

NATURAL AND ENVIRONMENTAL RESOURCES COMMITTEE
McHenry County Administration Building
667 Ware Road, Woodstock, IL 60098

MINUTES OF WEDNESDAY, MAY 11, 2011:

Chairman McCann called the committee meeting to order at 8:30 a.m. The following members were present: Mary McCann, Chairman; Donna Kurtz; Pete Merkel; Bob Nowak; Virginia Peschke and Kathleen Bergan Schmidt. Marc Munaretto was absent. Also in attendance: Peter Austin, County Administrator; Dennis Sandquist, Cory Horton and Cassandra McKinney, Planning & Development; Patti Nomm, Department of Health; Jamie Rein, Assistant State's Attorney; Dave Christensen, EMA; Susan Burke, McSEEP; Elizabeth Kessler, John Kremer, Nancy Williamson, Kevin Ivers and Ed Collins, McHenry County Conservation District; Dr. Anne LeHuray, Pavement Coatings Technology Council; and interested public.

Mary McCann, Chairman	
Donna Kurtz	Pete Merkel
Marc Munaretto	Bob Nowak
Virginia Peschke	Kathleen Bergan Schmidt

MINUTES: None.

PUBLIC COMMENT: Dr. Anne LeHuray, Executive Director of the Pavement Coatings Technology Council (PCTC) Alexandria, Virginia, joined members to discuss a proposed ban on coal-tar-based sealants for McHenry County. She mentioned that businesses that use coal-tar-based sealants are under the radar screen in locations such as McHenry County. She stated that the sealants are a very small portion of an increasing contamination problem with polycyclic aromatic hydrocarbons (PAHs). A county-wide ban on the use of PAHs would hurt businesses that use the sealants on commercial parking lots, residential driveways and playgrounds. PCTC is questioning what they can do to mitigate the problems they see are impacting communities. PCTC has held educational seminars for contractors who use coal-tar-based sealants to help educate them on the proper use of PAHs.

Chairman McCann requested that agenda item No. 6.6 be reviewed next.

NEW BUSINESS:

Discussion of legal authority to regulate coal-tar-sealants (PAHs): Mr. Sandquist and Ms. Rein joined committee members and provided them with a copy of the State's Attorney's opinion regarding whether or not the County may pass an ordinance regulating the application and sale of coal tar. Mr. Sandquist mentioned that this is an item that is identified in the Water Resources Action Plan (WRAP) and there is data that coal tar-based sealants are significant sources of PAHs and PAHs in the environment are carcinogenic. The P&D Department has heard from industries that they are looking for a level playing field and if the County regulates or bans coal tar-based sealants, businesses are asking that the standards be the same among communities and countywide. The initial review from the State's Attorney is that the County does not have authority to do this. The next step may be to go back to the task force, or a sub-set of the communities that are interested in this matter, and as a group discuss what can be done. There are still advocacy, outreach and education venues for this matter. Ms. Rein mentioned that the County has to derive their ordinances from state statutes or regulations and without changes to state laws, the County is unable to regulate PAHs. Dr. LeHuray stated that the PCTC is looking into organizing a certification program for individuals who use PAHs. She also mentioned that at both the federal and state levels one of the issues that the EPA will run into, that has not been discussed, are the medicinal uses of coal tar which is contained in psoriasis, eczema lotions and dandruff shampoos purchased over-the-counter, as well as prescription medications. Mr. Sandquist suggested an ad hoc committee be formed to further discuss this topic and discuss what advocacy steps may be taken. Ms. Kurtz questioned Chairman McCann if she recommends they work through the Legislative Committee if they, as a committee, made a decision that they want to be involved with the regulation of coal tar. Chairman McCann confirmed that they would work with the Legislative Committee to address the state law issue. Ms. Kurtz mentioned that she has heard that various municipal leaders are looking to the County for leadership with this matter. Mr. Austin mentioned that he has had conversations with several city managers concerning this topic. Many have expressed a desire to have a unified program on this topic. Chairman McCann suggested that a task force be formed to discuss the options available for this topic, including education, and to also work with municipalities in a leadership role. The task force would do an in-depth study and would report back to this committee concerning best management practices. Ms. Peschke suggested that a workshop be held for this topic, similar to the snow and ice removal workshop organized and presented by Ms. McKinney. Several members agreed that this was a

good suggestion. It was mentioned that the County does not require a license for businesses who apply coal-tar sealants. Mr. Nowak questioned if there are alternatives for coal-tar-based sealants. There is literature supporting alternatives as being equally as good as coal tar, some of which are latex-based or asphalt-based sealcoats. Many have a shorter application window and many people feel that they do not last as long as coal-tar-based sealants. It was the consensus of the committee to have a sub-committee formed to continue to study this issue and report back to this committee at a later date.

