



Municipal Environmental Group Wastewater Division

Regulatory Update

All The News That Fits

June 2009

MEMBER NEWS

- **STEERING COMMITTEE MEETING.** The next Steering Committee Meeting will be held September 9, 2009, in Stevens Point at the Holiday Inn. 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.
- **IMPORTANT SECURITY MATTER.** All MEG newsletters, minutes and meeting notes are confidential and must not be provided to persons, consultants or organizations outside of member communities. A MEG newsletter recently was obtained by an environmental group and its content was used before the Natural Resources Board to derail the thermal rule compromise we had reached with DNR staff (see below). It is critical to the continued success of our organization that this does not recur. We must have everyone's understanding on this matter.

LEGISLATIVE ACTIVITY

- **2009-10 BUDGET BILL.** We continue to monitor the budget bill to ensure the agreement we reached on Clean Water Fund loan discounts is not further eroded. So far, our deal is holding up.
- **PHOSPHORUS BILL.** Bill AB 281 was introduced in the Legislature to reduce the allowed amount of phosphorus in certain cleaning products. Similar to the fertilizer phosphorus bill, this is unlikely to have much of an effect,

but we plan to support it as a step toward reducing phosphorus loading. A public hearing was held on this bill on June 3, 2009 and we testified in support of the bill.

REGULATORY DEVELOPMENTS

- **THERMAL STANDARDS.** The revised draft rule was approved at the May Natural Resources Board meeting on May 27, 2009 but not without significant damage being done to our efforts to reach a workable compromise. An environmental group cited the proposed compromise we explained in a MEG newsletter and claimed that a "closed door deal" was negotiated between the POTWs and the DNR. In conjunction with concerns expressed by EPA, the Natural Resources Board approved the draft rule with instructions to meet with the EPA and stakeholders to re-evaluate the direction of the rule. It is possible that the outcome of the additional review will result in substantial additional burdens on POTWs.

We will continue to do what we can to work with the DNR to maintain the common-sense approach we had negotiated, but the outcome at this time is at best uncertain. Thermal impacts from POTWs have never posed major water quality impacts, so it is particularly frustrating that this will need additional attention.

The current rule can be summarized as follows:

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.

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.

- **PHOSPHORUS WATER QUALITY STANDARDS.** A phosphorus advisory committee meeting was held on April 30. Major topics from the meeting included: an EPA update on nutrient criteria implementation in the country and more specifically in Region 5; a discussion on effluent limits, including equations and modeling, default limits, and how a TMDL allocation would fit; and permittee options, including compliance schedules, variances and trading. The meeting ended with a call for comments on several specific issues. We provided comments by memo on May 15, 2009. Any member interested in a copy of those comments please check the website or contact us.

Despite our hope to develop a consensus approach to this rule, it appears that groups are retreating into their corners. The environmental groups submitted comments which take a hard line on most issues – essentially requiring compliance with 0.1-0.2 mg/l standard with limited compliance schedules or variances. The Farm Bureau took issue with our call for increased agricultural regulation.

The next meeting of the group was set for June 30, 2009. By that next meeting, the DNR is hoping to have a set of draft rules out based on the comments received from the various interested groups. This is clearly becoming more rather than less heated. Once we have seen the June 30 draft, we can evaluate how we will need to mobilize for the public hearings.

- **TRADING ISSUES.** As part of our efforts on phosphorus and TMDLs, we have continued to look at options for trading. Here also, the environmental groups have retreated from their prior support of this concept until we have presented a more complete framework. We will continue to

work on this with other POTWs. In the meantime, there may be some interest in the trading concept from the agricultural side and we will be exploring available options on that front.

- **TMDLS FOR THE ROCK RIVER.** Additional data gathering is currently taking place in preparation for penning the TMDL draft document. A small group met to discuss the TMDL technical approach document on May 21, 2009. The two major topics of discussion included load analysis and allocation methods. The DNR is expecting to have allocations tentatively set by the end of June, with a draft allocation report to go first to the small advisory group and then, after potential revisions, to a larger public meeting in August. DNR is hoping to publish a draft TMDL in October.

- **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 June Board meeting.

- **MERCURY GREEN TIER.** Randy Case has completed the report for the first group of the Green Tier Charter. It looks to be a big success, with a 41% overall decrease in effluent mercury concentrations comparing 2006-2007 with 2008 data. Also, of the 15 municipalities signed on to the initial charter, only 4 were under the 1.3 ng/l water quality standard in 2006-2007, while 8 were under the limit in 2008. Thanks to those participants in the first group for all your hard work over the last year!

The second group of the Mercury Green Tier Charter is still being assembled, with an initial organizational meeting being planned in early July. We have seven communities signed up and five more in the process of signing up. We look forward to working with these new communities, and hope it is as successful as the first round.

- **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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