes from the April 8, 2011, WAC meeting were approved.

The meeting began with an update of the Department of Environmental Quality (DEQ) and Wetland Program budgets. Director Dan Wyant indicated that the fiscal year (FY) 2012 budget passed the House and Senate and was approved by Governor Rick Snyder. Kim Fish indicated that the budget that was passed kept the Wetland Program funding as is just like last year. However, the DEQ requested an increased in appropriation of \$3.2 million for technology and database upgrades; that request was approved. The DEQ is now moving forward with Phase II of the technology upgrades and is hoping to be done by October 2011. The technology upgrades will allow the DEQ to do things the WAC has asked the DEQ to do, such as better tracking and better electronic transfer of information and data. There is no specific funding identified in the budget for the Wetland Program but account coding has been set up for DEQ staff to code their time to when working on wetland issues. In 2009, the DEQ earmarked \$6 million from the Environmental Protection Fund to replace General Funds that were used in the Wetland Program - \$2 million each year for 3 years, which is how the program is funded through 2012. It is anticipated that the Legislature will begin working on the FY 2013 budget in January 2012.

Director Wyant indicated that Governor Snyder proposed that the DEQ have only 5 line items in the budget. Restricted line items are put in the budget so legislators know where the money is being spent; therefore, departments are limited to what is in those lines and the source of funding. If departments were able to roll up the line items, they could be more flexible in how they spend the money.

Jeff Auch gave a status report on the work of the Permitting, Program Funding, and Public Outreach Subcommittee. The subcommittee met for the first time on June 9, 2011, and discussed appropriate means and level of program funding, minor project (MP) and general permit (GP) categories, wetland mitigation banking, and ways for the public and interested parties to apply for permits. In regard to funding, Jeff has been working with Kim Fish regarding the number of FTEs in the wetland program and how they interact between programs. The DEQ currently gets \$1.68 million for all permit fees; the portion for wetlands fees was \$230,000 for 2010. In order to cover the wetland program with just fees would require a fourfold or fivefold increase in the fees collected. The subcommittee also compared Michigan's application fees with the state of New Jersey's application fees, and determined that there is not enough General Fund money to run the program so fees will need to be looked at. The subcommittee is just getting into funding and structure issues and discussions will continue.

Director Wyant pointed out 4 things as he understood the subcommittee to say:

1. An appropriation fee structure is needed.
2. Can we get General Funds in the future? For 10 years there has been declining General Fund but next year there may be additional General Fund.
3. Can we be more flexible in rolling up line items? It would need to be decided what is a priority, and if it is decided that wetlands are a priority then there will be something we can't do.
4. Efficiency is needed.

Jeff King gave a status report on the work of the Permit Processing, Efficiency, and Program Structure Subcommittee. The subcommittee has focused on whether or not scientific methods can be effectively utilized in the permitting process, and reviewed the

applicability of the Michigan Rapid Assessment Method (MiRAM), a tool for evaluating wetland functions and values in Michigan, in an effort to determine whether such a scientific method would be helpful to both the regulators and the regulated community. If MiRAM is used on all permits, it could help with dispute resolution issues. The MiRAM is a tool for organizing information about plants, hydrology, and soils into a standardized format that can be used to assess the function and value of a wetland. In most applications, MiRAM would not have a significant impact on the permit application process and may increase the cost to the applicant and the DEQ. The use of MiRAM would require training for everyone who uses it.

Subcommittee recommendations: the DEQ continue to develop MiRAM as a tool to be used by staff and consultants and work with the MiRAM Development Committee to further calibrate the method and provide future training; that MiRAM be used when a permit applicant requests its use as a potential tool to resolve a disagreement between the DEQ and a permit applicant or consultant; and that the DEQ establish a database that documents the use of MiRAM on individual permit applications by staff and consultants and that such a database be shared with stakeholders.

The wetland delineation method is the next issue for the subcommittee.

Grenetta Thomassey gave a status report on the work of the EPA Program Requirements and Federal Coordination Subcommittee. The subcommittee held a meeting on April 25, 2011, with drain commissioners and their attorneys. They were able to resolve some confusion regarding exemptions and the MP/GP process. The subcommittee is meeting again following the WAC meeting today and will follow-up on these issues. The subcommittee is not doing anything with the issue of the State Programmatic General Permit process and other ways to improve coordination and reduce duplication of effort between the DEQ and the United States Army Corps of Engineers (USACE) until after a meeting the DEQ is having with the USACE in July 2011. The subcommittee is also discussing the feasible and prudent alternatives analysis, and the cranberry issue.

Joseph Rivet asked what the importance of cranberries was and why so much time was being devoted in this statute on this issue. Scott Piggott agreed to provide a 1-page brief. Kim Fish indicated there has been some activity regarding cranberries and she will provide the subcommittee with information on what has happened so far.

Todd Losee discussed the status of the MP and GP categories. The public notice period ended on May 18, 2011, and 300 pages of comments were received. The most significant changes were submitted by the United States Environmental Protection Agency (USEPA). The USEPA objects to 5 of the categories. The DEQ has been and will continue to work with the USEPA to resolve these issues. Comments were received from most the agencies represented by the WAC, especially utilities and drain commissioners. Comments included stream crossings, transportation, drains, manure lagoons, and many others. The DEQ will prepare a summary document within the next 4-6 weeks and address the comments received. Discussions with the USEPA, drain commissions, road commissions, Michigan Farm Bureau, etc. will occur before decisions are made. If there are significant changes to the categories, they may need to be public noticed again. The next step is to meet with Kim Fish and finalize the categories; submit to the DEQ's Water Resources Division management team for

review; then to Bill Creal, Chief, Water Resources Division for review and approval; and then to Director Wyant for approval.

Director Wyant indicated that in January 2011 there were key legislators that wanted to send the wetland program back to the federal government. That didn't happen but now we have a big funding issue, so it's critical that the WAC have the support of the new Administration and Legislature. The WAC has a lot of educating to do, and the DEQ is going to have to spend quality time on the categories. Senator Tom Casperson and Senator Mike Green have both said they will hold a minimum of 3 hearings on wetlands, so they are moving independent of the WAC. Director Wyant will bring the WAC before them in their hearing process and stress that it would be a mistake to move forward on a lot of significant changes without hearing the outcome of the WAC's efforts.

Proposed legislation currently in the House and/or Senate:

- Senate Bill 168, sponsored by Senator Tom Casperson; and House Bill 4303, sponsored by Representative Ed McBroom: identical bills that exempt public transportation agencies from mitigation.
- House Bill 4607, sponsored by Representative Holly Hughes: amends Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), to require the DEQ to issue dredging permits for 10 years instead of 5.
- House Bill 4132, sponsored by Representative Kurt Heise: limits the DEQ's ability to request additional information from permit applicants. Once an application is considered administratively complete, the DEQ can only request additional information 1 time and cannot require the applicant to provide the information in order to make a determination.
- House Bill 4554, sponsored by Greg MacMaster: amendments to Part 326, Great Lakes Submerged Logs Recovery, and Part 301, Inland lakes and Streams, of the NREPA, which will reopen issuing permits for submerged log recovery from the Great Lakes under Part 326, and continue regulating submerged log recovery from inland lakes under Part 301.

Possible meeting dates for the next WAC meeting were discussed. A tentative date of July 29 was agreed on. Joseph Rivet will contact Andy Such to see if the Michigan Manufacturers Association will host the next meeting. The meeting after that will be held sometime in mid-October.

Meeting was adjourned at 2:45 p.m.