

**WETLAND ADVISORY COUNCIL AGENDA
APRIL 30, 2010**

MICHIGAN FARM BUREAU
7373 West Saginaw Street, Lansing, Michigan
Parking is Off of Vermillion Street

PRESENTATION (ATTENDANCE OPTIONAL)

11:00 Paul Seelbach: Lessons from the WRCAC (20 minutes)

REGULAR COUNCIL MEETING WILL CONVENE

11:30 Approve Minutes from February 12, 2010 and March 26, 2010 WAC Meetings

11:45 DNRE Regulatory Efficiencies and "Wish List" -- *Liz Browne, DNRE*

12:00 Lunch – Executive Dining Room

1:00 Formation of Subcommittees

Suggested Subcommittees

1. Response to EPA Program Review.
2. The Permit Process and Ways to Improve Permitting Efficiency
 - o Quality of applications submitted.
 - o Impact of statutory decision-making deadlines on meeting purpose of program.
3. Options to Improve Overall Program Efficiency.
 - o Timing of consideration of mitigation within application process.

Expectations for Subcommittee Work Products and Due Dates
(Members should refer to Section 30329(8) for legislative requirements for the
October 1, 2010 report)

1:45 Schedule Next Meetings for Entire Council

2:00 Adjourn

**Wetland Advisory Council Meeting
Farm Bureau
Friday, April 30, 2010**

Meeting Minutes

Council Members Present: Joseph Rivet, Jeff King, Jeff Auch, Grenetta Thomassey, John Niemela, Erin McDonough, Randy Gross, Tom Hickson, Mindy Koch, Stephen Shine, Carrie Vollmer-Sanders, Lee Schwartz, Don Uzarski, Gary Dawson, Todd Wyett, John Konik

Council Members Absent: Dan Coffey, Susan Harley, Sue Elston, Chris Reidy

Others Present: Kim Fish, Peg Bostwick, Liz Browne, all DNRE; Paul Zugger (MUCC); Matt Smego and Scott Pigot (Farm Bureau); Paul Seelbach,

Meeting convened for a technical presentation at 11:05 a.m. by Chair Joseph Rivet, prior to formal business meeting.

- Presentation by Dr. Paul Seelbach, Lessons from the WRCAC – see addendum for presentation summary.

The Council meeting was formally called to order following the technical presentation.

- Liz Browne reviewed the efficiencies the Land and Water Management Division has implemented to date and discussed the division's "Wish List." - see addendum for the following LWMD handouts:
 1. Regulatory Efficiency Efforts
 2. Wish List
 3. Workload Reduction Implementation Plan Briefing
 4. Workload Actions
- The Council voted and approved the draft minutes from the February 12, 2010 and March 26, 2010 meetings.
- Three separate subcommittees were formed.

Subcommittee - Response to EPA Program Review.

Grenetta Thomassey, Co-Chair
Carrie Vollmer-Sanders, Co-Chair
Sue Elston
Susan Harley
Lee Schwartz
Peg Bostwick (department staff assistance)

Subcommittee - Permit Process and Ways to Improve Permitting Efficiency

- o Quality of applications submitted.
- o Impact of statutory decision-making deadlines on meeting purpose of program.

Jeff King, Chair
Todd Wyett
Dan Coffey
Erin McDonough
Gary Dawson
Steve Shine
John Niemela
John Konik
Russ Mason (department staff assistance)
Kim Fish (department staff assistance)

Subcommittee - Options to Improve Overall Program Efficiency.

- o Timing of consideration of mitigation within application process.

Jeff Auch, Chair
Joseph Rivet
Randy Gross
Don Uzarski
Mindy Koch
Tom Hickson
Chris Reidy

Subcommittee Chair/Co-Chairs will direct the subcommittee meetings in the next couple of months and update the full committee at the next scheduled meeting. The subcommittees should have some of the generalities drafted (introduction, charge of the committee, committee membership, meetings held, etc.)

Chair would like to schedule several public meetings in locations around the state to provide information to the general public on the legislation, intent of the legislation, and direction of the council. The meetings will also provide the council members the opportunity to receive input from the citizens. Council members should attend at least one public meeting.

