

DATE: January 27, 2016

FILE REF: NMAC

TO: NMAC

FROM: Tom Portle

SUBJECT: Minutes of 2015 NR 135 Nonmetallic Mining Advisory Committee Meeting

Following are the minutes from the NR 135 Nonmetallic Mining Advisory Committee (NMAC) meeting held on October 20, 2015 at State Patrol HQ in Deforest.

**NMAC members present:** Susan Courter, Mike Erickson, Tom Hunt, Marty Lehman, Kevin Lein, Bryce Richardson, Tony Tomashek, Clint Weninger and Gary Werner

**NMAC members not present:** none

**WDNR staff present:** Roberta Walls, Phil Fauble, Ed Lynch, Zoe McManama, and Tom Portle

**Others present:** Michelle Reynolds - WisDOT Bill Batten - WGNHS, Elaine Kraut Genesee Aggregate; Gerry Kokkonen, Jefferson County NR 135 administrator

Following are the minutes from the NR 135 Nonmetallic Mining Advisory Committee (NMAC) meeting held on October 20, 2015 at the Wisconsin State Patrol HQ in Deforest.

► **Meeting began at 10:00 with** Welcome, Housekeeping, Agenda repair, Go-around

We began with a go-around and introductions of new NMAC members Clint Weninger, Tony Tomashek, and the most recent appointee, Kevin Lein of Trempealeau County to replace Justin Cavey as the representative of the WCCA. Since the October 2014 meeting we also saw the formal appointment of Bryce Richardson. Besides Justin Clint and Tony are replacements for the other retirements of Ed Reesman and Ron Garrison respectively.

Because of the recent 33% turn-over it was appropriate to touch on the NMAC background, program history, past success and other items concerning the NMAC as summarized below.

► **NMAC background, role successes, meetings and governance**

We began with some program history as it relates to the origin of the NMAC, its contributions during rulemaking, and to the 2006 revision to NR 135 and others. A key item is that the NMAC was initially comprised of those involved with the original NR 135 rule-making process. The historical group dynamic, an established consensus based group process, has proven integral to the support of this unique and successful program. We touched on how the role of the NMAC has evolved since program inception. The NMAC advises the Department on this state-wide program and requested the development of guidance such as for reclamation plans and financial assurance early-on in the program and contributed to model ordinances, the nonmetallic mineral registration process, refining the dispute resolution process. The NMAC continues to provide an on-going means for affected stakeholders to provide input. Language authored by the eventual NMAC itself provided the NR 135 code language that addresses its composition and role. At the first meeting in 2001 the NMAC determined to govern itself as follows: the NMAC would operate among equal members using discussion (to reach) consensus where possible; recognize minority or dissenting views. The NMAC would rely on the WDNR to provide public notice of its meetings, prepare agendas, facilitate meetings and provide written reports of main conclusions and views from meetings. Among the NMAC's many other accomplishments and contributions the periodic fee reports of 2003, 2008 and 2013, prepared in consultation with the NMAC for the report to the NRB had relevance for one of this meeting's agenda items. This agenda item at the October 2014 NMAC meeting was to deal with the need to be prepared for future turn-over. The NMAC discussed

the management of transition. Subsequent to the meeting the NMAC was provided with the written materials on this for their comment. Once finalized the process was sent out. Today's meeting touches on what resulted.

► **NMAC Role, Composition and Continuity**

To date turn-over has been moderate and has occurred mostly due to attrition and retirement. Because there may be a point where more definition on this is needed this was discussed at the NMAC's October 2014 meeting. This agenda item was to follow-through on the process that began at that meeting. Among the concerns discussed in 2014 was the perception of "barriers to entry". We proposed possible solutions including that the NMAC members should display a commitment to attend or to have a designated alternate attend; we also decided to encourage the encouragement of attendance of ad hoc representatives who may be potential future NMAC members and to lessen any of "barriers to entry". We settled on the need to establish an accepted and known process for the appointment of new NMAC members, when needed, and for on-going reappointment as terms expired. The NMAC will work to assure the continuity of the NMAC and to ensure that a wide range of stakeholders are properly represented. There is an acknowledgement of the need to adhere to the code language on criteria for composition and staggered terms of appointment. There was agreement on the importance of maintaining, as a group, an on-going functional knowledge of mining and reclamation and on the importance of having the guidelines in place that foster and continue to support NMACs' traditional positive working relationship and successful group process, primarily, for discussion based on respectful communication. Also there was agreement on maintaining an on-going intention to keep the over-all statewide mission front and center and so be willing to put the NMAC and its role ahead of any individual or group desires.

