


Municipal Environmental Group Wastewater Division

Regulatory Update

All The News That Fits

April 2009

MEMBER NEWS

- **STEERING COMMITTEE MEETING.** The next Steering Committee Meeting will be held May 6 in Stevens Point in the Wisconsin Room. All members are welcome and encouraged to attend. Attendees receive 2 CEU credits and a free lunch, plus the opportunity to discuss matters of current interest to the wastewater community.
- **ELECTION AND DUES TIME.** We have sent out dues statements and election information to all MEG members by mail. Please remember to return your nomination papers promptly and look for further election ballots.
- **MEMBERSHIP INFORMATION SHEET.** A document with the data we have currently for your community was mailed with an enclosed stamped envelope. Please review it carefully and send it back so MEG has the most current information on your communities/facilities.
- **WISWARN REMINDER.** WisWARN is up and running, with 15 communities already signed up for participation in the program. The purpose of WisWARN is to provide a network where water and wastewater organizations can locate emergency assistance in the form of personnel, equipment and other necessary resources. To learn more about this important program, visit the website, at www.WisWARN.org. Membership is FREE, and all necessary documents to join are available on the website. For more information, contact Dan Lynch, City of Janesville at 608-755-3116 or lynchd@ci.janesville.wi.us.

LEGISLATIVE ACTIVITY

- **2009-10 BUDGET BILL.** One of the issues of interest in the budget is an increase in the percentage of the market interest rate charged for Clean Water Fund loans, from the current rate of 55 percent up to 70 percent. This is a 15 percent loss to municipalities' already strained budgets. We are currently working with Milwaukee MSD lobbyists to oppose this change. We previously asked MEG members to let us know if they are planning projects that will use CWF so we can target key legislators. **If you have such a project and have not yet responded let us know as soon as possible.**
- **ASSEMBLY BILL 3 / SENATE BILL 5 – BAN ON USE AND SALE OF PHOSPHORUS-CONTAINING FERTILIZER.** This bill proposes a ban on the use/sale of phosphorus-containing fertilizer. The Senate unanimously approved this bill on March 24, 2009, and it now awaits signature by the governor to officially become law. MEG supports this bill as a cost effective means of reducing phosphorus loading.

REGULATORY DEVELOPMENTS

- **THERMAL STANDARDS.** 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 are still available. The new rule is set to go before the Natural Resources Board for final approval in April.

• **PHOSPHORUS WATER QUALITY STANDARDS.** The next phosphorus advisory committee meeting has been scheduled for April 30. It appears the DNR is hoping to have a rule ready to go out for public hearing this fall. While it seems unlikely the rule will come that far by then, we continue to do what we can to ensure that we have a workable rule:

- We continue to meet with various environmental groups and other POTWs representatives. Our next meeting with them is April 9th.
- We have developed an alternative regulatory approach which we have shared with the DNR. We are meeting with DNR on April 3rd.
- We continue to explore extended compliance schedules and other options such as changes to the effluent limit calculation methodology so that limits

will not trigger the need for filtration technology.

• **TRADING ISSUES.** As part of our efforts on phosphorus and TMDLs, we have continued to look at options for trading. On a March 31st conference call with Madison, Milwaukee, Green Bay and Racine, we worked on developing a draft of trading issues in a coordinated fashion. As a result, we will be developing a proposed revision to the trading statute and a list of trading issues. In addition we will be looking at specific trading language as part of the phosphorus rule. After we have drafts, we will be working with DNR and other groups to try and develop a consensus approach.

• **TMDLs FOR THE ROCK RIVER.** Additional data gathering is currently taking place in preparation for penning the TMDL draft document. The completion date is now estimated to be January 2010. External work groups are expected to be formed.

• **TMDL FOR THE FOX RIVER.** Technical meetings also continue as the Fox River TMDL process moves forward. MEG is working with Green Bay MET to monitor the developments of the TMDL. Formal public hearings are expected later this year.

• **NONPOINT AND STORMWATER.** We continue to work with the League and the DNR to modify NR 151 to provide for greater flexibility in meeting the developed area performance standards. It is expected that a revised rule will be authorized for public hearing at the May Board meeting.

• **CONTAMINATED SEDIMENT ADVISORY COMM.** 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.

• **MERCURY GREEN TIER.** MEG attended an Advisors meeting on March 20, 2009, to discuss the progress of the Green Tier Program. Nearly all of the original Green Tier Charter members have submitted their annual progress report. Meanwhile, the second group of the Mercury Green Tier Charter is being assembled, with an initial organizational meeting being planned in late May. So far eight communities have signed up or are signing up.

• **OTHER PENDING RULES.** There is nothing new to report on SSO, bacteria standards, or biosolids. We will let you know as soon as there are updates on these issues.

For more information on any of these topics, please call Paul Kent or Julie Baldwin at Anderson & Kent at (608)246-8500 or e-mail:

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