

**Summary**  
**Air Management Study Group Meeting**

Thursday, August 22, 2013  
9:00 a.m.  
Room G09, GEF 2, 101 S. Webster St., Madison WI

**Attendees**

Gilberto Alvarez, EPA	Scott Manley, WMC*
Renee Bashel, SCS Engineers	Mitch Mariotti, WRMCA
Bill Baumann, DNR	Andrea Morgan, EPA
Dave Bender, Sierra Club*	Kim Novak, WRMCA
Anne Bogar, DNR	Todd Palmer, Michael Best*
Eric Bott, WMC*	Gerald Pellett, NASA
Tim Clay, Cooperative Network*	John Roth, DNR
Tyson Cook, Clean Wisconsin*	Jasmine Sodemann, Gannett Fleming
Steve Dunn, DNR	Bart Sponseller, DNR
Arthur Harrington, Godfrey & Kahn*	Kathleen Standen, We Energies
Kristin Hart, DNR	Pat Stevens, DNR
Tracey Holloway, UW-Madison*	Andy Stewart, DNR
Chris Hiebert, SEWRPC*	Michael Szabo, DNR
Jeff Jaeckels, MGE*	Nancy Utesch, citizen
Angela James, Michael Best	Karen Walsh, DNR
Jeff Landin, Wisconsin Paper Council*	Tara Wetzels, WTBA*

\* Air Management Study Group members

**Action Items**

- Air permit streamlining
  - Confirm permit streamlining subgroup membership
  - DNR will schedule follow-up meetings & develop other next steps for subgroups
  - For questions or feedback about the permit streamlining efforts, contact Kristin Hart at 608-266-6876 or [kristin.hart@wisconsin.gov](mailto:kristin.hart@wisconsin.gov)
- Alternative enforcement options
  - DNR will follow up with a request for member feedback about pursuing alternative enforcement options (responses from members will be due Friday, November 15)
- Major source NSR guidance
  - A new PSD/NSR application checklist will be posted in September on DNR's Air Permit Options page at <http://dnr.wi.gov/topic/AirPermits/Options.html#tabx2>
  - Contact Steve Dunn to provide feedback on the application checklist and/or NSR guidance development at 608-267-0566 or [steven.dunn@wisconsin.gov](mailto:steven.dunn@wisconsin.gov)
- DNR will send out a scheduling survey for 2014 meetings
- DNR will provide an electronic copy of the issue brief template
- Next meeting: Tuesday, December 3, 9 am, Room G09, GEF 2, 101 S. Webster St., Madison, WI.

## Meeting Summary

### Opening remarks and agenda review

Bart Sponseller, Bureau Director

### Administrative items

Anne Bogar, AMSG coordinator

Bogar addressed the following items:

- DNR received no further comments on the AMSG draft charter after the May 30 meeting. The charter was updated and posted on the Study Group website. It should be considered a working document, and members are welcome to make suggestions for revisions anytime.
- DNR has developed an AMSG issue brief template and will send out an electronic copy. The issue brief presented by Baumann serves as an example.
- Regarding the May 30 meeting notes: the Study Group will not formally approve minutes from each meeting, but members can request revisions to meeting summaries (sent out after each meeting).
- DNR will be sending out a scheduling survey for the 2014 meetings. The final meeting in 2013 is scheduled for December 3.
- Members are welcome to provide additional feedback about Study Group administration. If members are interested in using Live Meeting or Mediasite to attend the meetings remotely, DNR may be able to make arrangements.
- DNR is providing a list of priority topics for the Study Group, based on the first meeting. The list serves as a living document that sets the agenda for the first few meetings. DNR wants the development of priorities to be as cooperative an effort as possible. Members can provide feedback and request additions to the list.

### Air Program updates

Bart Sponseller, Bureau Director

Sponseller presented on the Bureau of Air Management's accomplishments in FY 2013 and the Bureau's FY 2014-2015 budget. The presentation slides are available on the Air Management Study Group website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>. Discussions that arose during the presentation are briefly summarized.

