

Wetland Advisory Council Agenda
January 15, 2010
Con Con Conference Room, Constitution Hall

- | | |
|--|--------------|
| 1:30 --Welcome and Introductions | Jim Sygo, |
| 2:00 --Michigan's wetland program | Peg Bostwick |
| The Corps of Engineers programs | John Konik |
| Clean Water Act Section 404 Program | Sue Elston |
| 3:00 --Break | |
| 3:10 --The 2009 Amendments and
the Wetland Advisory Council Charges | Kim Fish |
| 3:30 --Council Business | All |
| Election of a Chair | |
| Schedule of future meetings | |
| Meeting agendas | |
| Resources/information needed | |
| 4:30 --Adjourn | |

**Wetland Advisory Council Meeting
Constitution Hall, ConCon Conference Room
Friday, January 15, 2010**

Council Members Present: Joseph Rivet, Susan Harley, Steve Shine, Jeff King, Don Uzarski, Erin McConough, Barb Avers (for Russ Mason), Jeff Auch, John Konik, John Niemela, Sue Elston, Carrie Vollmer-Sanders, Randy Gross, Gary Dawson, Chris Reidy, Grenetta Thomassey, Todd Wyatt, Tom Hickson, Dan Coffey, Lee Schwartz, Jim Sygo

DEQ Staff Present: Frank Ruswick, Liz Browne, Kim Fish, Peg Bostwick, Lynda Jones

Welcome Remarks by Jim Sygo

Thank you to all the members in agreeing to participate in this Council.

Description of folders that include: meeting agenda, Public Act 120 of 2009 – recent amendments to the statute, summary of the amendments, charges for the Council and the reporting dates, and copies of the day's presentations.

Web page has been created for the Wetland Advisory Council. DNRE will be posting the meeting dates, documents that are generated, handouts, and presentations. The link to the Web site is:

The Council meetings are subject to the Open Meetings Act. The Council will need to decide if they want to allow for public comment during the Council meetings.

Introduction of the Council Members

**Powerpoint Presentation – Peg Bostwick
Introduction to Michigan's Wetland Program**

A Council member requested that they receive a little more information about the importance of wetlands.

The fundamentals for protecting wetlands were outlined by the Legislature beginning in 1979 in order to avoid additional wetland loss because they provide habitat for plants, fish, and game animals; critical for flood storage, integral part of our ecosystem, etc. The goal of the statute is to minimize impacts to wetlands.

A Council member asked if there are 78 FTEs in the Land and Water Management Division responsible for wetland activities.

There are 78 staff in the Land and Water Management Division that work a percentage of their time on wetland issues. They also work on inland lakes and streams and other programs. It is difficult to break down the actual percentage of time spent on each one of the programs. The LWMD is gathering the data by asking staff to code their time.

A council member asked for the source of the statistic that 15 percent of Michigan's land area is wetland.

The 15 percent identified of the wetlands in the state was a compilation of a number of different inventories. This percentage came from the U.S. Fish and Wildlife Service and it is an estimate of the land inventory of the state.

A member suggested there may be more information on economic benefits in the economic analysis of Michigan's Climate Action Plan. The report can be found at www.climatestrategies.us.

Powerpoint Presentation – John Konik **USACE Regulatory Program in Michigan**

The USACE's Detroit District Web site is: www.lre.usace.army.mil/

A Council member asked if the USACE appeal process similar to the State of Michigan's appeal process?

The USACE appeals process is applicable for permit decisions, special conditions to a permit, and jurisdiction determinations.

A Proffered Permit is an alternative permit that is offered to the applicant by the USACE. The applicant can appeal the Proffered Permit. A Review Officer looks at the decision package to see if staff followed all the regulations and documented the regulatory decisions. The Review Officer is a Corps employee and not an Administrative Law Judge. A meeting is scheduled with the applicant, staff, and the review officer recommends a decision. The final decision is made by the USACE District and if the applicant is not happy with the decision their next recourse is legal action.

The final Federal Mitigation Rule was issued in 2008 and establishes that mitigation should be considered in a hierarchal fashion. Mitigation banks is the preferred option.

A member asked when the USACE would have jurisdiction, but the state would not.

The USACE has sole responsibility for permits of private seasonal docks on Section 10 waters and permits on Tribal lands.

Both the State of Michigan and the USACE regulate most activities that involve Section 10 waterways (Great Lakes, St. Joe River, etc.) and the wetlands adjacent to these waterbodies.

USACE has a total of 48 regulatory staff in the Detroit District and five field offices in Michigan. Currently in the process of creating another branch and changing organizational boundaries.

The USACE issues approximately 1600 or 1700 permits a year in Michigan. The USACE has goals for permit processing times, but does not have statutory timeframes. Individual permits' processing goals are met within 59 percent of the time. The processing goals for Standard/General permits are met within 85 percent of the time.

Powerpoint Presentation – Sue Elston **EPA's Role in the 404 Program**

The USEPA has:

- the opportunity to provide comments on the USACE permits;
- enforcement authority under the Clean Water Act;
- veto authority under Section 404(c) of the Clean Water Act; and
- approval and oversight of the state and/or tribes assumption of the Section 404 Program.

In July of 2008 the final results of USEPA's comprehensive review of Michigan's wetland program indicated that staff were doing a good job of issuing permits following the 404 guidelines and a strong field presence. The wetland exemptions are much broader than what is allowed for under the federal program. There were concerns raised in the legal review of how the program is operated and whether the guidelines were being incorporated in a manner consistent with the way they are interpreted in the federal program.

