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# Municipal Environmental Group Wastewater Division

## Regulatory Update

All The News That Fits

June 2010

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### Phosphorus Water Quality Standards to NRB For Approval This Month

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#### MEMBER NEWS

- **STEERING COMMITTEE MEETING.** The May Steering Committee Meeting was held on May 18, 2010, and was very well attended. We welcomed new Steering Committee member Tim Reel and thanked out-going member John Krug for his years of service on the Steering Committee. The next Steering Committee meeting is scheduled to be held on Wednesday, September 8, 2010, in Stevens Point, at the Holiday Inn. All members are always welcome at the Steering Committee meetings and encouraged to attend. Attendees will receive 2 CEU credits and a free lunch, plus the opportunity to discuss current matters of interest to the wastewater community.

- **CHANGES AT ANDERSON & KENT.** We are excited to announce that as of July 1, 2010, my partner Connie Anderson and I will be joining the Madison law firm of Stafford Rosenbaum LLP. Stafford is a 30-member firm with a very strong municipal law practice as well as additional support in transactional law and litigation. This move should provide us with additional support for our practices, within the same rate structure and billing arrangements.

This move should not affect our continued representation of MEG. Our lobbying work at DNR and the Legislature, newsletters, permit review and other member services can

continue as they have in the past. We had a special Steering Committee conference call on June 7th to discuss this change, and the Steering Committee approved our continued representation of MEG.

Marjorie will be joining us and will help us with the transition. Julie will not be joining us as Stafford is fully staffed with associates but we certainly have appreciated her work and dedication to MEG and wish her all the best. We anticipate having similar website access for MEG as we do now. Actually, our current site will remain active at the Anderson & Kent, S.C. website until the end of the year and we will then transition to the Stafford website at that time. Updated contact information will appear in the next Regulatory Update.

#### LEGISLATIVE ACTIVITY

As you all know, the legislative session for 2009-10 has ended, and there will be no further activity until January 2011.

#### REGULATORY DEVELOPMENTS

- **PHOSPHORUS WATER QUALITY STANDARDS.** The final rules for phosphorus are going to the Natural Resources Board for adoption at the June 23, 2010 meeting. Since the end of the comment period, we have been in

negotiations with DNR, EPA and other stakeholders to achieve a rule package that is as workable as possible. While far from ideal, the final rule package has included many of the provisions we have advocated to lessen some of the burdens this rule will impose.

- **NR 151.** DNR has reached agreement with the ag groups on NR 151. Basically the phosphorus index (PI) of 6 has been retained but the tie to the TMDL process has been modified. Under the final rule, lower numbers would go through the targeted performance standards provisions in NR 151.004. While that requires rulemaking, the PI will provide the DNR with greater leverage in implementing such standards.

- **Trading and TMDLs.** DNR appears to be moving toward establishing a trading protocol and TMDL implementation plan. We are trying to firm up the latter two items as part of this rule package.

- **Variations.** The rule will retain a streamlined variance for lagoon systems for at least one permit term as in the current draft. Standard variations remain available for all other dischargers.

- **Extended Compliance Schedules.** The rule specifically acknowledges that extended compliance schedules can run up to 9 years if filtration is required. Depending on your permit cycle, you could get the equivalent of three permit terms. Hopefully, this will allow for technology to develop, trading options to develop and sufficient time to work through site specific issues.

- **Permit Limits and Averaging.** NR 217 proposed a 30-day rolling average which we objected to. In response, the final rules proposes an annual average when a limit is below 0.3 mg/l in conjunction with a higher monthly limit 3 times the monthly limit. For facilities that eventually end up with a low limit this will be important. DNR has also retained our suggestion to use the 7Q2 rather than ¼ of the 7Q10 for stream flow.

- **Adaptive Management.** We have spent considerable time working on obtaining approval for an approach where POTWs would develop a watershed plan to reduce phosphorus over three full permit terms. This received substantial objection from EPA and environmental groups but has been retained in the final rule. The approach requires some in-stream monitoring, the development of a plan to work with nonpoint sources, and the imposition of interim limits of 0.6 mg/l for the first permit term and 0.5 mg/l for the second permit term and a WQBEL if necessary in the third permit. All would be seasonal averages. In response to our comments, the limitation of this option to situations where nonpoint sources are 50% or more of the load have been modified.

- **Downstream Limits.** EPA wanted additional language on the imposition of limits to meet downstream uses. The final draft allows the DNR to imposed those standards in its discretion.

- **Great Lakes.** For now, the WQBEL number for Great Lakes dischargers is 0.6 mg/l.

Based on these changes, the Steering Committee voted not to oppose the final rule. If the rule is adopted, it could become effective by the end of the year. **Please contact us if you would like a copy of the final rule or have any questions or comments.**

- **TMDLs for the Fox and Rock River.** While there are no new developments, we are anticipating TMDL drafts for the Fox in the next few weeks and for the Rock later this summer. We will keep you advised as to further developments.

- **ARSENIC TMDL WITHDRAWN.** The EPA proposed a TMDL for arsenic in a portion of the Mississippi River Basin in Iowa. The waste load allocation in the draft was set at 0.00 pounds per day. The draft TMDL included a list of 3,700 upstream point sources from 5 states, including over 50 MEG member communities. We submitted comments opposing this development on behalf of MEG on June 2, 2010. On June 10, 2010 we learned that the TMDL was being withdrawn on a variety of technical grounds. While not related to our comments, we will take a win.

- **THERMAL STANDARDS.** The rule package will become effective on the first day of the month following publication, which is anticipated to be in July or August.

- **OTHER PENDING RULES.** We continue to monitor for SSO, and anti-degretation rules.

## LITIGATION DEVELOPMENTS

- MEG was asked to support the DNR in a petition for review to the Supreme Court related to a Court of Appeals' decision that held a citizen group could challenge whether a WPDES permit complied with federal law, even if EPA had approved the rule on which the permit was issued and did not object to the permit. Given the phosphorus and TMDL developments, we thought it made sense to support DNR's position. We will know whether the Supreme Court will take the case in a few weeks. The case is *Curt Andersen, et al. v. Department of Natural Resources*, Supreme Court Appeal No. 2008AP3235.

*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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