Mr. Nowak left the meeting at 9:05 a.m.

PRESENTATION: None.

OLD BUSINESS:

WRAP: Section 2: B(3) Stormwater Management: Ms. McKinney reviewed with members the edits made to the matrix based upon committee discussion during the last committee meeting concerning Sub-Section B(3) Stormwater Management of the Water Resources Action Plan (WRAP). The provisions/corrections are in red print on the matrix. Ms. Bergan Schmidt made a motion, seconded by Ms. Kurtz, to approve the amendments to the WRAPs Sub-Section B(3) Stormwater Management and accept this section of the WRAP. The motion carried on a unanimous voice vote of all members present voting aye (Kurtz, Merkel, Peschke, Schmidt and McCann).

NEW BUSINESS:

McHenry County Conservation District (MCCD) – updates for McHenry County Stormwater Ordinance: Representatives from the MCCD, Mr. Sandquist and Mr. Horton joined committee members to discuss the Unified Development Ordinance (UDO) and the Stormwater Management Ordinance (SMO). Mr. Sandquist mentioned that several of the suggestions mentioned in Ms. Kessler's letter dated April 19, 2011 pertain to the UDO project and these suggestions have been provided to Camiros. Two comments (#7 and #9) in her letter are specific to the SMO which is a countywide ordinance and is outside of the scope of the UDO. Members were asked to discuss these two comments and provide directions to staff as to whether or not they would like further research on these matters. A major topic is certification of communities and the Planning and Development (P&D) Department certifies municipalities to enforce the SMO. The objective is to become self regulating and regulate development within their corporate jurisdiction. The vast majority, which is private developments, issue building and stormwater permits. The outcome is when they do their own municipal public work projects, they are reviewing and permitting it. In order to do that, the MCCD has to have an engineer who designs the project and another engineer who reviews it because the same engineer cannot do both. MCCD needs to make sure their projects meet all the standards in the ordinance even though they are reviewing and permitting them themselves. P&D has been working with MCCD on Letters of Understanding (LOU) - one is for conservation-type and restoration projects which provides some relief from some standard requirements of the ordinance, and a second LOU that may be brought to the Stormwater Commission this month that would provide additional relief for developmental projects (parking lots, building rooftops) that would provide relief from the substantial standards of the ordinance. Previously the ordinance had an exemption for statutory entities doing their statutory-required work. MCCD did claim that exemption and felt they fell in this definition, but as they went through the SMO revisions last year, that was a provision that was flagged by FEMA and IDNR as being too broad and they required that this exemption be removed. Currently the ordinance states that a municipality can be certified. They may want to discuss whether or not certain entities can be certified. Mr. Horton mentioned that certified communities are municipalities under the SMO. The National Flood Insurance Program is administered by communities. He does not know how FEMA would handle the MCCD being a certified community because they would then have a government agency regulating the National Flood Insurance Program and they would have to be a part of the National Flood Insurance Program to administer that. He does not know if it is possible for a conservation district to administer the National Flood Insurance Program. A large part of the National Flood Insurance Program's requirements are to meet the requirements of the SWO. If the MCCD becomes a certified community, it may not allow them any relief from the requirements of the ordinance. They would have to investigate whether or not FEMA or the IDNR would allow this, and also if the statutory authority, through the SMO, would allow it. Ms. Kessler mentioned that the MCCD is currently working on a LOU concerning the SMO because of the majority of the sites the MCCD owns are less than 1% of impervious surface. The Conservation District's planning department still uses outside engineering consultants to review their plans. Ms. Williamson mentioned that the MCCD is always looking at the handling of stormwater, above and beyond simply handling the water, but also treating it so that it can remain as clean as possible. Mr. Merkel stated that most projects which have come before this committee are new developments which have an impact on stormwater and water quality. MCCD does many restoration projects and he questioned how this was addressed in

