Minutes
Small Business Environmental Council
July 10, 2014
DNR Central Office
101 S Webster Street, Madison, WI
Room 713
9:00 am – 12:00 pm

Members Present: Amy Litscher, J.D. Tripoli, Rep. André Jacque, Vince Ruffolo, Shane Lauterbach

Absent: Richard Klinke

DNR Staff: Kimberly Ake, Lisa Ashenbrenner Hunt

Guests: Kristin Hart, Kristi Minahan

Public Participants: Ken Yass

Agenda Repair – Kimberly Ake

Jeanne Whitish has completed her term on the council. She has given seven years of service.

Al Shea's former position is in the process of being filled. The person who is hired will assume the role of the DNR representative on the council.

Presentation: 50% ROP update; other small source rules – Kristin Hart

Kristin provided an update on the development of a registration permit for facilities that remain under 50% of the major source threshold (50% ROP).

- Will be a type of general permit requiring no additional comment period for each facility that applies for coverage.
- EPA concerns:
    - Will it be federally enforceable? – Yes, because there are recordkeeping requirements.
    - Will it allow emissions to increase? – 50% ROP includes modeling requirements that are in addition to the modeling requirements in the 25% ROP. Therefore, there is an incentive to remain under the 25% ROP.
- Facilities with wood-fired boilers may not be eligible for coverage due to PM 2.5 emissions which are difficult to characterize and model.
- EPA has reviewed the draft permit.
- Will be going to public comment in a couple of months.
- Like the 25% ROP, the 50% ROP will not list other air requirements.

- Future Environmental Results Programs (ERPs) could help permit holders understand additional requirements or could exempt participants from needing a permit.
- Need to educate local governments on how to help small employers understand their requirements.

Action Item: Discuss at a future meeting how the council can help small businesses with ROPs understand other air requirements.

Kristin also discussed an air permit streamlining initiative.

- Rule will soon be proposed. Shooting for going to the Natural Resources Board in October.
- The natural minor source exemption will not require a change to the State Implementation Plan (SIP).
- Natural minor sources, which are physically unable to emit at the major source threshold, will be exempt from operation permitting but will still require a construction permit.
- Changing definition of "commence construction" to allow for some site preparation prior to issuing a construction permit.
- A synthetic minor operation permit would no longer expire.

SBEAP updates – Small Business Program Team

Small Business Program confidentiality policy:

- Draft policy being reviewed by other DNR programs.
- Will go through secretaries directors to champion it in their part of the state and then to the secretary's office.
- Will be shared with the council.
- Information from small businesses contacting the Small Business Program will not be shared with enforcement staff; however, the information would not be protected from open records requests.
- Some states' confidentiality policies only apply to compliance inspections, which the Small Business Program in Wisconsin is not currently able to do.

Discussed the possibility of partnering with law firms to put on compliance seminars.

National Small Business Programs Annual Meeting recap – Small Business Program Team

Topics of discussion:

- EPA's Next Generation Compliance initiative which will change how rules are written.
- EPA will hire a contractor to develop a new web site for the small business programs. Previous site was taken down a year ago, because EPA planned to develop a site in-house, which did not happen. The web site is a key tool where small business programs from all states can share resources.
- Met with representatives from small business organizations including the National Federation of Independent Businesses (NFIB) and the Small Business Administration (SBA) to discuss collaboration and partnerships to better serve small businesses.

- Region V small business programs have a new regional liaison from EPA, Stephanie Cheaney, who will be the group's point person within EPA. Desire for all regions to have an EPA liaison.

Presentation: Site specific numeric phosphorus water quality criteria (WT-17-12); surface water designated uses (WY-25-13); and processes for water body assessments and impaired water listing (WY-23-13) – Kristi Minahan

Background:

- This rulemaking initiative began with developing a flexibility option for implementing the phosphorus rule and has been expanded to encompass three rule packages.
- Process for managing water quality:
  1. Identify uses of a water body.
  2. Identify the water quality criteria that support those uses.
  3. Develop management practices needed to meet water quality criteria.
- The above process determines discharge limits in permits.

These rules pertain to the development of site-specific phosphorous criteria, updating designated use categories and corresponding water quality criteria, and creating new water quality criteria using biological metrics.

- Possibility of adding more water body categories (for different water body types).
- Changes to the designated uses, water quality criteria, or management practices may affect facilities with surface water discharges by altering permit limits.
- May impact municipal wastewater systems and indirectly impact those businesses discharging to the municipal systems.

Potential entities affected:

- Any facility with a wastewater discharge permit
- Industries using non-contact cooling water
- Entities that do not have a surface water discharge permit (such as nonpoint sources) are not expected to be affected

Determining impacts:

- Currently working on determining impacts – who will be affected and to what magnitude.
- Changes could raise or lower permit limits.
- Existing facilities will need to comply with anti-backsliding requirements. If an existing facility is already meeting the current criteria, they wouldn't be able to switch to the less stringent limits. New facilities may benefit from lower thresholds.
- Will solicit feedback from those impacted once they are identified.

The PowerPoint is attached following the minutes.

Public Comment

Adjourn - Note: The next meeting previously scheduled for Thursday, October 23 has been rescheduled to Thursday, October 16.