USEPA indicated 20 corrective actions that Michigan would undertake to bring the program into compliance with the federal program. A table of these actions is included in your folders. USEPA's lawyers are reviewing the new statute (PA 120) in accordance with the federal program. Will need to revisit prohibition

of mitigation for General Permits and suspension of the guidance on how to interpret the rules on feasible and prudent alternative analysis [Section 303(11)a].

BREAK

Kim Fish – Wetland Amendments and WAC Charges

1. Wetland Program Amendment Summary

- One of the significant amendments under Section 30105, 30312, and 32512a provides authority to develop a standardized process to develop minor project permitting categories and general permits for all three of our parts (inland lakes and streams, wetlands, Great Lakes submerged lands).

LWMD must review all of the USACE Nationwide permit categories and develop as many minor projects and general permits under those nationwide categories as possible. This will allow us to have similar processing requirements under both the state and federal process.

Section 30301(a) requires the use of the federal wetland delineation manual. The state will no longer utilize their own wetland delineation manual. Division staff will have training on this manual the last week of January.

Sets up a few pilot programs for local units of government, local conservation districts, and partnering groups to develop assistance for applicants and establish mitigation banks. The first pilot program was advertised and posted by the DEQ. All agencies that applied were approved. The second pilot to establish additional mitigation banks will be advertised soon.

An amendment that directed the DEQ to pursue an agreement for state programmatic general permits, which are types of general permits that if approved we can put in place in areas where the state and the USACE have dual jurisdiction.

A provision that takes effect on January 1, 2011, allows an applicant to request the DEQ to delay our permitting decision until the USACE issues a permit for certain wetlands in those areas of joint jurisdiction.

A provision that waives the pre-application meeting fees for cranberry projects.

The feasible and prudent alternative language that was in the administrative rules was moved to the statute under Section 30311. Section 30311(a) deals with the

feasible and prudent alternative guidance that had to be rescinded. The DEQ will work with stakeholders and this Council to develop new guidance.

Section 30311(b) specifies that permits can not be issued for more than five years. This clarifies our authority and is consistent with the federal statute.

Clarifies the DEQ authority to impose conditions on a permit and require compensatory mitigation other than on a General Permit. Moves part of the existing administrative rules dealing with mitigation into statute. Specifies the types of mitigation that are allowed (acquisition of bank credits, restoration creation, and preservation).

Requires development of a Voluntary Wetland Restoration and Enhancement Program.

Section 30325 states that the department must pursue a Memorandum of Agreement with USEPA to expand the categories of discharges that do not require USEPA oversight.

Provision which creates this Council.

2. Wetland Council Reporting Requirements

The statute sets up a list of duties for the Council and requires reports from the Council on October 1, 2010 and August 15, 2012.

It was requested that the department put links to the following on the WAC Web site:

Part 13 of the NREPA
Permit application and instructions
404 Program Review Document and the Federal Register Notice

A question was asked if there is any funding available for Council activities. There was no funding made available in the statute to support the activities of the Wetland Advisory Council.

A Council member asked if department staff had any experience working with or participating in the Groundwater Conservation Advisory Council and the subsequent Water Resources Council due to the similarities with this Council.

Frank Ruswick and Paul Zuger provided input:

- Appointed a leadership structure which consisted of three co-chairs.

- Looked at the tasks and subdivided the work into subcommittees.
- Meetings were open to the public and there was opportunity to participate.
- Subcommittees could ask people who weren't members to participate in the meetings.
- Members met monthly, occasionally meeting for a couple of days.
- They moved the meetings around the State.
- The DEQ/DNR provided clerical assistance, meeting summaries, etc.
- The Council decided that they would operate on a consensus agreement.

Nominations/Vote for Committee Chair

Discussion ensued on who was a voting member of the committee and who was not.

- The statute states the members include the Director of Agriculture, Director of Natural Resources, and Director of Environmental Quality. After January 15, 2010 there will only be one Director for the combined DNRE. Discussion with the new DNRE Director on who will represent the new department on the committee will take place after January 17, 2010.
- John Konik, USACE, advised that according to Department of Defense policy he can participate as a liaison to the Council, but can not be an official member, and he will not vote.
- Sue Elston, USEPA, and Chris Reidy, USDA/NRCS will check with their management on their voting status on the Council. Frank Ruswick indicated that in previous Council meetings representatives of federal agencies could defer or not, it was the decision of the agency itself.
- The eligible count for today's meeting is 18. The eligible count for future meetings is 17.

Motion on the floor to nominate a chair.

Joseph Rivet was nominated as chair, and it was seconded.
Jeff Auch was nominated as chair, and it was seconded.

A brief discussion of the nominees' qualifications were given:

Joseph Rivet

I spent six years in the Legislature; with the designation of being a minority chairman of a standing subcommittee for four years while serving. Currently President of the Michigan County Drain Commissioners and Bay County Drain Commissioner with knowledge of wetland regulations and issues.

Jeff Auch

I am here as a conservation district representative. I serve as Executive Director at the Muskegon Conservation District. My background is in aquatic ecology with experience in mainly due to wetland delineations, wetland restoration.

Motion on the floor to discuss co-chairs. Discussion ensued and the Council decided to elect one Chair and a Vice Chair.

Handwritten votes were collected and the tally was:
16 votes for Joseph Rivet (new Chair)
2 votes for Jeff Auch

Jeff Auch was nominated as Vice Chair, it was seconded, and the vote was unanimous.

Unanimously approved to close the discussion.

Council member asked division staff what percentage of applications are received in the department that are quality applications. The division can prepare a document that addresses this issue.

All Council members agreed that the Council will meet monthly.

Future meeting on Friday, February 12th at 11:00 a.m. at the Michigan United Conservation Corps, Wood Street, East Lansing.

Meeting dismissed at 4:30 p.m.