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# Municipal Environmental Group Wastewater Division

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## **NOTICE OF STEERING COMMITTEE MEETING**

**DATE OF MEETING:** Wednesday, May 6, 2008

**TIME:** 9:30 a.m.

**PLACE:** Holiday Inn Hotel & Convention Center, Stevens Point, Wisconsin  
1001 Amber Avenue, Wisconsin Room\*\*

**ALL MEMBERS** are welcome. Please invite any wastewater managers in your area who you think would be interested in MEG. The meeting is anticipated to last about two and a half hours, followed by the MEG Water Division meeting.

**\*\*Driving Directions**

DIRECTION TO THE PROPERTY FROM EAST: TAKE HWY 10 WEST TO AMBER AVENUE TURN RIGHT. HOTEL ON RIGHT.

DIRECTION TO THE PROPERTY FROM NORTH: I-39 SOUTH EXIT HWY 10 EAST 2 MILES. HOTEL ON LEFT.

DIRECTION TO THE PROPERTY FROM SOUTH: I-39 NORTH EXIT HWY 10 EAST 2 MILES. HOTEL ON LEFT.

DIRECTION TO THE PROPERTY FROM WEST: TAKE HWY 10 EAST THROUGH STEVENS POINT 4 MILES TO AMBER AVENUE TURN LEFT. HOTEL ON RIGHT.





# Municipal Environmental Group Wastewater Division

## INFORMATIONAL BULLETIN

MAY 2009

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# **MEG BUSINESS**

## **MEG STEERING COMMITTEE MEETS ON MAY 6, 2009**

The MEG Wastewater Steering Committee's next meeting will be held on Wednesday, May 6, 2009, in the Wisconsin Room at the Holiday Inn: Hotel & Convention Center, 1001 Amber Avenue, Stevens Point. A copy of the proposed agenda and directions are enclosed with this Informational Bulletin. Bread, juice and coffee are provided for breakfast and a limited menu lunch is also provided. Anyone attending will receive 2 CEU credits. All members are welcome and encouraged to attend.

## **MINUTES FROM JANUARY MEETING**

We had a very productive session at our January 28, 2009, meeting. Minutes are attached as Appendix 1.

## **MEG STEERING COMMITTEE ELECTION RESULTS**

Once again, the elections process for Steering Committee members was a success. Thank you for your nominations and votes! We had a well-qualified group of election nominees for both the Regional and At-Large elections and all should be congratulated. A complete list of the 2009-2010 Steering Committee members is shown in Appendix 2.

The regional incumbents all won reelection this year! Incumbent Wally Thom won reelection for the Northern Region seat, incumbent Paul Christensen won reelection for the South Central Region seat, incumbent Ron Clish won reelection for the Southeastern Region seat, incumbent Ron Dickrell won reelection for the West Central Region seat, and incumbent John Kennedy won reelection for the Northeastern Region seat. Kevin Freber, the At-Large incumbent, also won reelection this year. Congratulations all!

Remember, members do not have to be on the Steering Committee to attend and participate in Steering Committee meetings. All members are encouraged to come to share any questions and concerns of their facilities.

## **MEMBER SERVICES**

**Permits.** We just recently reviewed Grand Chute-Menasha's draft WPDES permit and we reviewed Kiel's draft permit earlier this year. If your permit is coming due anytime soon, keep in mind that we would be happy to review your draft permit or address questions or concerns you have throughout the process. It is part of your membership benefit.

## **NEW MEMBERS**

We have had some interest expressed by a couple of communities to join MEG, and hopefully we can get a few more onboard throughout the coming year.

## **THANKS YOU TO THE MEMBERSHIP!**

Over 93% of the membership have paid their annual dues as of this date and at least 70% have responded with updated information. Marjorie Irving will be in contact with any member who has not responded to the updated information request by June 1 so that we can have current contact information.

## **ARTICLES**

### ***LEGISLATIVE ACTIVITY***

The 2009-2010 biennial legislative session began on January 5, 2009. While the majority of the Legislature's time so far has been spent on the budget bill, a few minor acts have already been signed into law.