WATER QUALITY STANDARDS: 3 RULE PACKAGES

Kristi Minahan, DNR Water Evaluation Section
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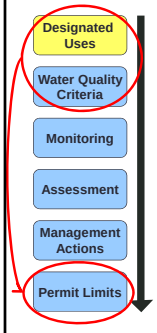
Three intertwined rule packages:

- Designated Uses & Use Attainability Analyses
- Water Quality Criteria:
  - Chemical criteria update
  - Biological criteria & Combined criteria for phosphorus
  - Site-Specific Criteria for phosphorus

Designated Uses…The Foundation



- All waters are assigned "Uses" that set the expectation for their quality
- Criteria are set based on protection of the Uses
- The Uses & criteria are the foundation for management actions, including permit limits

All waters are assigned Designated Uses

- Fish & Aquatic Life
- Recreation
- Public Health & Welfare
- Wildlife

Wisconsin's current Designated Uses

- Fish & Aquatic Life
  - Coldwater
  - Warmwater Sport Fish
  - Warmwater Forage Fish
  - Limited Forage Fish
  - Limited Aquatic Life
- Recreation
- Public Health & Welfare
- Wildlife

The Problem:

- These categories don't accurately represent Wisconsin's waters
  - For Streams, need Cool, Large River, and small Non-Fish streams
  - Need Lakes categories
- Outdated and incorrect classifications (1970s-80s)
  - Thousands of waters have no classification
- No process to correct uses (Use Attainability Analysis, or UAA)
- Incorrect expectations cause program conflicts: permit/mgmt implications

The Solution:

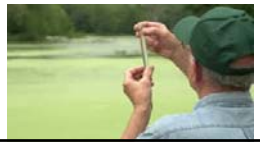
1. Refine Use subcategories
2. Refine Water Quality Criteria associated with Uses
   - Establishes basis for managing waters & right-sizing permit limits
3. Update Uses every 3 years (streamline process)
4. Establish protocols for waters that can't meet Uses now
   - Short-term: Permit variance
   - Long-term: Use change

Water Quality Criteria

- Purpose: Set numeric thresholds for pollutants or biological metrics that will be protective of Designated Uses

Three new initiatives:

1. Revise conventional chemical criteria
2. Codify Biological Criteria ("biocriteria")
3. Develop Site-Specific Criteria for phosphorus



1. Update existing chemical criteria

- Review/revise in accordance with new Use subcategories
- Criteria are based on species present in each waterbody type
  - Use species toxicity data to determine protective levels
- This will lead to a change in some permit limits

Step 1B) Determine if database requirements are met

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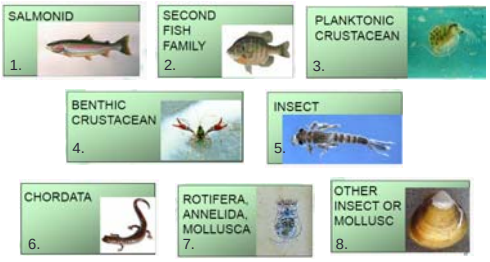
- Minimum Data Requirements:
  - At least one



2. Codify Biological Criteria (biocriteria)

- Currently, most codified criteria are chemical
  - Toxics, phosphorus, pH, dissolved oxygen
- Also need to assess Fish & Aquatic Life Uses → Biological metrics
  - Fish, bugs, plants, algae, etc.
  - We already use these for assessments
  - Currently only in guidance; need to codify

2a. "Combined Criteria" for Phosphorus

- Use biology & phosphorus in conjunction to determine impairments
- If phosphorus exceeds criteria (within certain range), validate impairment through biology
- If no biological impairment, water is not listed as impaired
- Similar to Maine's & Minnesota's approach

3. Site-Specific Criteria for Phosphorus

- Develop a process for consistency
- Use if the statewide phosphorus criteria are over- or under- protective of a waterbody's uses; modify the phosphorus criteria accordingly
- Site-specific conditions may cause biological responses to vary
  - Less sensitive → less stringent criteria
  - More sensitive → more stringent criteria
- Enables more appropriate assessments & permit limits

Economic Impact & Public Input

- Could be minor or more significant
- Changes to existing criteria may impact some dischargers
  1. Determine which criteria will change
  2. Identify which permits those changes will affect
  3. Solicit input from dischargers on costs
  - ★Delineate flexibility options
- New biological criteria are not expected to increase costs
  - More flexibility for phosphorus implementation using combined assessment & Site-Specific Criteria
- External Advisory Team (winter 2014?)

Potential Effects for Small Businesses

- Criteria could change to be higher or lower
  - Existing dischargers may need to meet new criteria
  - Because of anti-backsliding, if they're already meeting a limit they can't change to a less-stringent limit
  - New facilities will get receive limits based on new criteria
- Benefits for phosphorus dischargers
  - Water may not be listed as impaired if biology is good
  - May be able to pursue a site-specific criteria if the waterbody's Uses are supported
- If a waterbody's Use is currently wrong or not feasible, it can be corrected more quickly & permits adjusted

In Summary…Upcoming Improvements

- Designated Uses
  - Revise Use subcategories
  - Establish a process to change/update uses
- Water Quality Criteria
  - Update chemical criteria
  - Codify biological metrics & 'bioconfirmation' of phosphorus
  - Site-Specific Criteria for phosphorus

GOALS & BENEFITS

- Avoid over-restrictive or under-protective permit limits
- Better resource management
- Streamline DNR programs

QUESTIONS? INPUT?

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