Discussion of Agenda for Next Meeting. The Council agreed to meet on July 12, 2010, from 11:00 a.m. – 3:00 p.m. at Michigan United Conservation Clubs, 2101 Wood Street, East Lansing.

Meeting was adjourned at 2:00 p.m. Subcommittee members met for a few minutes after the council meeting to discuss scheduling, contact information, etc.

Addendum
April 30, 2010 Meeting of the Wetland Advisory Council
Presentation Notes

Dr. Paul Seelbach, – Lessons from the WRCAC

Dr. Seelbach discussed the elements of a successful collaborative and progressive approach for developing Michigan's water policy.

Suggested reading: "Making Collaboration Work" and "Bowling Alone"

Top Ten Lessons Learned from the Water Council

10. Flexibility
9. Address "homeplace" interests and variability.
8. Idea of a descriptive gradient of environmental risk thresholds and associated policies.
7. Pre-Investment in statewide systems-level scientific knowledge and tools.
6. Antecedent pre-existing, larger-scale social pressures.
5. Explicit recognition for and adaptive and iterative process.
4. Embedding ecological concepts in the law.
3. Get there in steps.
2. Patient investment in collaborative study understanding and acceptance of fundamental system principles and broadly accepted values.
1. Creation of a safe space for the collaborative discussion to happen.

Land and Water Management Division Regulatory Efficiency Efforts

Joint and Consolidated Permitting Process

Applicants need to fill out only one set of forms to address state requirements for all of the land and water managed programs as well as the federal requirements for the “404” program (wetlands and inland lakes and streams)

Division staff coordinates the many state and federal reviews needed on behalf of the applicant – including

- ❖ Federal Clean Water Act Authorization
- ❖ Water Quality Certification
- ❖ Coastal Zone Consistency Certification
- ❖ Screening with Federal and State Endangered Species Programs
- ❖ Screening with the Federal Historic Preservation Program

Value Stream Mapping (Lean Process Evaluation)

The Land and Water Management Division undertook a review of the consolidated permitting process in 2004 and 2005. The team included both division staff and outside stakeholders with an eye towards making the permit review process more efficient and had reducing the number of incomplete applications received as a major focus area.

A majority of the recommendations from this effort have been implemented:

- ❖ Expedited permit process that allowed contractors who had undergone division training to meet with division staff during open office hours to receive a minor permit authorization the day of application. This process had to be eliminated with the requirement under Part 13 that applications be processed in the order in which they were received.
- ❖ Expanded the universe of general permits and minor projects
- ❖ Developed an application screening process to more quickly identify some basic components of an incomplete application (such as lack of fee or signature)
- ❖ Expanded use of pre-application meetings
- ❖ Development of EZ Guides for the most popular permit requests
- ❖ Contractor training

The remaining recommendations have been partially instituted within the division. Full implementation requires resources beyond those currently available to the division.

- ❖ All permit applications should be processed completely in the field offices. This is true for general permits, minor projects, critical dune applications and all projects in the counties covered by the division’s Lansing District. The Lansing District was chosen as the pilot for this effort and as it has shown to be successful, the pilot has been left in place.
- ❖ Site inspections should be conducted during the initial 30 day completeness review time frame. In most cases this is not occurring for individual permit projects that require public noticing. These projects are still processed through the Permit Consolidation Unit

in the Lansing division office. The exception as noted above is for the eight county Lansing district pilot area.

Work Load Reduction Implementation Plan

In the fall of 2007 when it became obvious that a quick fix would not be found to a structural imbalance in the division's funding and staffing and its responsibilities to protect Michigan's sensitive natural resources the division began an effort to evaluate program implementation to realign work effort to the highest priority issues. This resulted in the generation of a work load reduction plan that was presented to then Director Chester in February of 2008. The hand out that you have been provided gives the background to the development of the plan and the action items that were implemented. This plan was later reviewed by the department's Environmental Advisory Council where it was given full support.