### **BUDGET BILL – CLEAN WATER FUNDS PRESERVED.**

One of the items of note in the current budget bill was the change in interest rate for Clean Water Fund Loans from 55% of the market rate to 70% of the market rate. While this same change had been proposed and defeated in the previous budget cycle, the circumstances of the budget this year are much more dire. We worked with lobbyists from Milwaukee Met in opposition to the change, and responses of the legislators to our pleas were not encouraging. A copy of the letter we sent to the Joint Committee on Finance is attached as Appendix 3.

On April 16, the joint finance committee took action on a compromise proposed by Representative Pedro Colón, who also happens to serve on the board for Milwaukee Metropolitan Sewerage District. His proposal was a slight increase in the interest rate, to 60% of the market rate, and was passed by a 14–1 vote. There is still a possibility that this will be changed before the final passage of the bill, but it seems unlikely given the strong bipartisan vote from the finance committee. All things considered, this is victory for us in a difficult budget climate.

### **PHOSPHORUS FERTILIZER BAN.**

The phosphorus fertilizer legislation (SB 5/AB 3) passed the Senate and the Assembly, and was signed into law by Governor Doyle on April 14, 2009, as 2009 Wis. Act 9. Although this is probably more show than substance, we supported the ban.

## ***REGULATORY ACTIVITY***

### **PHOSPHORUS WATER QUALITY STANDARDS: NEGOTIATIONS CONTINUE.**

The proposed phosphorus water quality standards continues to occupy a considerable amount of our effort. The next phosphorus advisory committee meeting with DNR has been scheduled for April 30. The agenda includes an update by the EPA on nutrient standards around the country, followed by discussions on effluent limitations and permittee options. The DNR is still hoping to have a rule ready to go out for public hearing this fall. With the progress that has been made to this point, it seems unlikely the rule could come that far by then.

On March 30, 2009, the Department of Administration, at DNR's urging, denied our request for a full economic impact report (EIR) on the phosphorus rule. However, DNR has advised us that it will be doing a detailed economic analysis as part of the rule. On April 20, DNR Secretary Frank wrote to us to assure that our concerns will be taken into account. Copies of the these two letters are attached as Appendix 4.

In the meantime, we have continued to have informal meetings with the DNR, meet with various environmental groups and other POTWs representatives to come up with a "livable" phosphorus framework. The DNR and the environmental groups have indicated a willingness to provide flexibility provided that there is a water quality standard and that there will be eventual compliance by POTWs. We have been told that our original proposal to tie significant changes in POTW limits to reductions by nonpoint sources will not be approved by EPA and is not acceptable.

Given those responses, we have been working on a conceptual approach that could involve the following elements:

- For lagoon systems and small facilities (0.1 mgd or so), there would be some kind of streamlined variance. This would apply to about 211 facilities that collectively account for about 3% of the wastewater volume from POTWs
- An adjustment in the stream flow assumptions from the standard 1/4 7Q10 to a larger flow rate such as annual average flow or a comparable measure. Currently about half of the POTW facilities in the state (those discharging to impaired waters or small streams) would see effluent limits at the applicable water quality standard. For discharges to streams, this is approximately 0.1 mg/l. The use of higher stream flows will result in higher limits for many of these facilities.
- An adjustment to address effluent dominated streams.

The overriding approach is to reduce the number of facilities that would be subject to limits requiring filtration. For those facilities that are still facing effluent limits below 0.6 mg/l or so, our previously proposed compliance schedule would take effect. The delayed compliance schedule would involve compliance over three permit terms. The

first permit would be optimization, the second permit some quantifiable reductions and compliance at the third permit term. As part of this schedule, we would also be looking at trading and other options. (See accompanying article).

**This concept will be discussed at our Steering Committee meeting on May 6.**

### **TRADING ISSUES: OPTIONS FOR TMDLS AND PHOSPHORUS.**

We continue to look at trading as a useful option for dealing with proposed TMDLs and phosphorus limits. There is interest from a number of municipal and environmental sectors on this concept. DNR has indicated willingness to consider this concept but we will need to take the lead in moving this forward.

To that end, we have worked collaboratively with Milwaukee, Madison, Green Bay and Racine in an attempt to coordinate the various efforts these communities are discussing. We have developed a list of potential issues and action items which are summarized into a memo. A copy is attached as Appendix 5. Some of the key issues identified are trading ratios, trading locations, trading parameters, and establishing baselines.