► **Summary on statewide NR 135 Reclamation Program activities** during the past year (October 2014 – October 2015) and planned activities for the coming year (November 2015 to October 2016).

**Tom Portle** gave this summary. It is as follows:

- **NR 135 Program Review (PR) audits**

Ten NR 135 Regulatory Authority (RA) NR 135 Program **Review (PR)** audits were conducted.

These are summarized as follows: seven county and three local (city, village and town). These were broken down as follows: three counties due to the 10-year statutory deadline; three other regular county audits and one county follow-up. The three Local NR 135 programs mentioned above were addressed in an audit of Washington County in its capacity as the local NR 135 RA's agent for program administration.

- **NR 135 Communication/Technical Support/Outreach**

As indicated there was the NMAC Meeting held in October 2014 NMAC meeting, prepared materials and consulted with NMAC – including after the meeting. Two NR 135 RA 'roundtables' held for program administrators and interested parties. One in **Eau Claire** (January) and the second in **Waukesha** (February) 2015. These were well attended and informative. Next, there was a new NR 135 administrators training event held in Wausau November 14, 2014 and a Revegetation Success Evaluation field workshop in August 2015. Finally, during this period there was work done in addressing public inquiry regarding nonmetallic mining by complaint coordination (TJ Maglio) and agency work across DNR programs to ensure reclamation standards are being met by Zoe McManama and Roberta.

- **Planned activities for the coming year** (November 2015 to October 2016).

The DNR will conduct at least ten NR 135 Reclamation Program (PR) audits; some follow-up may be necessary and an attempt is made to perform at least one or two PR audits in each DNR region. Two NR 135 administrator Roundtables are scheduled for early 2016. These will be held in Wood and Jefferson Counties.

► **Storm water WPDES General Permit and Strategic Analysis for Industrial Sand Mining**

**Roberta Walls** briefed the NMAC on the status of the Storm water WPDES General Permit (GP) revision for nonmetallic mining and the **Strategic Analysis** of Industrial Sand Mining (ISM) program. **Roberta** said it will now be two separate GPs to be sensitive to the different needs and industry diversity. Roberta indicated that opportunity to comment on this was still a few months out. As to progress towards the **Strategic Analysis** and ISM team's effort (for ISM projects) on a Pre-Application Coordination she indicated that given the range of scenarios that come up, the importance of communication on this is evident. The following discussion made some NMAC members aware of

the existing 2012 document that **Roberta** indicated was still available on the webpage. There were a few questions on this and Tom Portle asked if it is accurate that new document is using the 2012 document as a starting point? **Roberta** said this was basically the case. There was, at the time, no clear expected date for completion.

