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# Municipal Environmental Group Wastewater Division

## Regulatory Update

All The News That Fits

December 2009

### MEMBER NEWS

• **STEERING COMMITTEE MEETING.** The next Steering Committee meeting will be held January 13, 2010, in Stevens Point, at the Holiday Inn. A meeting notice and agenda along with the January Informational Bulletin will be posted on the website. We will also have our year in review with that issue. **There are several important issues centering on phosphorus regulation that will be discussed at this meeting.** All members are welcome and encouraged to attend. Attendees receive 2 CEU credits and a free lunch, plus the opportunity to discuss current matters of interest to the wastewater community.

### LEGISLATIVE ACTIVITY

• **APPOINTMENT OF DNR SECRETARY.** Assembly Bill (AB) 138 was introduced to return the responsibility of the appointment of the Secretary of the DNR to the Natural Resources Board. Governor Doyle vetoed the measure on November 13. No further action has yet been taken.

• **PHOSPHORUS BILL.** Bill AB 281, reducing the allowed amount of phosphorus in domestic dishwashing detergent, was signed by the Governor on November 12, 2009, as Wisconsin Act 63.

• **MERCURY BILL.** AB 299 was introduced as a means of limiting the sale and use of mercury-containing products. It was tabled on September 22, 2009, and no further action

has been taken at this time.

• **MUNICIPAL UTILITY COLLECTION RESTRICTION BILL.** AB-404 would eliminate the ability of municipal utilities to place unpaid utility fees from rental units on the property tax bill of the owner of the property. No further action has been taken on the bill at this time.

### REGULATORY DEVELOPMENTS

• **PHOSPHORUS WATER QUALITY STANDARDS.** There are several major developments on phosphorus.

**State Standards.** As previously noted, the final advisory committee meeting was held on September 23, 2009. Subsequent to that meeting, we have met with DNR and proposed the establishment of an interim limit at some level below 1.0 mg/l with a phased compliance schedule tied to watershed improvements. This would limit the requirement of advanced technology to instances where there is identified impairment.

Meanwhile we continue to work to refine the cost estimate for the rule, based on the number of facilities affected and studies based on unit and site-specific costs. We have made some progress with DNR in narrowing the cost estimates. The range is now between \$1-3 billion statewide.

We are also continuing to meet with other point sources, the agricultural community and environmental groups to find common ground, although those efforts have not been successful to date.

**60-Day Notice.** On November 23, 2009, Midwest Environmental Advocates (MEA) filed a 60-day notice of its intent to sue the EPA to promulgate water quality standards for phosphorus and nitrogen. You can view MEA's notice of intent to sue at:

<http://www.midwestadvocates.org/archive/phosphorus/11-23-2009%20Final%2060%20Day%20Notice.pdf>

The notice issued by MEA is a provision under the citizen suit provisions of the federal Clean Water Act. A 60-day notice means that unless the EPA undertakes the requested duty (in this case, adopt water quality standards or set a schedule for adoption), MEA has the ability to file a lawsuit in federal court requesting that relief. Keep in mind, this is an action directed at the EPA, not the DNR. This notice is based on a procedure that environmental groups successfully used in Florida.

In response, the EPA could act by adopting standards within the next 60 days or by prescribing a schedule for the DNR to act. If they do act, no suit can be filed. However, neither federal standards nor a federal schedule will be helpful to the approaches we are advocating. If EPA does not act and MEA files suit, we will need to decide whether to intervene into the action. At this time, we are working with Madison and Milwaukee in an attempt to convince the EPA that progress is being made on the state level and that EPA intervention is not necessary.

• **TMDL FOR THE FOX RIVER.** Significant developments have also occurred with respect to the Fox River TMDL. A meeting of the Fox River TMDL Technical and Outreach Teams was held on December 2, 2009, to discuss TMDL allocation scenarios. The Fox TMDL has limits applicable to point and nonpoint sources for phosphorus and sediment. There are a number of technical issues but the item of greatest interest for POTWs is that **the proposed allocation for point sources would require all POTWs to discharge no more than 0.2 mg/l on an annual average basis.** Representatives of the DNR and the EPA consultant indicated that extended cost effectiveness issues were not considered in making the allocations and that extended compliance options were not likely. We submitted comments on behalf of MEG and Green Bay MET on December 9. The DNR is expecting that a TMDL would be out for formal public comments in a few months.

• **TMDL FOR THE ROCK RIVER.** The Rock River TMDL has been on hold but it now appears that public

meetings on the allocation report will be held in early spring. Given the developments on the Fox TMDL, we will need to monitor this closely.

• **TRADING ISSUES.** As part of our efforts on both phosphorus and TMDLs, we have continued to look at options for trading. We have also provided information to the UW-Extension persons who are helping the DNR on their "white paper" about trading which is due by the end of the year. We have not heard back from our contacts with agricultural groups.

• **NONPOINT AND STORMWATER.** A special Natural Resources Board (NRB) meeting was held on November 13, 2009, where the request for authorization for public hearings on NR 151 was passed unanimously. We are anticipating public hearings will be held in January and February 2010. **It will be important for us to actively support the agricultural provisions of that rule, so that there is at least some ability address those sources through TMDLs or trading.** The League will also be supporting the provisions relating to additional flexibility for MS4 communities.

• **THERMAL STANDARDS.** The DNR is currently reviewing revised language with their internal legal counsel and plans to meet with us and environmental legal counsel later this month. The DNR is hoping to have the revised rule language ready for approval at the January 2010 Natural Resources Board meeting.

• **MERCURY GREEN TIER CHARTER.** The second group of the Mercury Green Tier Charter should be working on implementation of their Pollutant Minimization Plans (PMPs). The next group meeting is set for January 12, 2010, to discuss how the PMP is progressing and to address any questions on writing the annual progress report, which is due on February 15, 2010.

The Green Tier Charter also allows for a third group, which will be getting underway in 2010. If you have concerns about mercury levels and your PMP, e-mail Julie for more information on this group.

• **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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