### Permit processing

Manley asked if DNR has examined whether the permitting process prior to completing an application can be streamlined, because members would like to shorten time frames for the process. Sponseller responded that DNR has metrics to measure that, and is developing tools to help sources understand the process upfront, which will shorten it. DNR is also developing IT tools and updated forms to facilitate the process. Hart added that DNR will be administering a survey to gather feedback from construction permit customers about the guidance they need to complete permit applications.

Regarding permit issuance time frames, Palmer noted that there are a number of different types of construction permits (PSD, general), and asked whether the DNR's metrics address all types of permits. Sponseller clarified that the metrics address traditional construction permits, including PSD, but not general operation permits (GOPs) or registration operation permit (ROPs).

Bender asked whether DNR has been tracking the number of permit applications over time, i.e. whether changes in processing times are due to the number of applications. Stewart responded that the number of applications has been consistent over the last several years, about 80-90 applications per year. Sponseller noted that there has been a small uptick in applications since the end of the recession.

#### Air quality improvements

Regarding a chart showing the attainment/nonattainment status of Wisconsin counties over time, Hiebert pointed out that it would be interesting to see the number of monitors that are measuring attainment versus nonattainment, because 95-96 percent of monitors could be attaining, but one monitor in a 6-county area could be monitoring nonattainment.

#### Public outreach on air quality improvements

Palmer asked whether DNR doing anything to get out the word about improvements in air quality. Sponseller responded that Air Management has been using various media – press releases, the website, social media, etc. to educate the public, as well as the recent exhibit at the State Fair. He noted that he would welcome other suggestions.

Manley commented that it would be helpful to show how many hours per year a standard is violated. He thinks there is a misperception that, for example, a violating monitor in Sheboygan means that any time of day in Sheboygan people are breathing unhealthy air. He also feels it would be helpful for DNR to respond when the American Lung Association releases its report giving failing air quality grades to Wisconsin (e.g. because the report gives the impression that millions of people are living in areas with fine PM violations despite these areas attaining the standard since 2010). He feels that we could all do a better job of educating the public; we have good story to tell that's not being told to the extent possible. Sponseller responded that he welcomes suggestions from the Study Group on outreach beyond Air Management's current efforts.

Holloway pointed out that Google maps has high-powered resources to show data county by county, with drop-down menus, and this kind of resource could help people review attainment data. She noted that her research group has been looking at ways to make data more accessible and help people find the information they want.

#### Emission reductions in Wisconsin

Bender asked whether DNR has attempted regression analyses to understand what has caused emission reductions, i.e. which rules contribute to reductions. Sponseller referred to his PowerPoint slide showing mobile source and industrial/point source emissions over time. He stated that the majority of NOx emissions reductions are from point sources and mobile source emissions have not changed significantly. Point sources also constitute the majority of VOC emission reductions; mobile source emissions of VOCs lowered somewhat, but not as much.

Alvarez asked whether DNR has considered using public health indicators (e.g. incidence of asthma, hospital visits, etc.) like other states. Sponseller responded that DNR uses EPA's BenMAP program to estimate improvements based on air quality improvements, but it's hard to tease out the impacts on asthma.

Manley commented that standards are health-based, and Wisconsin has a high level of health care coverage. Metrics should be based on whether we are achieving the health-based standard or not. Sponseller noted that the DNR could probably approach the Department of Health Services about this issue, and pointed out that we will have a liaison for the Study Group from DHS.

Alvarez pointed out that there is a national tracking system for public health metrics and states choose to participate.

Holloway noted that the way the health community looks at asthma is different than the way others do. Data are available, and there's no reason not to use it.

Cook asked whether DNR has looked at similar regions throughout the country to see how improvements in Wisconsin compare. Wisconsin might be able to learn from other states, or educate other states if

Wisconsin is performing better. Sponseller responded that there have been consistent air quality improvements across the country, but Wisconsin compares favorably.

Harrington asked what emissions reductions are attributable to plant closings during the recession when comparing 2008 to 2011 emissions data. Sponseller responded that he would have to check with his staff (Joe Hoch). He assumes that the economy has some impact. Harrington suggested the closing of plants like GM and Delphi could be contributing to some of the reductions. Sponseller pointed out that there were emission reductions before the recession. Hart also noted that the slides are showing data specifically for the southeastern region only. Bender commented that DNR could look directly at source emissions data to assess the impact of plant closings.