Additional Actions and Tools

The coordination of permit applications across the division and with the Army Corps of Engineers, creation of the EZ Guides, contractor training efforts by the districts and pre-application meetings has already been mentioned. Additional efforts to gain efficiencies include:

- ❖ Active participation in the department's Environmental Assistance Center (the "800" number that people can call for help with department issues)
- ❖ Maintenance of the division web site – both for individual program areas as well as specifically for the application process
- ❖ Having permit tracking available via "CIWPIS" on line so that interested parties can check on a permit application without having to contact staff
- ❖ Use of electronic mail to interact with local units of government and applicants more quickly
- ❖ Acceptance of credit card and electronic fund transfers for fee payments, significantly reducing the division's overhead as compared to cash handling

Wetland Program Specific Actions

- ❖ Used federal grant money to complete the mandated State-wide Wetlands Inventory
- ❖ Developed a Wetland Mitigation Banking Program
- ❖ Revised the Wetlands Identification Program rules to make it more responsive by allowing expedited review requests that are accompanied by the higher fee
- ❖ Refined the rapid assessment model to use in Michigan to aid staff in evaluating the values and functions associated with the wetlands that they are reviewing, resulting in more consistent evaluations state-wide
- ❖ Developed a landscape level assessment tool to aid watershed groups and others in evaluating the values and functions of a wetland system within the larger landscape

On a final note, in 2009, 4239 applications were received. Of these 2910 (over 68%) were processed without a correction return being needed. 34% of the applications (1451) had a final action issued within 30 days of receipt.

Land and Water Management Division Wish List

While the easy response might be – more money and more staff – that is not of use as one can always do more if the resources are available, and find more that you could do if you just had more staff, money and time. In terms of what the major impediments are to running an efficient program, or things that cause staff the most distress, the division wish list is fairly short, but not necessarily easy:

- ❖ A computer database for the 21st century – the current program was designed in the late 1970s with the last major upgrade in the 1980s. The platform used is no longer supported by the state’s information technology office. An updated system (both software and some field hardware) would allow staff to be more efficient in managing their permit files and would provide managers at all levels better tools to evaluate work loads and effort across the state.
- ❖ Better outreach capability to local units of government, potential applicants, contractors and the general public. Much of the applicant pool interacting with the division is one time contacts. This coupled with the program’s regulation of private property leads to much distress on the part of the applicant and the need to often spend staff time helping “mom and pop”. While this is the area that staff have indicated they would like to spend more time, and some outreach is conducted on a limited basis, it is insufficient. Having the wherewithal to have a robust outreach program would help both the regulated community and the division.
- ❖ Capability to provide staff training on a regular basis. This would address educating staff on any program changes, new technologies, new requirements, updated contested case or court decisions, etc. It would also allow for more cross-program interaction that is necessary to assure consistent application of the program requirements state-wide. It would also be an aid to staff in dealing with the unusual situations that arise by giving them a larger pool of people with whom they have built up a relationship as resources.

Land and Water Management Division (LWMD) Work Load Reduction Implementation Plan Briefing

The LWMD faces considerable challenges in meeting its responsibilities to protect Michigan's sensitive natural resources. Beyond the difficulties inherent in the programs it administers, the LWMD does not have sufficient funding and staffing to fulfill its statutorily assigned responsibilities. Decreasing funding support coupled with increasing program responsibilities has created a structural imbalance that is distorting LWMD operations and that is having unrecognized consequences to the people and natural resources of Michigan.

The LWMD has experienced an erosion of funding, with a corresponding reduction in staffing levels.

Since 2002, general fund appropriations have decreased from \$7,700,000 to \$5,600,000, a reduction of nearly 28%.

Since 2005, LWMD has received \$8 million of supplemental funding, consisting of many one-time funding sources, which are now limited or no longer available.

Permit application revenue has decreased due to a drop in applications and an increase in the percentage of applications in lower fee categories.

The overall LWMD budget has decreased since 2002 from \$14.2 million to \$13.8 million. Because of increased costs, the real buying power of this allocation means the LWMD can now fund 112 staff, in comparison to the 135 funded in 2002. Thus, LWMD has lost 17% of its staff (23 positions) since 2002.

