



**Minutes
Wisconsin Small Business Environmental Council
November 3, 2016**

**DNR Central Office
101 S. Webster St. Madison, WI
Room 613**

9:00 – 11:30 A.M.

Members Present: Amy Litscher, Mark Aquino (part of meeting), Vince Ruffolo, Representative Jacque, Jody Jansen
Absent: Shane Lauterbach, Richard Klinke
DNR Staff: Renee Lesjak Bashel, Jennifer Hamill, Laurel Sukup, Lisa Ashenbrenner Hunt, Tom Nowakowski (guest speaker), Amy Walden (guest speaker), Steve Sisbach (guest speaker)
DOA Staff: Joe Knilans, Nancy Mistele
Guests: none

Meeting was called to order at 9:00 am.

Agenda Repair

none

SBEC Guideline Review

Reviewed marked changes.

- Add sentence at end of Member section, “When a member chooses to leave mid-term, they should notify both their appointing office as well as DNR staff in order to facilitate a quick replacement.”
- Change frequency from bimonthly to quarterly
- Remove SHWEC from list of referrals under “Additional Member Responsibilities...” as the organization is no longer active at UW extension
 - Also suggested to write up some criteria for a good member to share with appointing offices: include someone who is involved with the DNR, wants to give back to small businesses, has time, experience and is willing to help businesses work with the DNR.

Action: Review document and submit changes to Renee via email so it can be finalized next meeting.

Council Updates

Rich, Vince and Shane all need to be reappointed. There is one extra opening, depending on whether Rich is reappointed by the governor’s office or Senator Lazich (senate President). Maintain the list of interested people for appointments, knowing the appointing offices do not have to use the names. [A list was maintained years ago.]

Actions:

- Get re-appointment letters for those whose term is expired.

- SBEAP to modify DOA slide and other materials to assist in recruiting future SBEC members / create mission statement for council.

SBEAP program updates

SBEAP has been attending other DNR media program (air, water) training sessions, and had booths at FET conference and Governor's Small Business Summit. Will attend EPA Region V training, WI Agribusiness Conference, and Governor's Northern Economic Development Summit. Amy volunteered to represent the council at the Agribusiness Conference. She has materials on grain handling that SBEAP could use.

The property transaction page is new and SBEAP looking for opportunities to promote for outreach to banking industry and real estate. It has information on what to look for prior to purchasing property, including contamination, wetlands, storm water, endangered resources, existing permitted operations, shorelines, greenspace, forest land, etc. Search for keyword "purchase property" from DNR website. There was a comment on a gas station property needing help to restore the property – Renee and Laurel to follow up.

Regarding the Marketplace Conference: the day before is business training sessions rather than exhibit, and it may be worthwhile to get time for presenting information on SBEAP, property transaction information, etc. The booth is not worthwhile due to procurement focus. Nancy can contact event coordinator to help connect us.

Waste Determination and presentation – Amy Walden

Handout: summary of guidance document available for public comment. Comments are due by November 21 (note: comment period was extended from November 14).

Also a copy of PowerPoint is available upon request.

Additional notes:

- When DNR staff conducts inspections, they look at many parts of the waste streams. In general, businesses are good at identifying hazardous waste but not good at documenting non-hazardous waste streams.
- "Generator knowledge" is not a defined term, and simply "knowing" where the waste stream originates doesn't provide enough documentation to demonstrate whether it is a hazardous waste stream or not. Proper term is "applied objective knowledge."
- Facilities should evaluate their waste streams if changes were made to processes because it may re-characterize the waste. It is recommended to do a re-characterization at least every three years.
- All waste streams should be identified within the industrial process areas, so excluding office (i.e. paper, common recyclables) waste.
- Solid waste can be in solid, liquid or gas form. A few examples include: blasting material, paint (commercial paints or older paints often contain lead), and injection molding.
- There are lists of approved haulers; however, DNR doesn't quality control the haulers, only licenses them. It is the due diligence of the facility to hire a proper hauler. There is a list of licensed haulers: <http://dnr.wi.gov/topic/waste/licenses.html>
- The public notice for the guidance document was published on the DNR webpage for public notices, a waste e-newsletter will be sent out, and can be placed in the Small Business Advisor. DNR guidance documents are put on the website: <http://dnr.wi.gov/news/input/> for public comment whenever significant changes are made.

- DOA note: In the future, there will also be a statewide location for rules in public comment.
- Once a hazardous waste is identified, the waste will always be hazardous waste.
- New evaluation of waste stream flow chart: clarified steps and if questions, please call waste staff because they want to assist in making the correct determinations before it is an issue.
- Have received comments on land disposal and will be addressing those comments after the public notice.
- Section for generators on how to do a lab analysis and applied objective knowledge using existing documentation. Lab analysis must be a DNR certified lab. Objective knowledge may include published information, reaction diagrams, waste profile (from landfill or hauler), SDS sheets, or information from TSD (treatment storage disposal facility).
- Example documentation form is available. It is a separate document containing the required information to make the determination clear, and supporting information or documentation should be attached. It is not required to be used, but designed to assist generators understand the documentation requirements. In future EPA rules more documentation will be required, and this documentation will assist generators with compliance. Wisconsin adopts EPA rules so it will take about 2 years after the EPA rule is final to be adopted in WI.
- Waste stream determination should be completed when a process changes or there is a new variable in the waste stream. Landfills require determination every 3 years so it is recommended as a guideline to check every 3-5 years.