**These action items will be discussed at our Steering Committee meeting on May 6.**

### **THERMAL STANDARDS – REVISED AND SET FOR FINAL APPROVAL.**

We have been successful in achieving significant changes to the DNR's thermal rules. Since the draft rule introduced in January 2009 eliminated the POTW exemption and variance at EPA's insistence, we have been working with the Department to develop alternative rule language that will reduce potential impacts to POTWs. The revised draft establishes acute and "sub-lethal" thermal standards for new and existing facilities. Our biggest concern has been the ability of POTWs to meet the "sub-lethal" limits during fall and winter months. That concern has been largely addressed in the latest rule revisions summarized below:

#### Existing facilities.

- Acute limits are established if the discharge exceeds standard default values which are based on the classification of the waterbody and month of the year, or exceeds site specific stream temperatures based on data from the POTW. For effluent dominated streams, the temperature at the outfall can be used as the ambient temperature. It is not anticipated that acute limits will be a problem for most POTWs.
- Sub-lethal limits are established if the discharge exceeds standard values or measured values, **AND** the DNR makes an affirmative finding that the heated effluent causes or contributes to non-attainment of the aquatic life use of the water

body. The DNR can look at several site specific factors. Given the burden this places on DNR and the limited impact of such discharges, it is not anticipated that such limits will be imposed unless there is an obvious and significant impact.

#### New facilities.

The standards for new facilities are basically the same as for existing facilities with two exceptions.

- The effluent dominated stream provision does not apply to new facilities.
- New facilities can use temperature data from at least two other POTWs within a 100-mile radius that utilize similar wastewater treatment technology to establish their limits.

The bottom line is that few POTWs should be adversely affected by the rule. For those that are, standard variance procedures will still be available. The new rule is tentatively set to go before the Natural Resources Board for final approval in May.

#### **MERCURY PMP GREEN TIER – FIRST GROUP PROGRESSES; SECOND GROUP BEGINS.**

The first group of the Green Tier Charter has fifteen members. Some of the communities are already seeing the results of their hard work in implementing their pollutant minimization plans (PMPs), and Randy Case is working on a summary of the results of this group's work so far. All of the communities involved have benefitted from the collective approach to problem solving emphasized in the program.

The Charter also provides an annual window for new communities to join in the first quarter of the year. Nine communities are assembling to form the second group, with a probable first meeting in June 2009. This meeting will allow Charter members to get to know each other and Randy Case, the DNR Community Mercury Reduction Coordinator. Randy will discuss the first steps in preparing a mercury PMP and discuss resources available to communities throughout this process.

#### **TMDLS FOR THE ROCK RIVER AND THE LOWER FOX RIVER – MEG WORKS TO PROVIDE INPUT THROUGHOUT THE TMDL DEVELOPMENT PROCESS.**

We continue to stay involved in meetings for both of the DNR's efforts to implement the first TMDLs in Wisconsin. Additional data gathering is currently taking place in preparation for penning the Rock River TMDL draft document. External work groups are expected to be formed soon. The completion date is now estimated to be January 2010. Technical meetings also continue as the Fox River TMDL process moves

forward. MEG is working with Green Bay MET to monitor the developments of this TMDL. Formal public hearings are expected later this year.

**STORMWATER SEDIMENT COMMITTEE: DRAFT RULES IN PROCESS.**

MEG attended a Technical Advisory Committee meeting on March 10, 2009, to review comments received at the public hearings. The rule will provide for more options for disposal of sediments from stormwater ponds. It is likely to go to the Natural Resources Board for adoption in a few months.

**BACTERIA STANDARDS – NO ACTION.**

Bacteria standards remain on hold until the EPA makes a decision on certain issues such as their target for indicator species (E. coli, Enterococci, Bacteroides). We will continue to monitor the progress of this rule.

**SANITARY SEWER OVERFLOW – NO ACTION.**

The last SSO advisory committee meeting was held on November 30, 2006. We will continue to monitor this matter.

