

Municipal Environmental Group Wastewater Division

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MEG BUSINESS

MEG STEERING COMMITTEE MEETS ON SEPTEMBER 10, 2008

The MEG Wastewater Steering Committee's next meeting will be held on Wednesday, September 10, 2008, at the Holiday Inn: Hotel & Convention Center, 1001 Amber Avenue, Stevens Point. All members are welcome and encouraged to attend. A copy of the proposed agenda and directions are enclosed with this Informational Bulletin. Rolls and coffee are provided for breakfast and a limited menu lunch is also provided. Anyone attending will receive 2 CEU credits.

MINUTES FROM JANUARY MEETING

We had a very productive session at our May 14, 2008 meeting. Minutes will be presented at the September meeting.

CHANGES AT ANDERSON & KENT

Nothing is as constant as change. Abigail Potts who has worked with us for the past two years has decided to take a position with the Wisconsin Department of Justice. We are very sorry to see her go and will greatly miss her legal skills as well as her enthusiasm at the office. We wish her all the best in the future and look forward to a friendly face at the Justice Department.

After interviewing several very qualified candidates, we have hired Julie Baldwin as an associate beginning with our firm on August 30, 2008. She is a University of Denver Law School graduate. She also has a Molecular Biology undergraduate degree from UW Madison and a master's degree in Environmental Science Engineering from the Denver School of Mines. She has worked as a science teacher and as a project manager for an environmental remediation firm before and during law school. She is from Cross Plains where she lives with her husband and eight-week-old daughter. We look forward to introducing her at our September Steering Committee meeting.

ARTICLES

LEGISLATIVE ACTIVITY

The 2007-08 biennial legislative session came to an end on March 14. The next session will not begin until January 2009 and will be largely concerned with budget issues. The conventional wisdom in Madison is that the Democrats could take control of both houses. That presents both challenges and opportunities for municipal and environmental issues.

REGULATORY ACTIVITY

PHOSPHORUS WATER QUALITY STANDARDS: MEG COORDINATES MUNICIPAL RESPONSE TO NEW STANDARDS.

There is probably no bigger issue for municipal wastewater right now than the proposed phosphorus water quality standards. It is clear that the Department is pushing these forward at a fast pace and is being encouraged along this line by several very aggressive environmental organizations. For purposes of background, the proposed water quality standards and limits are as follows:

Proposed Water Quality Standards. The proposed water quality standards (ambient standards not effluent limits) would be as follows:

- Large streams 105 ug/l (0.1 mg/l)
- Small streams 75 ug/l (0.075 mg/l)
- Non-stratified lakes and impoundments 40 ug/l (0.04 mg/l)
- Stratified lakes and impoundments 15-30 ug/l (0.015 to 0.03 mg/l)
- Great Lakes 5-7 ug/l (0.005 to 0.007 mg/l)

Proposed Water Quality Based Effluent Limits. On May 2, the DNR reviewed several actual cases and worked through how the limits would work. Among the key points from my report to the Steering Committee are the following:

- For any waters that do not meet the proposed ambient water quality standard (this is estimated to be more than 50% of the waters in the state), the effluent limit will default to the water quality standard. In other words, your limit will be either **0.1 mg/l or 0.075 mg/l** depending on whether you are on a large or small stream.
- For any waters in which the point source discharge is the dominant source (whether the stream meets the water quality standard or not), the effluent limit will default to the water quality standard – either **0.1 mg/l or 0.075 mg/l**. Certainly this will be the case for any effluent channel or dry runs or effluent

dominated streams. The exact breakpoint in terms of in-stream waste concentration (IWC) % may vary some.

- For those waters which currently meet the water quality standard and the relative IWC is relatively low, your effluent limits will range from **0.2 to 0.7 mg/l** (in some cases a little higher or lower).

At the May MEG meeting, the Steering Committee authorized us to contract with Strand Associates to cover part of the cost of a study to evaluate the costs of phosphorus removal to varying treatment levels from varying sizes of treatment plants. In addition, we have met with Madison, Milwaukee, Racine and Green Bay to obtain detailed cost estimates from those communities. We also worked with Madison to obtain a survey on what POTWs are currently achieving. While these efforts were underway, on August 7, 2008, Clean Wisconsin and Midwest Environmental Advocates (MEA) submitted detailed comments criticizing MEG's position on implementation and cost concerns back in April.

On August 29, 2008, we submitted to the DNR a memo detailing our cost concerns and DNR's approach to targeting POTWs. We also responded to the MEA report. Along with our memo, we provided the DNR with the 20-page Strand report. Our memo is attached as Appendix 1. The Strand report is not attached but is available along with the MEA comments on our website.