the SMO. There may be items in the SMO, because of the way it is written for development projects, which may not meet the criteria for restoration projects. As examples, The Land Conservancy, private land owners, park districts, and municipal parks may also have land they may want to do restoration projects on. He feels they should encourage municipalities to do restoration projects which help the overall stormwater management. Mr. Sandquist mentioned that they did consider, during the last round of amendments to the SMO, adopting a county-wide permit for restoration projects that would provide all property owners doing restoration projects some relief from some requirements of the ordinance. Ultimately those amendments were not adopted. As an alternative, a LOU was adopted for the MCCD based on review and approval by the TAC, the Stormwater Commission, this committee and the County Board. It is a formal process that will provide specific relief to the Conservation District for those restoration projects based on the acknowledgement that they will be responsible for the proper completion of the projects. If other non-profit organizations or park districts want similar relief from substantial requirements, they may be addressed through additional LOUs and through an ordinance amendment. Ms. Williamson mentioned that the Conservation District was not looking for relief from the ordinance, but are looking to hold itself to a higher standard and are looking to oversee their own developments. Mr. Sandquist mentioned that the LOU with the MCCD would not apply to other park districts or land management agencies. Chairman McCann mentioned the high engineering costs for both homeowners and public agencies is because of the way the SMO is written. She previously asked if there are any concessions that can be made to have the costly engineering drawings eliminated and still be able to obtain the same results and quality of stormwater control and the answer was yes. The SMO has very strict engineering requirements. She inquired if some of the engineering requirements for smaller projects may be in order for the committee to give direction to the Stormwater Commission and they would give that direction specifically to the TAC for purposes of reducing some of the requirements. Mr. Horton said that it could be pursued when engineering is required for intermediate development, but it would vary according to each project. Many projects require retention which requires engineering review. Mr. Kremer mentioned that the MCCD has been working with the P&D Department concerning the improvement of the LOU. MCCD's planning and development manager recently completed the analysis of MCCD's sites that have site development on them, and what percentage of the site is developed. He mentioned that Glacial Park has approximately .3% of impervious surface and they hope to use this as the benchmark for future LOUs. He questioned if the MCCD can obtain credit for the removal of impervious surfaces, why won't they be able to obtain credit for enhancing the ability for water infiltration. Mr. Horton mentioned the recent amendments to the SMO addressed impervious areas. As far as best management practices, they are being as flexible as possible within the confines of the SMO to allow credit for permeable pavement and other items. Providing credit for changing land use to native vegetation may be possible under the SMO. The P&D Department may need deed restrictions for the property to make sure it stays in the land use for the MCCD. Mr. Sandquist mentioned that the section concerning restoration projects in the SMO may need to be reviewed and reworked. Mr. Horton stated that TAC is currently working on volume reduction and infiltration requirements.

Mr. Nowak returned to the meeting at 9:45 a.m.

Ms. Kessler mentioned that having changes to the SMO in a way to incorporate what the MCCD is doing would be ideal. Concerning the certification process and as a unit of government, the MCCD should be held to the same level as local municipalities. Mr. Sandquist stated that if they will be allowing the MCCD credit for specific projects and there have to be amendments to the ordinance or a LOU to make it a regulation for the MCCD, this would be a separate issue if the MCCD becomes a certified community.

Mr. Sandquist requested the committee to provide direction as to what they would like staff to do concerning this matter. It was the consensus of the committee to have staff continue working on the LOU with the MCCD, and in one year revisit whether or not to pursue the MCCD becoming a certified community.

McHenry County Conservation District (MCCD) – UDO Issues Regarding Open Space: Chairman McCann requested clarification of item No. 4 contained in the correspondence dated April 19, 2011 from Ms. Kessler which references establishing a Conservancy Preservation zone classification. She mentioned that a soil scientist recently attending a NERC meeting and he mentioned that Lake Zurich and Long Grove has this classification. Ms. Kessler stated that the sample provided in her correspondence is from the Village of Richmond. The MCCD would like to see this move into their open space and many municipalities have Open Space Recreation (OSR). Since they are discussing zoning with the UDO, a Conservancy Preservation would not be, per se, just to the MCCD because their wetland does not have to be zoned to protect their own area. It is potentially something they may seek, or the private land trust may want to put their land in this type of zoning. The zoning classification would limit the type of development or create a mandatory buffer to

help protect sensitive areas. Mr. Sandquist mentioned that this matter has been forwarded to Camiros and is a core piece as to what the County wants to do with the UDO. Currently there is not a zoning category for open space and most of the open space land is zoned as it was when it was purchased.