Hart noted that the results of the permitting section's registration operation permit (ROP) customer survey indicate that customers needed help estimating emissions. Small companies getting ROPs do not have consultants to do that for them, so DNR needs to develop more guidance.

### **Alternative enforcement options - issue brief**

Bill Baumann, Compliance, Enforcement & Emissions Inventory Section Chief

Baumann presented an issue brief on alternative enforcement options he developed in consultation with Art Harrington. The topic came up in the May meeting, and Baumann is looking for feedback from the group about whether the issue is worth pursuing. The issue brief is available on the AMMSG website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>. Discussions that arose during the presentation are briefly summarized.

Harrington remarked that DNR's current approach to enforcement is all or nothing. A Notice of Violation (NOV) is resolved by closing it out, or referring it to the Department of Justice if the DNR determines that is appropriate. There may be value to having a cost-effective interim step. It would be similar to EPA's administrative option, and it would be nice to be able to challenge administrative decisions.

Cook asked about the magnitude of the issue. Baumann responded that between referrals and closeouts there are probably plus/minus three dozen enforcement cases annually. If DNR does not want refer a case, the Department has a process with EPA to discuss the situation and get feedback before making a final decision.

Palmer remarked that the idea has been kicking around since about 2002 in different areas, but the legislature has never accepted a proposal. From the industry perspective it is a mixed bag. The authority has the potential to be refused. Palmer has seen situations where a client gets an NOV and ends up paying a penalty for the convenience and reduced expense of avoiding referral to the DOJ, no matter how strong the client's case. He noted another option: when a NOV is issued, the facility has a conversation with the enforcement agency and can agree to terms. The package is referred to DOJ, and the complaint and settlement are filed on the same day. This option is not much more costly than administrative work. This option is available and has certainly been used.

Palmer also stated that he would encourage the group to think about an appeals mechanism. EPA orders are not subject to appeals. Instead, a source would have to violate an EPA order and be sued in order to have an opportunity to challenge it. Palmer thinks the group should address whether administrative approaches could be subject to EPA enforcement and citizen suit actions. This could be a rare occurrence, but should be considered if the group moves forward. No one wants to resolve an NOV with the state and face a citizen suit or EPA action.

Baumann responded that a streamlined referral option has been kicked around. The issue brief lays out some options, but not all. Palmer's suggestion is one option and there are surely others.

Harrington pointed out that the initiative would require a legislative change and asked whether that could mean that any work from the Study Group on the topic could be irrelevant. Baumann responded that it would take broad support from a variety of stakeholders to move the initiative forward, which is a good reason to bring it to the Study Group

Sponseller asked whether the group is interested in having a subgroup work on this topic with Baumann and Harrington. Members indicated that they needed several weeks to think about it and get feedback from their organizations. Sponseller suggested that it could be discussed at the December meeting, and stated that DNR will follow-up by emailing a deadline for feedback (the deadline would be around the week before Thanksgiving, so DNR has time to consider responses before the next meeting).

A member of the public audience noted that the regulated community would support this effort and would like to receive information about the process to move the initiative forward.

Another member of the audience commented that she hopes DNR pursues alternative enforcement mechanisms for air management, because there are violations that will not be referred to the Department of Justice but need to be addressed.

### **Major source NSR guidance**

Steve Dunn, Permits and Stationary Source Modeling Section

Dunn presented on DNR's guidance development initiative for major source New Source Review. The presentation slides are available on the Air Management Study Group website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>. Discussions that arose during the presentation are briefly summarized.

Harrington stated that the effort is a great idea, and asked whether rule making will be required. Dunn clarified that the effort will not change the rule (which mirrors the federal rule). The effort aims only to provide guidance, and provide examples of how things have been done in the past, though they do not necessarily have to be done that way.

Sponseller commented that other states – e.g. Michigan and Iowa – have something similar, and that DNR has had requests over time for something like this. PSD permits are complicated, and the hope is that the guidance will cut the time required to prepare applications. The guidance will go out for public comment, and DNR would like the Study Group to be involved upfront.