# APPENDIX 1

**Minutes**  
**MUNICIPAL ENVIRONMENTAL GROUP**  
*WASTEWATER DIVISION*  
**STEERING COMMITTEE**

**Wednesday, January 28, 2009**

**9:30 a.m.**

**Holiday Inn Hotel & Convention Center**  
**1001 Amber Avenue, Stevens Point, Wisconsin**

**1. CALL TO ORDER.** The meeting was called to order by President Wally Thom at about 9:30 a.m.

**2. ROLL CALL**

Steering Committee members present:

Jeff DeJarlais	Ron Dickrell
Jeff Deitsch	Wally Thom
Ron Clish	Todd Fischer
John Krug	John Fales
Kevin Freber	John Kennedy
Paul Christensen	John Leonhard

Other members present:

Tim Reel	Kevin Russeth
Terry Siglinsky	Dean Gerber
Chris Shaw	Sue Olson
Jeff Schlegel	

**3. WELCOME GUESTS.**

**4. REVIEW AND APPROVAL OF PRIOR MINUTES.** President Wally Thom introduced the September 10, 2008, meeting minutes for approval and recognized motions to approve the minutes. The minutes were approved.

**5. PRESIDENT'S BUSINESS.** None.

**6. BUSINESS MATTERS.**

**6.1 Next Meeting Time.** The Steering Committee is scheduled to hold its next meeting on Wednesday, May 13, 2009, at the Holiday Inn Hotel & Convention Center, 1001 Amber Avenue, Stevens Point, Wisconsin. Since Paul Kent will be out of town on this date, moving the meeting to Wednesday, May 6, 2009 was discussed.

**6.2 Other Items.** No other business items were discussed at this time.

**7. TREASURER'S REPORT.** Jeff Deitsch presented the Treasurer's Report which was approved by the Steering Committee.

**8. PENDING POLICY ISSUES - ACTION ITEMS**

**8.1 Phosphorus Water Quality Standards.**

Paul Kent discussed the impact our request for an Economic Impact Report (EIR) had on the DNR, as they don't feel they have the resources to conduct the study. The DNR threatened to pull out of the rule making process and let EPA over-promulgate on this rule in response to the EIR.

Paul has met with Dave Taylor at Madison Met., the Paper Council and various environmental groups to stay on top of this issue. The DNR wants nutrient water quality standards in place so they can work on the agricultural community. DNR is willing to work with us to make the rule more manageable for municipalities. We want to come up with an approach that allows us to move forward with DNR (not EPA) that will allow the agricultural community and TMDLs to catch up.

Paul went over two possible approaches. The first was for phased implementation compliance, with the first permit term establishing baseline levels; the second term looking for a 10% reduction from baseline; and the third level, a further 10% reduction contingent on nonpoint sources also meeting a 20% reduction at that time. The second approach would be to pick an alternative technology to be implemented within 24 months. Issues discussed at the meeting included how to deal with staff layoffs, mass limits versus concentration limits, how the food industry affects phosphorus, and the rising costs of chemical treatment. It was further noted that EPA, under the current administration, will be making a bigger push towards water quality standards. After discussion, members seemed to be in favor of the phased implementation.

**8.2.1 Rock River TMDL and Fox River TMDL.** Paul Kent was told in December that the DNR was planning to have a draft Rock River TMDL for public hearing in May 2009. He just heard from the DNR that there were some problems with the consultant contract, which could impact the schedule.

John Kennedy updated us on the Fox River TMDL group. John indicated that the meeting that was scheduled in December was cancelled and they would not be meeting again until March. The paper mills have done some initial analysis, and the consultants are looking at an optimization model at this time.

**8.3 Thermal Standards.** This rule has been in the works for 16 years, with POTWs exempt until last year. In last year's draft, most POTWs would get a streamlined variance, except new facilities. We submitted comments last year that new facilities should also be eligible for the variance. The EPA strongly suggested to the DNR that the rule needed to be applied consistently and they were not happy with the variance. Not all facilities take temperature data, so we are not sure how this will affect us. Dave Taylor

**8.4 Mercury/Green Tier.** The group met yesterday, January 27, 2009, in Plover. Julie Baldwin indicated that the first group has been a success, and they are looking to start a second group. Randy Case is retiring in six months, so this will be the last opportunity to gain from his expertise.

**8.5 Stormwater Issues and NR 151 Revisions.** The new draft rule NR 528 is going to public hearing in February. Comments will be accepted until February 20, 2009.