When we aggregated the costs for the proposed standards for 443 POTWs for which size data was readily available, the aggregate capital costs to meet the proposed WQBELs would range from **\$2.6 to \$4.3 billion, and the 20-year present worth costs would range from \$3.5 to \$6.2 billion.** Given that there are over 689 POTWs in Wisconsin and assuming at least 500 of them discharge to surface waters, the 20-year present worth costs of imposing limitations state wide could be over \$7 billion. For some communities, the cost per pound removed was as much as \$1700/lb.

Given those costs and the relatively limited benefit from additional treatment, we have proposed a variance process similar to that for mercury and chlorides. It would require that we optimize plants in a Phase I period and would provide that we not undertake expensive capital projects until non-point sources at least meet the current NR 151 standards. See Appendix 1.

While we are hopeful that we can influence the DNR to adopt this kind of approach, it is possible that the rule could go to hearing in early 2009 without major changes. If so, we will need political support for the hearing process. It is not too early to start advising your elected officials about this issue.

THERMAL STANDARDS – DNR'S RESPONSE TO COMMENTS PENDING.

No new news on thermal standards. We are still waiting for the DNR to respond to comments on the draft thermal standards rules and schedule the rules for approval by the

Natural Resources Board (NRB). Attached as Appendix 3 are comments that MEG submitted. We will let you know when we have more information on this issue.

MERCURY PMP GREEN TIER–CHARTER IMPLEMENTATION MOVES FORWARD.

The Mercury Green Tier Group had its first meeting on May 6 in Sun Prairie. At the meeting, Randy Case of the DNR went through the preliminary steps for completing a mercury pollutant minimization plan and arranged a schedule for members to complete the required inventories by the end of July. Charter members discussed their current mercury reduction practices and shared suggestions of future reduction activities. The next group meeting is scheduled for September 9, 2008 in Plover, WI.

PROPOSED AMMONIA MASS LIMITS – ADMINISTRATIVE ACTION OPPOSED.

In early March, we were made aware of an attempt by the DNR to impose mass limits on ammonia to dischargers in the Fox River. Because this approach could have statewide implications for ammonia and other limits, we consulted with the Steering Committee and filed a set of comments opposing this proposal on March 21. We focused on the fact that the ammonia limits were only recently promulgated and that there was no need to expand the coverage of the rules by this tactic. We particularly objected to the DNR's attempt to argue that mass limits were justified because discharges taking place over a 10-12 mile stretch of the river were discharges at single location. We have not obtained a formal response from the DNR but there have been some suggestions that the DNR might be looking at other options to address their concerns about this stretch of the Fox River. We are continuing to monitor the situation.

TMDL FOR THE ROCK RIVER – TMDL DELAYED FOR ADDITIONAL STUDY.

MEG continues to work with a group of other point sources on the Rock River to provide technical and legal input into the TMDL development process. We have provided significant input on implementation issues which the DNR has used in its comments to the EPA.

Under the original timeline, the draft was due out at the end of March, but that schedule has been pushed back to allow the Department time to work through certain issues with the EPA and its consultants. Conflicts over the draft document appear to be significant and recently the DNR confirmed that there was going to be an additional contract to gather and/or correct data gathered to date. The contract will be issued after the start of the next federal fiscal year which is September. Effectively, this means that work will not start until the end of this year and any additional report would not come until sometime in 2009. Thus, we will not have a draft TMDL for quite some time.

ARSENIC AND OTHER WATER QUALITY STANDARDS – NR 105.

The DNR proposed updates and additions to NR 105 water quality standards to meet federal requirements. Of the proposed changes, arsenic is of particular concern to several communities because it will impose a wastewater standard more stringent than the drinking water standard. Copper is also a concern to some of our members. We submitted comments on the proposed rule revisions on behalf of MEG.

The Natural Resources Board (NRB) adopted the NR 105 rule revisions at the June Board meeting held on June 25, 2008. The rule revisions were then sent to the Legislature on July 11, 2008 and review of the final rule was assigned to the Senate Committee on Environment and Natural Resources. A hearing was held by the Assembly Natural Resources Committee on August 20, 2008 and no objection was made.

In response to our request, the DNR included a note on arsenic that recognizes certain communities (those that discharge to Lake Michigan waters and have a groundwater water supply that contains high levels of arsenic) will likely have difficulty meeting the proposed criteria. The Department recognizes that those communities may need to request a variance. Although we would have preferred that the Department put streamlined variance provisions directly in the rule, this language is better than nothing and should assist communities in obtaining variances.