### ► Clarification on Use of Various Materials for Reclamation of NR 135 Nonmetallic Mining Sites

**Zoe McManama** updated the NMAC on the status of the department's document entitled: *'Use of Various Materials for Reclamation of NR 135 Nonmetallic Mining Sites' (Materials)* that had received public comments earlier in the year. Zoe let the NMAC know that its finalization was delayed. **Tony Tomashek** asked when this might be available for another review? **Ed Lynch** said it would be between 4-6 months. **Tony** requested an opportunity for the NMAC to review the next version of *Materials* and said he felt it might be good to convene another meeting on this document before DNR moves ahead on it. **Tom** recommended sending a future revision of *Materials* to members for review before deciding if the NMAC needs further input via either a conference call or meeting. By way of clarification, **Ed** spoke to misunderstandings on this document that came out during the review period. For one, other DNR efforts the revision of the WPDES General Permit (GP) for nonmetallic mining may have caused some confusion. Ed informed the NMAC that he and TJ Maglio had met with representatives of interested stakeholder organizations and their legal counsel on this. The meeting served to clarify the *Materials* document's intent and to emphasize that it did not create any additional requirements during reclamation but mostly pulled together existing information and added important updates. **Tom** reinforced Ed's comment on the *Materials* document as being mainly a compilation of previous newsletters on the use of alternative materials in reclamation and provided links. Next, **Zoe** brought up key points such as clarifying understanding the different materials that may be considered for use in the reclamation of nonmetallic mining sites. She and others emphasized a key distinction based on whether the material is generated on-site during nonmetallic mining activities versus material generated off-site. Doing so highlights the need to use codified definitions such as "nonmetallic mining refuse" as defined under NR 135.03 to understand important jurisdictional distinctions. **Tony** at this juncture correctly pointed out the distinction made for "marketable by-products". It is important to clarify origin and definitions to adequately determine jurisdictional nuances and so to be clear as to which jurisdiction the materials may fall under. Along this line Zoe also spoke to the need to harmonize field terminology and regulatory language to avoid confusing communications. Next, **Phil Fauble** continued by reinforcing the notion that one had to know the array of possible materials, definitions and rules that may apply. **Phil Fauble** went on to make distinctions between "clean fill" and alternative materials such as industrial byproducts that are actually regulated by the department under its 'Beneficial Use' program. **Phil** described the program to regulate high volume industrial waste or materials termed "*industrial byproducts*" such as spend foundry sand, paper mill residuals (PMR) and other materials are is regulated under NR 538. **Tom** indicated while there have been cases of use of industrial byproducts under a NR 538 approval on pre-NR 135 sites but more often these projects need NR 135 RA approval to be consistent with the approved NR 135 reclamation plan. Except when the material is *nonmetallic mining refuse*, NR 135.06 directs that other solid wastes shall be disposed of pursuant to chs. 289 and 291, Stats. and applicable rules of the department (the NR 500 series). Some of these projects are documented in the nonmetallic mining reclamation newsletters of 2008 and 2009, that serve as examples of how this works as well as the joint DNR NR 135 RA approval. **Ed** and **Phil** emphasized above, the NR 135 reclamation plan must address the use of any alternative materials: whether exempt by rule, regulated under NR 135 as "nonmetallic mining refuse", or when the material is regulated under other department rules. In any case, the use needs to be reflected in the reclamation plan or the plan needs to be modified accordingly. **Zoe** mentioned finding burnt oil filters, solid wastes include household garbage, tires, electronic waste, vehicles or parts thereof, as well as miscellaneous debris and expressed a concern that could inadvertently get mixed in with backfill or otherwise mixed in with legitimate reclamation materials during site grading. There seemed to be a sense that this was a rare problem but **Tom** indicated that this is something that is found on numerous sites across the state. We had discussion on the proper role of NR 135 administrators and the interaction with Department. Both have certain responsibilities that may vary for different materials used at nonmetallic mine sites. It's important to realize there are many scenarios, often driven by the nature of the material, and communication is necessary to understand the interface between the department and the NR 135 RA. When it comes to solid waste solid waste management, the jurisdiction of the department is primary. That said, some zoning ordinances and county departments may have requirements. However, when it comes to use in reclamation, the jurisdiction of the NR 135 RA (via compliance with NR 135) is operative. This is usually clearer when the material in question is covered by the NR 500 series. The department needs to assure compliance with state laws concerning solid waste management, air and water resources. **NR 135**

**reclamation program** administrators are charged with ensuring compliance with the uniform statewide reclamation standards in the context of NR 135 reclamation plans and reclamation permits. This responsibility exists during plan review, permitting and later, during on-site compliance inspections. When waste materials are found on site during NR 135 RA's compliance inspections or are proposed for storage on-site or for use in reclamation it may require discretion. However, when solids are found that would appear to require landfilling or otherwise need to be managed as a "solid waste" being likely inappropriate for use in reclamation, then action needs to be taken. NR 135 RA inspectors should notify the DNR if any waste appears to be an unacceptable material or is being placed in an unacceptable manner. We discussed instances where NR 135 finds questionable solids on site during routine mine inspections and contacts DNR – in case she referred to there was an enforcement scenario with an ultimately positive outcome. **Marty Lehman** spoke to this as well discussing how important it is, not only to know applicable requirements, but to communicate these to any contractors a company engages in the project. **Tom Hunt** weighed in while discussing the draft *Materials* publication that it should address what needs to be done to assure groundwater protection. He asked if there was any consideration of impacts due to subsidence?

To summarize, all these underscore the need to communicate effectively and to provide ways to make it easier for all to consider the many materials, have the same understanding of terms, jurisdictional interfaces and matters as well as clarity as to responsibilities. The discussion on this item was closed by stating the importance of the department and the NR 135 RA working together to ensure that the responsibilities of each are met and to minimize confusion and complexity.