NR 151 is planned to go to the Natural Resources Board for adoption in March 2009. Paul is working with the League to create more flexible language regarding the 40% reduction.

**9. PENDING POLICY ISSUES - INFORMATION ITEMS.**

**9.1. WisWARN.** Dan Lynch discussed the progress of WisWARN. He asked the group for permission to invite all MEG members to join. The group decided putting an invitation in the regulatory update would be acceptable.

**9.2. Bacteria Standards / SSO Committee.** Nothing new happening right now on either of these issues, but could change at any time.

**10. MANAGEMENT ISSUES: NONE**

**11. CALL TO ADJOURN.** Motion was made to adjourn the meeting, seconded, without discussion. The meeting was adjourned at approximately 11:50 a.m.

# APPENDIX 2

## MEMBERS OF THE STEERING COMMITTEE

### Northern Region

Wally Thom (Rice Lake)	May 2011
John Fales (Medford)	May 2010

### South Central Region

Paul Christensen (Fort Atkinson)	May 2011
Todd Fischer (Richland Center)	May 2010

### Southeastern Region

Ron Clish (Cedarburg)	May 2011
Jeffrey Deitsch (Jackson)	May 2010

### West Central Region

Ron Dickrell (Marshfield)	May 2011
Jeff DeJarlais (LaCrosse)	May 2010

### Northeastern Region

John Kennedy (Green Bay)	May 2011
John Leonhard (Fond du Lac)	May 2010

### At Large

Kevin Freber (Watertown)	May 2011
John Krug (Sun Prairie)	May 2010

# APPENDIX 3

TO: Members of the Joint Committee on Finance

FROM: Paul G. Kent  
Julie M. Baldwin  
Municipal Environmental Group – Wastewater Division

DATE: April 8, 2009

RE: 2009-2010 Budget

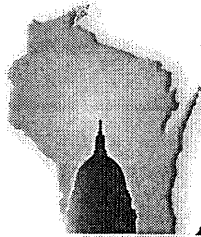
I am writing today on behalf of the Municipal Environmental Group – Wastewater Division. MEG – Wastewater is comprised of over 95 communities statewide that own and operate municipal wastewater facilities. We regularly participate on DNR advisory committees in the development of administrative rules and work with the Department on water quality issues. We are writing today in regards to the 2009 Budget Bill.

The one major area of concern for us is the change in the interest rate for projects covered under the Clean Water Fund (CWF). Currently, the interest rate for loans obtained from the CWF is set at fifty-five (55) percent of the market interest rate, whereas the proposed budget sets the rate at seventy (70) percent of the market interest rate. We understand the harsh economic times, but municipal entities are also facing tight budgets. When communities are required by state regulations to spend tens of millions of dollars on treatment plant upgrades, this fifteen (15) percent increase in the interest rate will result in significant increased local costs.

While we understand that budget cuts need to be made, we urge the Legislature to consider the State's special responsibility under the Public Trust Doctrine in the Wisconsin Constitution to promote and protect the waters of the State. Local governments are willing to do their share but the State needs to be a partner in this process of keeping the waters of Wisconsin clean. This is a budget cut the State cannot afford to make.

If you have any additional questions, please feel free to contact us.

# APPENDIX 4



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

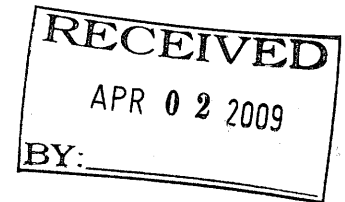
**JIM DOYLE**  
GOVERNOR

**MICHAEL L. MORGAN**  
SECRETARY

Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1741  
Fax (608) 267-3842

March 30, 2009

Paul G. Kent  
Anderson & Kent, S.C.  
1 N. Pinckney Street, Suite 200  
Madison, Wisconsin 53703-5809



RE: Petition for Economic Impact Report for Proposed Phosphorus Rule

Dear Mr. Kent:

We have reviewed your petition, dated December 29, 2008, for an economic impact report for the Department of Natural Resources (DNR) rules regarding nutrient water quality criteria. We believe strongly in reviewing rules for their potential impact on the economy, the environment, and the health and safety of Wisconsin citizens. However, we have determined that this petition is untimely and, therefore, your request is denied.