STORMWATER CONFERENCE.

On July 24 and 25, 2008, MEG and other organizations sponsored a conference on stormwater policy for policy makers and technical staff. The conference was held in the Manitowoc Holiday Inn. Among other things, the conference looked at ways of impacting and responding to stormwater regulations in Wisconsin. Conference papers are now available on the League of Wisconsin Municipalities' Website at the following address: http://www.lwm-info.org/index.asp?Type=B_BASIC&SEC={FDA05F83-D682-4FE5-83C9-EA980170495B}. For more information, contact Paul Kent

NONPOINT RULE REVISIONS: NEXT DRAFT PENDING.

The Natural Resources Board directed the Department to revise the runoff management administrative rule to incorporate an agricultural buffer performance standard based on Wisconsin research. An advisory committee has held these meetings to review agriculture and urban nonpoint standards. One of the key issues is to tie the best management practices to applicable TMDL requirements. This will impact urban stormwater and agricultural runoff management.

In the past, we have participated in the nonpoint regulations to insure that other sources of pollutants are regulated, not just POTWs. This is especially important now that TMDLs are being developed. The DNR is revising its urban and agricultural non-point standards in NR 151 but there have been no new developments since earlier this spring.

**STORMWATER POND CONTAMINATED SEDIMENT ADVISORY COMMITTEE:
FOLLOWING EXTENSIVE COMMENTS RULE IS SET FOR HEARING
AUTHORIZATION.**

The DNR formed an advisory committee to address questions associated with disposal of stormwater sediment. Because the sediment (solids) accumulated in such detention structures is a solid waste, it is subject to solid waste rules, Wis. Admin. Code ch. NR 500, and covered by the Solid Waste (Waste and Materials Management) Program. Unfortunately, procedures are not well defined for the management of sediment disposal and/or beneficial use. Thus, the DNR is looking at regulatory options that are mutually agreeable, consistent, appropriately streamlined, and protective of the public health and the environment. We are urging that cost-effective commonsense solutions be proposed.

A final draft of a new contaminated sediment rule has been sent to the advisory committee for comments. The plan is to obtain hearing authorization for the rule this fall. The draft rule will apply to all stormwater management structures, except temporary sediment practices and highly contaminated sediments regulated by other provisions, and will provide options to landfilling materials if it is low risk. Specific provisions of the rule include: testing and ceiling requirements – the rule does not require testing if it can be certified that the drainage area to the basin is less than 15% commercial, multi-family, institution and industrial and has no other history of contamination. Otherwise, testing is required. If testing results show contaminate levels above certain ceiling levels or if a person does not want to test, then the material must be placed in a licensed landfill facility.

- Land Management Options – The rule allows for onsite disposal. If the 15% criteria is met, it can be disposed without sampling; if not, it can be disposed onsite only if sampled and is below the ceiling level. Off-site disposal is allowed within the same basin and controlled by same entity as long as sediment is sampled and is below the ceiling level. Defined off-site options, including confined fill, transportation projects and reclamation of non-metallic mine sites, are allowed if sediment is sampled and is below the ceiling level.
- Landspreading – The rule allows landspreading if sediment is sampled and is below the ceiling level and meets other criteria for landspreading addressing nutrient management, pathogens and other criteria.

On July 23, we submitted comments on the current draft rule. A copy is attached as Appendix 2. We urged greater clarity in the options and more flexibility to reduce operational costs. A follow up meeting to discuss a somewhat clarified draft is scheduled for September 5, 2008. At this time, it is likely that the Department will seek hearing authorization for hearings later this year. We will keep you posted. If you would like a copy of the proposed rule, let us know and we will provide you with one.

WET GUIDANCE REVISIONS.

The *WDNR Whole Effluent Toxicity (WET) Program Guidance Document* has again been revised as of July 2008. The latest revisions to the WET Guidance Document are available at: <http://dnr.wi.gov/org/water/wm/ww/biomon/>

BACTERIA STANDARDS – ATILL ON HOLD.

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 monitor the applicability of this rule to POTWs.

SANITARY SEWER OVERFLOW – EO ACTION IN 2007.

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

LAB CERTIFICATION STANDARDS – ANDARDS IBECOMES EFFECTIVE IN SEPTEMBER.

Just a reminder that the new NR 149 rules go into effect September 1, 2008. The revised rule is available at: <http://www.legis.state.wi.us/rsb/code/nr/nr149.pdf>