► Reclamation plan review fees & other NR 135 program revenue: variation per NR 135 jurisdiction, complexity

This agenda item was included due to concerns raised on the dollar amount of some NR 135 program fees assessed by NR 135 RAs and with regard to consistency among NR 135 jurisdictions. **Susan Courter** began by indicating that some RAs had revenue (fee and plan revenue) structures appeared high and so were inconsistent with others. **Susan** felt that these ought to be within a reasonable percentage of one another (say perhaps 10%). **Mike Erickson** indicated similar concerns. **Kevin Lien** agrees in principle with the consistency matter. He provides reasons where fees could vary from on jurisdiction to another. **Phil** indicated that Reclamation plan review fees and other NR 135 program revenue will vary among NR 135 jurisdictions for a number of reasons. These have to do with the variety of materials mined and mining methods and socio-economic considerations among a number variables that may influence costs. **Susan** requested a Department review of the appropriateness of fees under NR135 and the potential consistency issue. **Tom** explained the NR 135 code requires that NR 135 RA program revenue match, as closely as possible, the (administrative) expenses of the reclamation program. He discussed how the existing review process is based on regular NR 135 Program audits which contain a financial review component. These are documented in compliance letters which serve as the basis for periodic statewide "Fee Report" to Natural Resource Board (NRB) that is prepared in consultation with the NMAC. **Tom** pointed out that this approach did have its limitations. First, due to the audit frequency, a minimum of once every ten years, these are necessarily a "snap shot". Second, funding schedules can be altered at the county level on an as needed basis. On balance it seems better to rely on an existing mechanisms, applied on a statewide basis as required by the NR 135 code, than a one-time study.

► Input from partners and public on NR 135 Program and the specific feedback from NMAC members

**Elaine Kraut** credited the long-standing approach attendant to NR 135 and emphasized the importance of performance based standards, this continues to allow common sense and flexible solutions. By maintaining flexibility there is more chance for creative outcomes. She also spoke to the reality of a reclamation pan being subject to revision since it's not possible to foresee all the things that may come up.

**Bill Baten** said he was standing in for Jay Zambito and that the WGNHS wanted to contribute and asked questions as to how best that might happen. **Gary Werner** had spoken to how valuable Bruce Brown's input has been in the past. **Michelle Reynolds** indicated that DOT also has materials management needs and is happy to stay engaged in future meetings. **Gerry Kokkonen** said he and others were pleased with the success evaluation workshop at BMC in August. Thanks again, to Marty and BMC.

NMAC members - **Mike** advocated keeping it simple and **Marty** also seemed to agree that often things are not as complicated as it may appear. **Tony** wanted the Department to work more closely with the NMAC and before any

public comments is requested on documents such as the *'Use of Various Materials for Reclamation of NR 135 Nonmetallic Mining Sites' (Materials)*. In addition, the NMAC expressed a desire to be copied on information on outreach events including the annual NR 135 Roundtables and adequate notice of these should they wish to attend. Henceforth, NMAC members will be copied on future RA roundtables and other training events so members may participate and/or support the education/outreach process. **Clint and Tony** both indicated they would like it if there was a way that they could be more aware/get more input into the program review audit process. The NMAC will be provided with audit schedules in the future. **Gary Werner** would like to be kept informed about "out of the ordinary" issues, unsatisfactory programs and other brewing issues or concerns so as to not be in a reactive mode. **Gary** also mentioned local NR 135 programs that may be connected to the annexation issue. **Tony** expressed a concern that some NR 135 RAs were putting together program guidance and using the work "shall". This concern is being shared with administrators at NR 135 Roundtables and will be brought up in future program review audit.

► **Final go-around – General** Feedback & Schedule Next Meeting next meeting.

One main conclusion, based on views expressed at this meeting, was that the NMAC desired more involvement and interaction with the Department and wished to see documents before they went out for public hearing. This included more chance to be involved and attend outreach events. Finally, the NMAC would like to receive alerts or indications of potential issues between meetings rather than waiting to the meeting. The Department intends to increase its communication with the NMAC.

Overall, there continues to be over-all satisfaction with the administration of the NR 135 program, at all levels including county/municipal and state. There was a consensus is that the **next meeting** should be held in **early-October 2015** and should consider a reclamation field tour.

► **Adjourned** - The 2015 NMAC meeting adjourned about 3:00.