Section 227.137(2), Wis. Stats., requires that a petition for an economic impact report be submitted no later than ninety days after the publication of the statement of scope of the proposed rule or no later than ten days after the publication of the notice for a public hearing, whichever is earlier. The scope statement for the proposed rule was published April 30, 2006. Your petition is dated December 23, 2008, outside of the ninety-day statutory timeline. Therefore, your request for an economic impact report under s. 227.137, Wis. Stats., is denied.

However, DNR has agreed to prepare an estimate of the potential cost of this rule. By copy of this letter, I am requesting that DNR provide you a copy of that information when it is completed.

Sincerely,

Michael L. Morgan  
Secretary of Administration

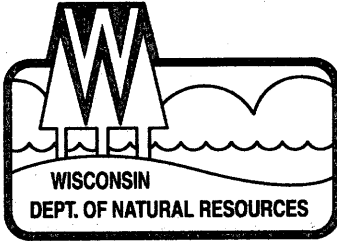
March 31, 2009  
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cc: Kevin L. Shafer  
Executive Director  
Milwaukee Metropolitan Sewerage District

Jon W. Schellpfeffer  
Chief Engineer and Director  
Madison Metropolitan Sewerage District

Matthew J. Frank  
Secretary  
Department of Natural Resources

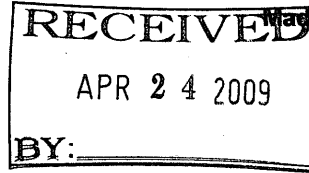
David P. Schmiedicke  
Director  
State Budget Office



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
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April 20, 2009

Paul G. Kent  
Anderson & Kent, S.C.  
1 N Pinckney St. #200  
Madison, WI 53703

Dear Mr. Kent,

In accordance with EPA requirements the Wisconsin DNR has begun the process for amending our current administrative rules related to phosphorus.

We have made progress on reducing phosphorous in our lakes and rivers but there is more work to be done. We need to be creative as we look for solutions and to that end the department has been working with the agriculture industry and our local communities on innovative approaches to phosphorus management both from point sources as well as non-point sources. Consideration of costs is an important factor that we will take into account as we explore a cost-effect solution. The department has begun meeting with individual groups to get a sense of what issues may need to be addressed and we look forward to sitting down with you and your organization to learn what steps need to be taken to ensure that our lakes, rivers and streams are protected from phosphorous contamination and how to mitigate the potential cost implications of phosphorous management. Our goal is to have widespread public involvement in this process, including input from businesses and local governmental entities

Your concerns over the potential financial impacts of these rules will be taken into consideration as we prepare the rule package as will the concerns about the detrimental impacts that phosphorus has on our lakes, rivers and streams. I look forward to working with you as we tackle this important water quality issue. There is no doubt that together we will enact a set of rules that make sense from a fiscal standpoint as well as environmental protection.

If you have any questions on this matter please feel free to contact Todd Ambs, Water Division Administrator at (608) 264-6278.

Sincerely,

Matt Frank  
Secretary

Cc: Secretary Michael Morgan – DOA  
David Schmiedicke - DOA

# APPENDIX 5



TO: MEG Steering Committee  
Milwaukee Metropolitan Sewerage District  
Madison Metropolitan Sewerage District  
Green Bay Metropolitan Sewerage District  
Racine Water and Wastewater Utilities

FROM: Paul G. Kent

DATE: April 20, 2009

RE: Analysis Update on Key Issues from 1999 Rock River Trading Pilot

### **Introduction**

Subsequent to the passage of Wis. Stat. §283.84 in the fall of 1997, a small stakeholder group and DNR formed the Rock River Trading Structure Workgroup (TSW) to develop a list of key trading issues. A final draft summary was prepared on June 11, 1999 and identified 48 issues. To make this list more manageable, I have attempted to group these issues into ten general categories. A summary of those issues is attached as Appendix A.

This memo will review those categories in light of the 1999 TSW comments, subsequent developments at EPA including the EPA Trading Policy and EPA's Water Quality Training Toolkit for Permit Writers and the information from the GBMSD sponsored trading workshop. The goal of this memo is to focus the list of 48 issues down into a manageable list of key issues and action items that will provide enough certainty to make trading work, while still maintaining flexibility.

