

## **MEMORANDUM**

**Date:** January 15, 2016  
**To:** The Honorable Stephanie Chang, State Representative  
**From:** Michael Campana, Division Director  
**Re:** **Environmental Boards and Commissions (Request #16-01588)**

In response to your request, the Research Services Division is providing background information about citizen oversight of state environmental quality agencies. In particular, you were interested in the air advisory council and if surrounding states have citizen oversight boards. I have gathered information from our files as well as various documents, websites, and state laws.

In short, many states have boards or commissions that provide oversight of state environmental quality agencies. Among surrounding states, Wisconsin has a true citizen board, Illinois has a professional board, and Indiana has a stakeholder board that is limited to rule-making decisions. Until last year, Minnesota also had a citizen board, but it was eliminated by the legislature. Michigan used to have similar environmental oversight boards, but they were eliminated by Governor Engler in 1991. The Air Advisory Council is a fairly recent stakeholder board that appears to have been created by the director of the Michigan Department of Environmental Quality (DEQ). However, it is limited to an advisory role unlike Michigan's previous commissions and the current boards in Illinois, Indiana, and Wisconsin.

### **Air Advisory Council**

The Air Advisory Council was created within the DEQ in 2012. There are 24 members on the council, primarily representing regulated industries. It appears that there is one member representing environmental interests. The adopted mission of the council is to provide "meaningful input and guidance to the Air Quality Division thereby assisting in the wise management of the State's air resources." The council has met 14 times since its inception.

I have not been able to find any reference to the Air Advisory Council in statute, rules, or executive orders. It appears that the council was created by the department director.

### **Citizen Environmental Boards**

Environmental policy boards are fairly common throughout the country. A 2013 dissertation indicated that 32 states had some form of environmental policy-making board. However, that number is shrinking, as these boards can be controversial. In 2015, the Minnesota Legislature eliminated the citizens' board that oversaw the Minnesota Pollution Control Agency (MPCA). Apparently, the board angered many legislative interests when it required a proposed concentrated animal feeding operation to complete an environmental impact statement. While the Minnesota governor has created through executive order an 8-member advisory board to replace the citizens' board, the advisory board will not have the same power as

the citizens' board to review decisions of the agency. Last year, Wisconsin Governor Scott Walker failed in an attempt to make the Wisconsin Natural Resources Board advisory only. Eliminating the supervision of the board over the department would have given the governor and his appointed department director more control.

Among the other surrounding states, Illinois, Indiana, and Wisconsin have some form of oversight board. Similar to Michigan (and now Minnesota), Ohio does not have an environmental policy board.

### *Illinois*

The 5-member Illinois Pollution Control Board is a professional, full-time, independent board appointed by the governor with the advice and consent of the Senate (415 ILCS 5/5). Members must have "verifiable technical, academic, or actual experience in the field of pollution control or environmental law and regulation," and no more than three members may be of the same political party. Among other duties, the board adopts environmental rules, hears permit appeals, and considers environmental complaints under the Illinois Environmental Protection Act.

### *Indiana*

The 16-member Indiana Environmental Rules Board adopts rules for air pollution, water pollution, and other environmental issues implemented by the Indiana Department of Environmental Management (Indiana Code 13-13-8). The board is composed of stakeholders and government officials. Five of the board members are government officials: the lieutenant governor and four department heads. The remaining 11 members are appointed by the governor to represent certain constituencies specified in statute, including agriculture, manufacturing, environmental interests, labor, local government, small business, electric public utilities, and solid waste management industries. Two members represent the general public and one member is a health professional. The Environmental Rules Board was created in 2012 and replaced separate air pollution, water pollution, and solid waste management control boards.

### *Wisconsin*

The Wisconsin Natural Resources Board is a 7-member citizens' board that governs policy and supervises the Wisconsin Department of Natural Resources. The Wisconsin DNR administers the state's natural resources and environmental programs. The board is appointed by the governor with the advice and consent of the Senate. To provide statewide representation, three board members must be from northern areas of the state and three members from southern areas of the state. The last member serves as an at-large member. At least one member must have an agricultural background, and at least three members must have experience with hunting, fishing, or trapping as demonstrated by holding a license over a certain period preceding appointment. Wisconsin statute specifically prohibits the appointment of board members that earn "a significant portion of their income" from permit holders, applicants, or persons subject to permits or enforcement orders (Wisconsin Statutes 15.34).

## **Michigan's Environmental Boards and Commissions**

Michigan used to have numerous environmental boards and commissions, including a water resources commission and air pollution control commission, which operated within the Department of Natural Resources (DNR). In 1991, Governor Engler eliminated by executive order these boards and commissions and transferred their powers to the department director. As detailed in the backgrounder I have already provided, this action was controversial. The House rejected the executive order but the Senate took no action, and the Michigan Supreme Court ruled that the executive order was legal. The Natural Resources Commission, a 7-member citizen board, that sets DNR policy and at that time appointed the DNR director, continued to provide some citizen oversight of environmental programs. Four years later, environmental programs were separated from the DNR and the broad oversight of the Natural Resources

Commission and placed in the newly created DEQ, further separating environmental programs from citizen oversight. The next two sections provide a brief overview of the Water Resources Commission and the Air Pollution Control Commission.

#### *Water Resources Commission*

The Water Resources Commission was the primary regulatory authority for water pollution control in Michigan for over 60 years. For most of its existence, the seven-member commission consisted of four agency directors (natural resources, public health, agriculture, transportation) or their designees and representatives from industry, municipalities, and conservation interests. The citizen representatives were appointed by the governor with the advice and consent of the Senate. Originally an independent state agency, the Legislature transferred the commission to the Department of Conservation, the precursor to the DNR, in 1965. Despite the transfer, the commission remained an independent authority within the department that did not answer to the department director or the Natural Resources Commission (NRC), although the director did serve as a commissioner.

Over the next 25 years, a series of internal and external reports would describe how this independent authority within the department created a complex and confusing organizational structure. In 1972, Governor Milliken transferred some of the commission's authority, primarily related to flood and shoreline management, to the DNR director and the NRC, with the Water Resources Commission only serving an advisory role. However, the commission retained independent authority over water pollution control issues. In 1976, Governor Milliken transferred more of the commission's authority to the director and the NRC with the commission only retaining independence on administering National Pollutant Discharge Elimination System (NPDES) permits and related orders.

#### *Air Pollution Control Commission*

Similar to the Water Resources Commission, the Air Pollution Control Commission was the primary regulatory authority for air pollution control for decades. Initially created in 1965, the 9-member commission consisted of three agency directors and the following six additional members appointed by the governor with the advice and consent of the Senate:

- Two representatives of industrial management, including one professional engineer with expertise in air pollution control and measurement
- Two representatives of local governments, including a full-time pollution control officer
- A licensed doctor with experience in the toxicology of air contaminants
- Member of the general public.

In 1972, a representative of labor and another member of the general public were added to the commission. The commission was originally housed in the Department of Health but transferred to the DNR in 1973 by Governor Milliken. As with the Water Resources Commission, the independent authority of the commission was a source of controversy for decades, until it was eliminated by Governor Engler.

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If you would like clarification or have any further questions regarding this issue or another issue, please contact the Research Services Division at 3-5200.