Resolution Authorizing Acceptance of a \$12,500 Grant from the Army Corps of Engineers for the Kishwaukee River Riparian Marsh Project and an Emergency Appropriation to the Planning and Development Fiscal Year 2011 Budget: Ms. Peschke made a motion, seconded by Ms. Kurtz, to recommend the County Board approve the above resolution. Members were provided with a copy of the revised Resolution. Ms. McKinney mentioned that this project is in partnership with the MCCD who will provide a 25% match (\$12,500) in cash and a 25% match (\$12,500) for in kind services for a restoration project of the Kishwaukee River Riparian Marsh. The marsh restoration project fits with the County's Water Resource Action Plan (WRAP) and its commitment to groundwater recharge, reducing stormwater, water resources protection and open space conservation design. The motion carried with all members present voting on a roll call vote of all ayes (Kurtz, Merkel, Nowak, Peschke, Schmidt and McCann).

Verbal approval to prepare a Hazard Mitigation Grant Program Application: Mr. Christensen introduced himself as the new Emergency Management Director. Mr. Sandquist mentioned that the County developed and adopted a McHenry County Hazard Mitigation Plan. Based on the adoption of the Plan, the County is now eligible to apply for grant funding through the Hazard Mitigation Planning Grant program. One of the programs funded will be to address flood structures that are repeatedly subject to flood damage. They are proposing to prepare an application between the P&D Department, EMA and the MCCD to address residential properties along the Nippersink Creek canoe base that suffer flood damage. They could help property owners elevate structures along the flood plain, or the properties could be purchased and remove the flood structures and turn the property into open space. If approved by MCCD's Board, MCCD will provide 25% matching funds required to purchase these properties and demolish the flood-prone structures. MCCD will accept and maintain the property as open space. The applications are due July 1, 2011. Mr. Nowak made a motion, seconded by Ms. Peschke, to approve the preparation of a Hazard Mitigation Grant Program Application. The motion carried with all members present voting aye on a voice vote (Kurtz, Merkel, Nowak, Peschke, Schmidt and McCann).

Mr. Merkel stated that Nancy Williamson is the current President of the MCCD, her term is expiring, and her last meeting will be in June, 2011. Everyone thanked her for her years of service with the MCCD.

Ms. Kurtz left the meeting at 10:05 a.m.

Resolution Authorizing an Emergency Appropriation to the Planning & Development Fiscal Year 2011 Budget and Authorizing Installation of a Rain Garden Demonstration Project on the County Campus: Ms. Peschke made a motion, seconded by Mr. Merkel, to recommend the County Board approve the above resolution. Members were provided with a copy of the revised Resolution. Ms. McKinney explained that this is a joint project between two funding sources/grants. One grant is for \$1,800 from the McHenry County Soil and Water Conservation District (MCSWCD) to install a rain garden demonstration project, and the second grant is from the Illinois American Water Association for \$6,200 to install a rain garden xeriscaping educational project. The MCSWCD grant requires a 40% match (\$1,200) which will be provided by the grant from the Illinois American Water Association. The demonstration rain garden and xeriscaping projects will be located near the front entrance to the County Administration Building and will include educational signs showing alternative methods of stormwater management and landscape maintenance. The MCCD will provide excavation work as part of the cost share in-kind services. The motion carried with all members present voting on a roll call vote of all ayes (Merkel, Nowak, Peschke, Schmidt and McCann).

Water Resources Action Plan, Section II: Sub-Section B3) NPDES (National Pollution Discharge Elimination Systems): Ms. McKinney reviewed this subsection of the WRAP with committee members. The NPDES concerns run-off pollution which runs into the county's ditches and right-of-ways. Item Nos. 13 through 17 concern education as the primary component for implementation. Section No. 13 is to educate the public of possible point and non-point sources of pollutants that can enter various water bodies. Section No. 14 concerns developing and distributing training materials for commercial and industrial businesses for pollution prevention and good housekeeping practices. Section No. 15 is to educate the public on the importance of stream quality classification and the need for protection. Section No. 16 is to support community efforts for best management practices and participation in community events. Section No. 17 is to utilize school programs, brochures, articles and water conservation events to help educate the public on all of the above

topics. Section No. 18 is to coordinate countywide stormwater and sanitary drainage system mapping information by using the County's GIS application of ATHENA. MCDOT has taken the lead on this. Section No. 19 is to develop a coordinated NPDES ms4 Phase II program with local government entities to further advance education and public involvement countywide and enhance ordinances in the McHenry County Stormwater Management Program.