### **Analysis of Trading Issues**

#### **I. Measuring "success"**

This topic is discussed along with monitoring and enforcement below.

#### **II. Trading Parameters**

EPA currently supports trading for nutrients and sediment and has allowed cross pollutant trading for oxygen related impairments. Trading is not allowed for other

substances. Cross pollutant trading is not allowed between nutrients and sediment. This is consistent with the TSW comments.

Two implementation questions arise in the point non-point trades. First, are urban and ag sources of phosphorus and sediment equivalent? DNR has expressed its opinion that urban sediment contains more contaminants than ag sediment, and that urban phosphorus may be more bioavailable than ag phosphorus. The EPA Toolkit suggests that differences in bioavailability could be addressed through trade ratios. We need to discuss how to best respond to this concern.

Second, can urban sources trade reductions of phosphorus that are achieved in complying with MS4 TSS requirements. For example, certain practices that reduce sediment loading will also reduce phosphorus loading, even though phosphorus is not the regulated pollutant. Questions on whether phosphorus generated from those sources is available for trading is likely to arise in the context of background credits. We should discuss how to respond to this concern as well.

In responding to these two issues, we should develop a protocol to encourage trading between stormwater sources and POTWs.

### **III. Baseline**

The TSW document concluded that BMPs required to meet prohibitions or nonpoint performance standards could be funded through trading unless the BMP was considered a minimum practice standard.

EPA protocol seems to indicate that non-point trades can only be made after non-point sources have achieved the levels required by a TMDL or other applicable regulations.

A seller generates excess load reductions by controlling its discharge *beyond what is needed to meet its baseline*. ... For a nonpoint seller in a watershed under a TMDL, EPA's Trading Policy states that state and local requirements and/or existing practices should determine a nonpoint sources' baseline. EPA Water Quality Training Toolkit for Permit Writers at 28-29

The inclusion of any nonpoint BMPs as baseline will result in the loss of nonpoint reductions and will substantially limit trading opportunities. Ways should be explored to limit these losses. The NR 151 standards are contingent on cost-share and that might be a basis to argue to remove those reductions from the baseline. Addressing the TMDL situation may be more difficult. The EPA Trading Policy notes that in the TMDL context, "the baseline for nonpoint sources should be the level of pollutant load

April 20, 2009

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associated with existing land uses and management practices that comply with applicable, state local or tribal regulations." Again the key is defining "applicable regulations."

In this regard, MEG, Madison, Clean Wisconsin and Sierra Club sent a joint letter to DNR earlier this year urging that trades to meet NR 151 standards should be eligible. DNR does not appear to be opposed to this but it will require concurrence from EPA.

#### **IV. Trade Ratios**

Trading ratios were a deferred item in the TSW document. Ultimately a simplified trade ratio calculator was developed as part of the Rock River Pilot that used a base trade ratio of 1.75 and included the following four modifiers, each of which could add and additional 0.125 to the ratio:

- Outside of the target area
- Outside of the watershed
- Down stream
- Not "nearby"

Trade ratios that approached 2:1 proved uneconomical for significant trading at that time. EPA trading protocols seem to allow flexibility on trading ratios, but have recognized ratios to address the following issues in a non-point context:

- "Equivalency ratios." Bioavailability of phosphorus may be higher for POTW discharges than for ag run off
- "Delivery or location ratios." Distance of trade from point source, particularly to account for upstream-downstream impacts. There does not appear to be a prohibition on downstream trades provided that the trade does not result in a water quality impairment
- "Uncertainty ratios." Uncertainty associated with non-point BMPs absent monitoring or modeling data

Whether any ratio other than location should or must be considered, and if so how they should be developed is a significant threshold issue. Developing appropriate trade ratios will require substantial technical evaluation.

I thought the idea from TSW of looking at benefits beyond water quality as an offset on the ratio was an interesting concept. Whether EPA would formally approve of such a concept is yet to be seen.

**V. Trade Location**

The TSW effort focused on two sets of issues. How big should the "targeted area" be and would downstream trades be allowed. Basically the targeted area was defined as a sub-basin which is probably equivalent to a 10 digit Hydrologic Unit Code (HUC) designation. That is pretty small. In the TSW any trades outside of the targeted area within the basin had a higher trade ratio. In the current NR 151 proposal we suggested an 8 digit HUC. EPA and other states seem to use distance from the source of the trade as a basis for increasing the trade ratio as well.