This structural imbalance is unlikely to be addressed through any significant increase in funding in the near term, and with LWMD's own internal reviews having nearly maximized efficiencies, the need for a more comprehensive and innovative approach was needed. LWMD management, with significant input from division staff, generated a list of actions to reduce staff effort with the least potential for public health, safety and resource impact. The list of actions became the basis for the LWMD Work Load Reduction Implementation Plan. The Department of Environmental Quality's Environmental Advisory Council supported this effort when it recommended that the LWMD take steps to more keenly focus its efforts on the greatest risks to Michigan's sensitive lands, resources, and ecological functions and processes, and curtail other services and operations accordingly.

The Plan was designed to realign LWMD work effort to ensure that the highest priority issues can be addressed with the staff resources available. Most of the actions identified in the attached plan summary are expected to be short term in nature (up to 18 months). The status of funding and staffing levels as well as the identified impacts of the actions being taken will be evaluated to determine what changes will need to be made at the end of fiscal year 2009.

**Department of Environmental Quality
Land and Water Management Division
Workload Actions**

The Department of Environmental Quality (DEQ), Land and Water Management Division (LWMD) has a significant structural imbalance between the responsibilities it is charged with and the resources available to meet those responsibilities. LWMD has evaluated the scope of its responsibilities and has identified actions to be taken to balance the workload with existing funding and resources. These **short term** actions must be taken until LWMD's structural imbalance is addressed.

Action Items

1. **Issue all permits, except for Part 353, Sand Dunes Protection and Management, for the full five year time frame allowed by state statute, rules and Michigan's Section 404 program.** Last year LWMD processed over 500 requests for permit extensions. By extending the permit terms to five years, this will greatly diminish the number of permit extensions requiring annual review and action. The permit time frame for Part 353 was recently extended to two years as a result of an agreement with the Critical Dunes Area Stakeholder Work Group and thus will not be changes at this time.
2. **Strictly follow the statutory and rule deadlines for processing permit applications; cease allowing applicants to withdraw applications in order to temporarily suspend processing for up to 180 days.** The statute and rules provide time frames for the review of applications and permit processing; Staff will closely follow these time frames and no longer allow applicants to prolong the process. This will benefit applicants who submit complete applications and encourage others to improve the quality of their submittals.
3. **Process most General Permit/Minor Project applications with minimal review and no site inspection.** In 2007, over 58% of the non-transportation project applications were either Minor Project (MP) or General Permit (GP) applications. MP/GP applications will be processed without conducting a site inspection as long as the application is reasonably complete, photographs of the site have been provided, and we have no reason to suspect significant problems with the project.
4. **Suspend LWMD review of designated Part 301 and Part 303 permit applications, deferring to decisions by the US Army Corps of Engineers (USACE) in areas of joint jurisdiction.** LWMD proposes to issue a General Permit (GP) under the authority of Part 301, Inland Lakes and Streams, and Part 303, Wetlands Protection that would authorize minor activities in waters where the USACE has jurisdiction under Section 10 of the Rivers and Harbors Act/Section 404 of the Clean Water Act. LWMD will defer and issue a GP if the proposed activity has been approved by the USACE.
5. **More consistently prioritize reactions to complaints of unauthorized activities.** The LWMD categorizes citizen complaints based on size and scope of environmental impact and threat to public health and safety. In 2007, staff took actions on 50% of the low priority complaints. LWMD will no longer respond to the lower priority complaints until adequate staff resources are available to address all complaint cases.
6. **Insure that staff is consistently administering the law regarding requests for pre-application meetings by requiring submittal of the appropriate fee for each meeting, including subsequent meetings.** Statutory amendments (324.30306b and 324.30104b) were passed in 2006 which require a fee for each such meeting,

Potential Impacts

Although difficult to quantify, the above actions may have impacts on the public and Michigan's lakes, streams, wetlands, and shorelines. The reduction in the review and oversight of permit applications and reported violations may result in loss of wetlands and public bottomland resources, illegal activities, and possible permitting delays and uncertainty for construction and development projects. These actions will also result in reduced services to applicants and the public and minimal outreach to the public and the regulated community.