Chairman McCann mentioned that they have discussed a creation of a map of new and existing drain tiles located in the County. She questioned if this would be beneficial to add this map to this section of the WRAP. Mr. Sandquist suggested that such a map may be better suited in another section of the WRAP rather than in the NPDES section. Ms. McKinney suggested that a map be placed under Sub-Section B3) Stormwater Management. She also suggested that it be placed under both groundwater quantity and quality. Drain tiles have both quantity and quality impacts to stormwater, as well as groundwater. Mr. Horton stated that drain tiles are a requirement under the SMO and many drain tiles discharge into ditches. Ms. McKinney questioned if staff is being asked to map the drain tile network in McHenry County. It was mentioned that such a map does not exist, but there are many maps of drain tiles located throughout the County. Chairman McCann made the recommendation to include the drainage mapping in Sub-Section B3) Stormwater of the WRAP. Chairman McCann requested Ms. McKinney compile Sub-Section B3 of the WRAP and present it to the committee at the next meeting for review and approval.

Ms. Kurtz returned to the meeting at 10:22 a.m.

Senate Bill 38 – Rainwater Harvesting: Chairman McCann mentioned that she wanted committee members to be aware of SB 38 as it relates to rain gardens and the WRAP. She asked for the consensus of the committee to move this matter to the Legislative Committee to be placed on their agenda. Ms. Peschke made a motion, seconded by Mr. Bless, to have Senate Bill 38 – Rainwater Harvesting moved to the Legislative and Intergovernmental Committee for review. The motion passed with all members present voting aye (Kurtz, Merkel, Nowak, Peschke, Schmidt and McCann).

REPORTS TO COMMITTEE:

McHenry County conservation District: None.

CMAQ: Weekly Newsletter: None.

Agricultural Conservation Easement Farmland Protection Commission: None.

Northwest Water Planning Alliance: Chairman McCann informed members that the minutes of the executive committee meeting of the Northwest Water Planning Alliance held on March 10, 2011 were provided to members in their meeting packet. Currently they do not have a website and when one is created, she will inform members of the website.

NPDES: National Pollution Discharge Elimination Systems: None.

Watershed Updates: None.

Solid Waste: Ms. Nomm mentioned at on April 30th eight police departments participated in the Drug Enforcement Agencies pharmaceutical take-back program which was very successful. An electronics collection and recycling event is being planned for June 11, 2011 at McHenry County College located in Crystal Lake, IL. During an upcoming meeting, Ms. Nomm would like to do a presentation on the County's solid waste plan. The solid waste plan is scheduled to be updated in the upcoming year.

Green Team: None.

EXECUTIVE SESSION: None.

FUTURE TOPICS: None.

OTHER: Chairman McCann reminded committee members that the next NERC meeting will be held at 8:15 a.m. on June 7, 2011 and will be a joint meeting with the Finance and Audit Committee to discuss the MCCD's budget report.

ADJOURNMENT: Ms. Peschke made a motion, seconded by Ms. Kurtz, to adjourn the meeting at 10:31 a.m. The motion carried with all members present voting aye on a voice vote.

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RECOMMENDED FOR BOARD ACTION/APPROVAL:

Resolution Authorizing Acceptance of a \$12,500 Grant from the Army Corps of Engineers for the Kishwaukee River Riparian Marsh Project and an Emergency Appropriation to the Planning and Development Fiscal Year 2011 Budget
Resolution Authorizing An Emergency Appropriation to the Planning & Development Fiscal Year 2011 Budget and Authorizing Installation of a Rain Garden Demonstration Project on the County Campus

RECOMMENDED FOR STAFF FOLLOW-UP:

Water Resource Manger to follow up coal tar issues with a study group or sub-committee to continue to study this issue and report back to this committee at a later date
Staff to continue working on the LOU with the MCCD and revisit this matter in one year to discuss whether or not to pursue the MCCD becoming a certified community

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