The related issue is whether there can be a downstream trade. This was a major issue in the TSW effort, but seems less of an issue in the recent EPA materials. EPA simply notes that trading should occur with a hydrologic unit that is appropriately defined. Handbook at 12. Downstream issues are addressed through the trade ratio.

EPA has also focused on the difference between trades in unimpaired vs. impaired waters. Trading in impaired waters is either done through a TMDL or in a pre-TMDL context if there is a net reduction in pollutants. EPA Toolkit at 20-21. Trading in unimpaired waters requires that the trade not lower water quality.

**VI. Trade Duration**

As the TSW effort noted, this is a particular problem given the language in the current state trading statute that limits trades to 5 years. Absent that restriction, there appeared to be some flexibility by DNR to consider longer options.

EPA appears to provide fairly wide latitude on these matters noting that the permitting authority should decide when a credit expires and that point sources should be encouraged to enter into contracts for an extended period of time (5 to 10 years). This is also consistent with recent information suggesting that EPA has some flexibility in developing compliance schedules that run longer than one permit term. Thus, the primary impediment appears to be the statutory limitation.

**VII. TMDLs**

See discussion of baseline and trade location issues.

**VIII. Administration**

The TSW effort noted that trades could be direct or through a third party but either way the trade initiator (typically the point source) would bear the cost of administration. EPA

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does not seem to have any major concerns provided that there are monitoring and enforcement mechanism.

We need to identify basic administrative functions and how to preserve flexibility to allow those functions to be met.

## **IX. Monitoring and Enforcement**

Both the TSW and the EPA Toolkit are clear that the ultimate responsibility for monitoring and compliance remains with the point source. For example, the EPA Toolkit notes:

The permitting authority should consider how default by the unregulated partners could affect the permittees compliance with the effluent limitations and condition in the permit. To the extent possible, the permitting authority should incorporate appropriate, enforceable actions into the NPDES permit to address nonperformance by an unpermitted trading partner.

Thus, there is a need to build in provisions to ensure high compliance rates through contract terms (e.g. conservation easements) or third party assistance. For many POTWs this is may be unacceptable risk.

## **X. Misc. Legal Issues**

The TSW identified several legal issues relating to Clean Water Act provisions, funding and procedures. EPA has provided some additional flexibility on these issues.

There appears to be a willingness by DNR and EPA to allow CWF to fund trading BMPs. How other state and federal funds are used in the trading context will require some additional clarification. TSW allowed credit to be given for projects that use federal funds, but projects using state and local funds are eligible for trades only for the percentage not cost shared. It is unclear whether that remains current policy.

Anti-degradation and anti-backsliding issues seem to be accommodated under EPA's current trading policy. EPA notes that jurisdictions have the flexibility to determine when a new or increase discharge lowers water quality and triggers anti-degradation. EPA Toolkit at 22. EPA also notes that anti-backsliding will generally be satisfied where a point source increase its discharge through the use of credits in accordance with alternate or variable water quality based effluent limits in a permit. EPA Toolkit at 21.

Procedurally, the process will continue to be driven by WPDES permitting procedures and contracts provisions.

### **Summary of Action Items and Recommendations**

1. Confirm with DNR and EPA the applicable baseline for nonpoint sources, and specifically the impact of NR 151 standards and TMDL allocations. In addition we should confirm the availability of trades between stormwater and POTWs. In general, we should advocate for excluding as much nonpoint from the baseline as possible.
2. Work with consultants to develop a workable set of parameters for trading ratios, and then work with DNR and stakeholders to set those in place by rule or guidance.
  - Pollutant to pollutant equivalency
  - The size of the trading area
  - BMP certainty/uncertainty

We will need to decide which of these should be used as a trade ratio and for those areas how to set the ratio. If we do not resolve equivalency and uncertainty through trade ratios, we will need to develop policy as to how such issues will be addressed.

3. Revise the trading statute to allow for trades longer than one permit term, encourage the broadest use of other state and local funding and ensure flexibility in administration. A draft is attached as Appendix B.
4. We should discuss what if any additional guidance is needed for program administration. At the very least we need to make sure that necessary flexibility is not precluded.