

**WETLAND ADVISORY COUNCIL
EPA SUBCOMMITTEE REPORT**

September 22, 2011

The EPA Subcommittee has been meeting regularly.

First of all, we'd like to acknowledge DEQ staff and the role they play in helping this committee to get results. Specifically, we appreciate the work of Kim Fish, Amy Lounds, Todd Losee, and Dina Klemans for their support. We also thank committee member Sue Elston from EPA for her crucial role and help to work through these sometimes complicated tasks.

Since our meeting in June, we finished this item:

The feasible and prudent alternative standard under section 30311 and consistent application of the standard.

Lee Schwartz and Sue Elston worked to address EPA's concerns about changes in the new legislation. They ended up making a one-word change that did the trick; they struck the word "primary" in the last sentence of the economic development section on page four of the document. The subcommittee agreed and approved it. Then, as you know, prior to the June meeting a copy of it was sent to the entire committee for review and comment. Since then, it was proofread and sent up the chain of command for signatures. That was completed and the document is now in use, with the correction in place.

Additionally, since our meeting in June, the following has been done on this task:

Actions necessary to adopt and implement measures determined by the US Environmental Protection Agency to support consistency with the exemption in Section 404 of the Clean Water Act.

One key piece of action for accomplishing this task is to get the Drain Commissioners on board with changes that will be needed from them related to exemptions. At the core of this is the fact that they assume "maintenance" includes things that the EPA does not agree with; but that is changing.

A first step toward compliance with EPA program requirements was to get the Drain Commissioners' agreement on the MP/GP categories that now require permits for some things they did not get permits for, in the past. After 6 months' worth of meetings and a lot of discussion with DEQ, the Drain Commissioners asked their technical committee

to review the MP/GP categories and process. This was done, and the Drain Commissioners now agree with the MP/GP categories. This was an important breakthrough.

They are getting closer to agreement about what EPA considers maintenance and what is not exempt, but there is more work to do on this and DEQ is continuing discussions with them. The Subcommittee remains available to help with these discussions when we are needed, as we have done at various points this year. Joseph Rivet has also been helping with these discussions and we appreciate his efforts, to be sure.

Discussion is also needed with the Agricultural community about the recapture clause, and the Drain Commissioners also want to be involved in that. We hoped that maybe we could get some discussion from the entire WAC today about this point, and Kim Fish noted during our last subcommittee meeting that we might be able to include that in the general discussion. There are still many questions for EPA on this and other points, and we hope to compile a list of those questions for Sue.

A final point on the Drain Commissioners: we hope to establish an agreement from the MADC to go neutral on any proposed legislation we put forward. This is because we assume numerous members of MADC will not support the legislation, but some will. Rather than have MADC oppose, outright, we are hoping for at least a neutral position in lieu of support. That way, any individual commissioners who want to testify or comment against can do so, but so could individuals who support.

Also since our last meeting, we talked about this item:

The appropriateness of the provisions of section 30304b [Corps SPGP] as a means of reducing regulatory burdens from dual federal and state regulation.

DEQ and the Corps both agreed that this item should wait until the MP/GP process was completed. Since this is now done, DEQ is in the process of setting up meetings regarding the SPGP. The plan is to take the MP/GPs and see how many the Corps will allow DEQ to take the lead on, which would reduce duplicative permitting requirements. After these meetings begin, DEQ will give us feedback and we will need to see if the SPGP handles concerns on the following point that this subcommittee is also charged with addressing:

Improving coordination and reducing duplication of effort with the United States army corps of engineers.

We also continued discussion of this item:

Appropriate regulation of the siting, construction, and operation of cranberry production activities, in light of the benefit of cranberry production activities to the economy, the regulatory approach of other states, and other factors.

Scott Piggott had a call with the existing cranberry producers since our last WAC meeting. It was generally gloomy; the cranberry market has tanked, making it difficult for any producer to make a big commitment right now. There was only one person on the call operating with a permit from the state, and another producer is still having conflicts with DEQ. It is a small group of folks who talk to each other all the time, and they are generally not comfortable with the department, despite the new changes.

Scott could not make our last meeting, but he may have more to add for the WAC today. Either way, the subcommittee will continue work on this item.

Finally, we are also charged with this:

How to move ahead with making the legislative changes recommended by EPA?

As such, we are very interested in the WAC agenda item today addressing this point. And, as Kim noted in our last subcommittee meeting, that discussion should also include how to keep the legislature engaged over the next year, as we complete our work.

Our next subcommittee meeting is set for October 11 at 2pm, by conference call. Anyone who is not on the committee but interested in participating is welcome.