



Municipal Environmental Group Wastewater Division

Regulatory Update

All The News That Fits

October 2009

MEMBER NEWS

• **STEERING COMMITTEE MEETING.** The September Steering Committee meeting was held on Wednesday, September 9 in Stevens Point. The meeting was well attended, with lots of good discussion about current issues. The next Steering Committee meeting will be held January 13, 2010, in Stevens Point, at the Holiday Inn. All members are welcome and encouraged to attend.

LEGISLATIVE ACTIVITY

• **APPOINTMENT OF DNR SECRETARY.** Bill AB 138 was introduced in the Legislature in March to return the responsibility of the appointment of the Secretary of the DNR to the Natural Resources Board. An Assembly vote was held on September 22, 2009, where it passed 61 to 32. It is now in the Senate committee on Transportation, Tourism, Forestry, and Natural Resources. We have not participated in this debate but will continue to monitor its progress.

• **PHOSPHORUS BILL.** Bill AB 281 was introduced in the Legislature at the end of May to reduce the allowed amount of phosphorus in certain cleaning products, namely domestic dishwashing detergent. Although the bill's effect is probably limited, we have testified in support of it front of both the Assembly and the Senate. The Bill has passed the Assembly and is now in the Senate Committee on Environment.

• **MERCURY BILL.** Assembly Bill 299 (AB-299) was introduced on June 2, 2009, as a means of limiting the sale and use of mercury-containing products. It also prohibits schools from buying and using mercury-containing chemicals and instruments. We testified in support of this bill at a public hearing held on July 29, 2009, as a way to reduce potential influent flow of mercury into POTWs. AB-299 was amended and passed by the Assembly Committee on Natural Resources on Sept. 16, 2009, and was referred to the Committee on Rules, where it was tabled on Sept. 22, 2009.

• **MUNICIPAL UTILITY COLLECTION RESTRICTION BILL.** Assembly Bill 404 (AB-404) was introduced on August 31. The purpose of the bill is to 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. A fiscal estimate was received on September 11, stating that the costs were indeterminate, but noting, "[u]ltimately, unpaid bills would be written off as unrecoverable and increase the utility's cost of operation." We are registered against the bill.

REGULATORY DEVELOPMENTS

• **THERMAL STANDARDS.** As previously reported, even though the revised thermal rule was approved at the May Natural Resources Board meeting on May 27, 2009, there were some additional changes requested by Midwest

Environmental Advocates and the EPA. As discussed at the Steering Committee meeting, a meeting on the proposed changes to the rule was held September 2, 2009. The changes largely shifted the burden of proof from the DNR to the POTW showing there were no sublethal impacts. MEG submitted written comments on the rules to the DNR on September 21, 2009. Our comments continue to object to a rule that addresses a non-existent problem, but presented alternate rule language addressing the information POTWs submit to the DNR as well as adding language that, if a no-impact determination is made, no future determination is needed, unless new and contrary data is available. The DNR is currently reviewing our proposed language with the EPA.

• **PHOSPHORUS WATER QUALITY STANDARDS.** A final advisory committee meeting was held on September 23, 2009, which included four representatives from the EPA. The majority of the meeting was spent discussing changes that the DNR proposed following the prior meeting.

- One of the options in the prior draft was a provision we had proposed – a compliance schedule over three permit terms (15 years). The DNR changed that language to a compliance schedule from 7 to 9 years. At the last meeting, the EPA expressed concerns about a compliance schedule more than 3 to 5 years.
- We had also argued for a broad variance for any lagoon or facility not currently subject to NR 217 because they discharged less than 150 pounds per year. The DNR now is expressing concern about facilities discharging more than 100 pounds per year.
- We had urged the DNR to utilize an annual average rather than a weekly or monthly average. DNR and EPA rejected that approach and required a monthly average.

On balance, it was not an encouraging meeting. The DNR is still planning to seek hearing authorization for the rule in December or January. We are continuing to network with allied interests and are continuing to look at other options that may be amenable to both the EPA and the DNR, including a variety of options with interim limits. At the same time, we are working to refine the cost estimate for the rule based on the number of facilities affected and studies on unit and site specific costs. We will keep you informed on how discussions progress.

We continue to ask members to hold off on political contacts until we have a better sense of the substance and timing of the rule package.

• **TRADING ISSUES.** As part of our efforts on both phosphorus and TMDLs, we have continued to look at options for trading. We have had a couple of meetings on the trading concept with representatives of some of the key agricultural groups, who seemed receptive.

TMDLS FOR THE ROCK RIVER. DNR has recently informed us that EPA's consultants have evaluated the impact of actual versus permitted values for point sources; however, during this process, several anomalies showed up in the allocation data. Given the potential ramifications of the allocations, the DNR requested that all of these anomalies be evaluated before moving forward. As a result, the draft allocation report has not been completed and will not be available until the end of October or the beginning of November.

• **TMDL FOR THE FOX RIVER.** The Fox River TMDL process also moves forward. MEG is working with Green Bay MET to monitor the developments of the TMDL. Formal public hearings are expected later this year, with complete TMDLs expected in February 2010.

• **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. A follow up meeting was held with the DNR to discuss cost impacts on September 3, 2009. The rule is going to the Natural Resources Board in October for hearing authorization. Hearings will probably be held early in 2010.

• **MERCURY GREEN TIER CHARTER.** The second group of the Mercury Green Tier Charter has 11 members, including Beaver Dam, Hudson, Jefferson, Portage, Prairie du Chien, River Falls, Stevens Point, Stoughton, Waupun, Whiting, and Wisconsin Dells-Lake Delton. Member communities have until the end of September to submit their PMPs. The next group meeting is set for January 12, 2010, to discuss how the implementation of the PMPs is progressing and to address any questions on writing the annual progress report, which is due February 15, 2010.

• **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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