Action:

- **Provide comments by November 21 (note comment period was extended from November 14).**
- **Possible future topic discussion of wastewater treatment.**
- **Publish article in Advisor**
- **How does the new statewide public comment page link with the DNR's public comment page? Are comment periods for guidance documents included on the statewide page in addition to administrative rules?**

DNR Updates – Mark Aquino

Alignment: want to get it right so it is still a work in progress.

Budget: First step in process was submitted to Natural Resources Board in September.

- There was a proposal to reallocate 1 staff person from SBS (Laurel's section where Lisa and Jen are part of; Renee is located under Air Management) to CAFO field work. A legislative audit determined CAFO program was short staffed and existing resources and funding types were evaluated.
- 4 positions with general purpose funding were moved to CAFO, and one was in SBS.
- DNR is looking at only filling vacancies with the highest needs.
- Legislative Audit Bureau was evaluating WPDES permits based on concerns with Flint, and independent of EPA review
- EPA is also conducting a review because there was a petition that the WPDES program was not properly managed. 75 items were listed as deficient and the DNR has already addressed many of those items. MN is also going through a similar process ahead of the DNR.

Question: There is still a lengthy time period to become an assured delineator. What is DNR's plan?

- DNR needs to determine where the bar is set and able to defend delineations. Need assurance that the applicant will be in compliance.
- Army Corps will need to approve DNR process/criteria.
- Also looking into expanding the program to have approval for nutrient plan and reviews.
- Additional issues include accountability and who is liable.

Mark introduced Enforcement section chief, Steve Sisbach to provide brief introduction to DNR stepped enforcement process. (Topic was not planned in agenda. Will be revisited at future meeting to discuss small business concerns.)

- Handout "Environmental Enforcement Handbook" describes the stepped enforcement process.
- In 2015: 86% of cases resolved without penalty after went to enforcement staff. Estimated over 90% resolved when including the field staff level "enforcement discretion" and compliance assistance. There were: 266 Notice of Violations (NOV) issued, 251 enforcement conferences and 39 referrals to DOJ.
- DOJ decides when to prosecute and typically settles the case.
- If the action is a complaint, it may come from a tip line and gets sent to the warden or regulatory staff. Enforcement action is not based on complaints but data collected on the case.
- Question: How is Regulatory Flexibility used for small businesses?
 - It is used by resolving without penalty 86% of the time.
 - When working with small businesses, their experience with regulations is taken into consideration when they are out of compliance. This is not explicitly stated in enforcement handbook but is how it has always been done over last 40 years.

Action:

- **Future meeting agenda item for more in-depth discussion of small business enforcement concerns**

Compliance Audit Program follow up discussion – Tom Nowakowski

Harley Davidson – a positive example: They asked for an audit regarding the air program for one of their facilities. The air staff was contacted regarding any possible issues and none were found. The audit is expected to go as planned in November; however, the company has one year to complete the audit.

The current process:

- Company provides notification to the DNR.
- The DNR checks for possible issues with the specified programs and has 30 days to review. The audit can occur within a year after the 30 day notification.
- Then the company needs to meet reporting and compliance requirements as specified in state statute.
- The benefits of the program include lower fees for findings of noncompliance and the ability to self-disclose any issues found. There is not a limit on the size of company or the amount of times a company requests an audit. The audit can be completed by company staff or hired out.

Milwaukee hospital – a negative example: company asked to utilize the audit program for two smaller hospitals in the same parent company. Under review it was found that there were waste disposal issues at the larger Milwaukee facility owned and operated by the same company. However, DNR regulates facilities separately so they could request to use the audit program for other facilities within same parent company. During the 30-day waiting period, a complaint was received by the DNR regarding one of the satellite facilities. The DNR had to act on the complaint due to health and safety issues related to the complaint. The company was told that they would not be a good fit for the program.

There are positives and negatives to the proposed changes regarding the 30-day notice period. The period allows time to make a determination whether the company is a good fit for the program ahead of time. However, there are items in the statute to also address any issues after the audit, especially regarding impact to health and safety, or larger violations.

Need consensus on the document to introduce it as a bill. Session will start in January. Will need to move it through the process, have council member willing to give testimony as well as likely needing a formal letter of support from the SBEC.

Some additional items to evaluate are:

- Do any eligibility items need to be added?
- Does language need to be added differentiating between small and large businesses similar to EPA?
- Evaluate for any unintended consequences.

Action:

- **Evaluate the additional items above and communicate issues/concerns to all members and DNR staff via email. Plan to vote on final document at the next meeting.**
- **SBEAP to update slide on Compliance Audit Program for DOA. Focus on benefits of using the program and promoting its use.**

Next meeting:

- **To occur in Madison, address future locations and ideas at next meeting. Possible meeting locations including financial institutions, businesses and schools, and could include site visits. Vince has volunteered to host a meeting at his facility.**
- **Doodle Poll will be used to determine date of January meeting**
- **Approval of Compliance Audit Program language**
- **Waste water treatment**

Parking Lot

- Enforcement on Small Businesses
- High capacity wells permitting
- Other new water regulations
- Small Business Green Tier level
- Other Legislative ideas