Jaekels asked whether the document will include guidance on air quality analysis and PSD increments. Steve confirmed that the information would be linked to the document.

Palmer remarked that the effort is a good idea. He noted that there are probably 1,000 plus guidance documents in the EPA Region 7 guidance database. If you look at a particular issue and there is inconsistent guidance in the database you have to choose one interpretation. Dunn responded that the document is intended to be consistent with EPA and past DNR actions. He acknowledged there could be some conflicting letters, but pointed out that any large organization will have those issues. The goal is to be as consistent as possible. The document will not intentionally exclude EPA documents, and at the same time DNR will not refuse to hear other arguments about how to do things. Sponseller pointed out that the Study Group needs to be involved upfront to red-flag any issues members identify.

## **Air permit streamlining**

Kristin Hart and John Roth, Permits and Stationary Source Modeling Section

Hart and Roth presented on several air permit streamlining projects that DNR is undertaking:

- Ch. NR 406 – Construction Permits
- Ch. NR 407 – Operation Permits
- Defining “Cause or Exacerbate”
- 50% Registration Operation Permits
- S. NR 445.09 – Air Toxics Requirements for Diesel Engines

Hart provided an overview of the topics and outlined a potential role for the Study Group in the streamlining initiative. Roth provided more information about the effort to define “cause or exacerbate.” The presentation slides are available on the Air Management Study Group website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>.

Hart mentioned that DNR would like one or two volunteers from the Study Group to participate in a subgroup for each topic (except the NR 445 work, which is probably less relevant to the Study Group, though volunteers are welcome if interested). These subgroups would report back to the larger group.

After the presentations, Sponseller commented that DNR has presented on topics they want to move forward on. He said that DNR has an internal schedule that is becoming the Study Group’s schedule. DNR would define success by getting some people to volunteer today to serve in committees, because the work needs to start immediately.

Study Group members volunteered to participate in permit streamlining subgroups [see subgroup list].

Additional comments and questions during the presentations are briefly summarized:

### Overview and AMSG role

Kristin Hart, Permits and Stationary Source Modeling Section Chief

Hart stated that for the 50% registration operation permit initiative, DNR would like to have the permit drafted this winter and finalized by summer 2014 at the latest.

Regarding the streamlining effort for construction permits (NR 406), Cook asked whether there is a reason DNR is looking to remove the undue hardship requirement from the construction permit waiver instead of defining it. Hart clarified that defining “undue” is another possibility and that everything is still on the table at this point.

### Defining “cause or exacerbate”

John Roth, Permits and Stationary Source Modeling Section

Roth stated that he is in the process of developing a working group, and has asked for participation of some Study Group members, in addition to other individuals. He welcomes suggestions for additional members, especially those with experience with or knowledge of how other states handle the term “cause or exacerbate” (he noted that few states have a definition, though most include the term in their statutes). Suggestions should be sent to Kristin Hart [see Action Items on p. 1 for contact information].

Roth clarified that the term affects a broad range of requirements, e.g. construction permits, PSD review, operation permits, registration permits, and whether sources meet standards. DNR wants to get a broader sense of what the term could mean to avoid unintended consequences.

Manley asked for clarification about whether DNR has made the decision that dispersion modeling will be used as a basis for determinations. He noted that the regulatory community is looking for clarity and that

requiring modeling does not necessarily provide clarity. Roth responded that DNR has not made this decision, and that he understands the limitations of modeling. He noted that it is important to be cognizant that EPA developed significant impact levels as guidance, but that this procedure does not have to be reliant on models.

Holloway asked whether, in light of the Supreme Court decision on the cross-state air pollution rule, national discussions would affect this issue. Roth agreed that they could.

#### **Final remarks**

Harrington thanked Alvarez and Morgan for representing EPA at the meeting, and asked if they had any comments. Alvarez noted that it is a good thing when people with diverse points of view get together to work on common solutions to tough problems and address issues open to interpretation. Morgan noted that they have been impressed with DNR's permit streamlining work and are happy to have been invited to participate.