TESTIMONY OF THE CHIPPEWA COUNTY ROAD COMMISSION

BEFORE A JOINT MEETING REGARDING TRANSPORTATION, NATURAL RESOURCES, ENVIRONMENT AND GREAT LAKES

WEDNESDAY, APRIL 13, 2011

PRESENTED BY: ROBERT LAITINEN

Testimony of Robert Laitinen, Superintendent/Manager for the Chippewa County Road Commission

Thank you for the opportunity to provide comments regarding SB 168 and HB 4303 which involve reform of the current wetland mitigation requirements as they relate to Michigan's County Road Commissions. Chippewa County is the second largest county in the state of Michigan at 2698 square miles, and is broken down into 16 townships. The Chippewa County Road Commission maintains 1284 miles of county roadway and under a maintenance contract with MDOT we also maintain 527 lane miles of state trunkline within our boundaries. Although no accurate map exists delineating the exact acreage of wetland, I would estimate that approximately 50% of Chippewa County would be considered wetland. Because of the frequent occurrence of wetland and the number of miles of roadway we maintain we have had many disagreements with the MDEQ and have spent numerous dollars in construction of one mitigation site and in legal defense of activities that do not require permit.

Of the 16 townships within our county, 12 of them have passed some sort of local road improvement millage, and at the county level the voters have approved and renewed for the past 25 years one mill county wide for the improvement of roads. Due to the funding generated by the property owners within the county and the participation of the townships we have a very active local road improvement program and we typically re-construct about 8 to 10 miles of roadway each year using our own forces and equipment. Many of our rural local roadways are about 20 feet wide across the top, gravel surfaced, are nearly level with the surrounding terrain and usually have inadequate drainage. A typical local road improvement project involves raising and widening of the travelled surface to a standard 30 foot width, gravel surface and drainage improvements to insure stability of the subbase. In general, we improve the road to a level necessary to ensure that eventual paving of the roadway will be a responsible investment and will be long lasting.

As previously stated, over the last several years Chippewa County has spent just over $400,000 in legal fees and other expenses relating to a supposed wetland violation on one of these local road projects. In

this case the DEQ sent a Notice of Violation stating that a permit was required for this type of activity and asking for an after-the-fact application for permit. If the Road Commission had accepted this interpretation of the law we would have been subject to an after the fact permit fee and the permit most certainly would have carried a requirement for significant mitigation acreage. As a basis for our argument we used Sec. 30305 item (2) part (k) of the Natural Resources and Environmental Protection Act which states that this type of activity is clearly exempt from the permit process. In the end the 50th Circuit Court found the same to be true and ruled that no permit was necessary for this project and therefore no mitigation. We were able to argue the aforementioned case because it was a strictly locally funded project and argument would not postpone construction or endanger any funding. In other cases, the most recent being our Tilson Road project in 2007 and 2008, we were forced to construct 9 acres of mitigation as a condition of the permit at an additional cost to the county of $59,470. This additional cost was accepted and the site was built simply because this was a federal aid project and not complying with the permit requirements, even though those requirements were illegal, would have jeopardized our federal funding for the job. We also have 4 other sites where the department (under a previous Director) has sent violation notices and is requesting mitigation for work that is clearly exempt and it is stated on one Notice of Violation that the department rejects the 30305 exemption.

My first reason for relaying this information to you is to try and demonstrate the adversarial, costly and time consuming atmosphere that we endured throughout this process, just to defend ourselves for actions that were entirely legal in the first place. I believe that we were being scrutinized to a higher degree than some others simply because we chose to argue.

My second reason for presenting this is to bring attention to the existing exemption under 30305 (2) (k), as most road work we typically perform falls under that exemption, we used it as the basis for our legal arguments, and it was accepted and upheld by the Court in Chippewa County as well as previously in Oceana County. I feel that further mention of it in this legislation would serve to strengthen the intent of that language and would clarify that the proposed amendment would only have effect where a permit is actually required. At my first reading of the proposed legislation I felt that it inferred that a permit was necessary for most road work when in fact many projects would be exempt under 30305. Mentioning it again would tend to lend a little additional validity to the exemption.

My third reason is to express concern that this action will more than likely attract the attention of the EPA, and may have the potential to trigger a review of Michigan's program and possibly revocation of Michigan's authority to regulate its own wetlands. Michigan was granted authority to regulate its own wetlands using its own statute in October 1984 (40CFR 233.70), and since that date the EPA has completed one review of Michigan's program and published those results in 2002. In the document outlining their review it was made clear that if Michigan's statute as a whole fails to be as strict as the federal Clean Water Act, that they can revoke Michigan's authority. They mention that failure could be due to several reasons like court decisions, rule changes, or legislative changes. I would like to ask that this committee proceed with caution, because even if it means leaving the current law alone, we are better off with what we have than we would be with EPA in control. The Chippewa County Road Commission made what I consider to be a significant investment to gain freedom from mitigation and

permit requirements and I would hate to lose what we have gained so far. If Michigan's authority is revoked then even the existing exemption would cease to exist.

Lastly, I would like to offer my sincere support for this legislation. Even though I have concerns about EPA involvement, I feel that the proposed change would be beneficial not only to Chippewa County but to all of Michigan's Road Commissions and would like to thank everyone involved for their time and effort. Overall reform of environmental regulation at both the state and federal level is long overdue and such reform has the potential to invite new development and help create jobs rather than stalling development and doing significant damage to this state's economy as it has been doing. Protection of the environment is a noble exercise in itself, but when it is used as an excuse to stall implementation of well designed and publicly owned infrastructure improvement projects and to redirect transportation funds into mitigation sites it is nothing more than an undue burden on the economy in a time when we can least afford it. I thank you all again for your interest and involvement in this long overdue reform and I hope that it is the first of many.

If anyone has any questions, I would be happy to try and answer them now, or you may contact me at your convenience and I will answer to the best of my ability.

Respectfully Submitted,

Robert Laitinen
Superintendent/ Manager
Chippewa County Road Commission