

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Informational update on the Department's schedule for responding to the US EPA letter dated July 18, 2011 regarding water program inconsistencies.

FOR: JUNE 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Russ Rasmussen, Deputy Director, Water Division

SUMMARY:

An information update was made at the January 2012 NRB meeting and this update will provide specific schedules for Administrative Rules, statutory changes, and other.

RECOMMENDATION: Informational only

LIST OF ATTACHED MATERIALS:

No Fiscal Estimate Required

Yes Attached

No Environmental Assessment or Impact Statement Required

Yes Attached

No Background Memo

Yes Attached

APPROVED:

Susan L. Sylvester

05/15/2012

Bureau Director, Susan L. Sylvester

Date

Ken Johnson

5/17/12

Administrator,

Date

Matt Moroney

6/8/12

Secretary, Cathy Stepp

Date

cc: NRB Liaison
DNR Rules Coordinator

In January 2012, we presented an Informational Update to the NRB on the Department's response to the EPA on water program inconsistencies. Today, we will bring you up to date on the schedule of addressing these issues through administrative rule processes, proposed statutory changes, or other.

There are eight Administrative Rule packages being proposed, four of which are before the NRB at the June 2012 meeting. The following outlines the status of each package:

I. RULE MAKING SCHEDULES:

Rule Package 1 - Sanitary Sewer Overflows (SSOs) & Bypassing

Federal Issue: Issue # 1 (SSOs)

Rulemaking Schedule for RP 1:

- **Rule Draft Completed** – December 2011
- **NRB Authorization for Hearing** – January 2012
- **EIA Process Completed** – May 2012
- **Public Hearings** – August 2012
- **NRB Adoption** – October 2012
- **Submit Rule for Legislative Review** – January 2013
- **Effective** – After completion of Legislative review

(Note: The scope statement was published prior to June 8, 2011 so Governor's approval is not required and therefore those actions are not included in the schedule)

Rule Package 2 – Pretreatment

Federal Issues: Issue # 16 (Pretreatment)

Rulemaking Schedule for RP 2:

- **Rule Draft Completed and EIA Process Completed** – October 2012
- **NRB Authorization for Hearing** – December 2012
- **Public Hearings** – March 2013
- **NRB Adoption** – May 2013
- **Submit Rule to Legislature** – July 2013
- **Effective Date** – After completion of legislative review process

(Note: The scope statement was published prior to June 8, 2011 so Governor's approval is not required and therefore those actions are not included in the schedule)

Rule Package 3 – NR 106 Issues and Some Great Lakes Initiative (GLI) Issues

Federal Issues:

- Issue # 8 Mercury Reasonable Potential

- Issue # 10 (Intake Pollutants)
- Issue # 17 Noncontact Cooling Water Exemption Issue # 71
- Mixing Zone Phase out for Bioaccumulative Chemicals of Concern (BCCs)

Rulemaking Schedule for RP 3:

- **Rule Draft Completed and EIA Process Completed** – November 2012
- **NRB Authorization for Hearing** – January 2013
- **Public Hearings** – May 2013
- **NRB Adoption** – September 2013
- **Submit Rule to Legislature** – November 2013
- **Effective Date** – After completion of legislative review process

(Note: The scope statement was published prior to June 8, 2011 so Governor's approval is not required and therefore those actions are not included in the schedule)

Rule Package 4 – Additional NR 106 Issue:

Federal Issues:

- Issue # 28 (Acute limits = FAV)
- Issue # 32 Tier II Value Compliance Schedule Provision
- Issues #31, 35, 36, 37 and 38 (Ammonia)
- Issues # 2, 30, 34, 41 (Expression of Limits)
- Issues #39 - 43 (Chloride)
- Issue # 70 (Alternative Limit When Results Cannot Be Quantified)
- Issue # 10 and #74 Regarding Whole Effluent Toxicity Reasonable Potential (WET R.P.) and Other WET issues and
- Issue # 10 TMDL Procedures for Discharges in the Great Lakes Basin

Rulemaking Schedule for RP 4:

- **Scoping Statement to Governor** – May 2012
- **Approval from Governor to proceed** – May 2012
- **Scope Statement Submitted to NRB for Approval** – June 2012
- **Rule Draft Completed and EIA Process Completed** – December 2013
- **NRB Authorization for Hearing** – February 2014
- **Public Hearings** – April 2014
- **NRB Adoption** – August 2014
- **Submit Rule to Governor** – September 2014
- **Written Approval from Governor** – November 2014
- **Submit Rule to Legislature for review**– January 2015
- **Effective Date** – After completion of legislative review process

Rule Package 5 – NR 200, NR 205, NR 220 - Technology Based Limit Issues, New Source Performance Standards (NSPS), Expression of Limits Generally, Mass

limits, Generic Reasonable Potential, Pollutants in the Intake for Technology Based Limits, BMP limits, General Compliance Schedule provisions, Waters of the State (note to definition), Permit application requirements for Industrial groups, Intake requirements for new facilities (316(b)):

Federal Issues:

- Issue # 2 (122.45 (a) and (h), (b)(1), (c), (d), (f) and (g), (i))
- Issue # 7 (NSPS)
- Issue #11 (Generic RP)
- Issue #13 (Best Management Practice (BMP) authority)
- Issue # 14 (Antibacksliding)
- Issue #15 (General Compliance Schedule language)
- Issue # 20 (Adjustment to Technology Limits)
- Issue # 29 (Solid Waste Leachate Provision in Compliance Schedules)
- Issue # 46 (Expedited Variance for Technology Based Limits))
- Issue # 61 (Application Requirements for Certain Classified Groups)
- Issue 14 (Antibacksliding)

Rulemaking Schedule for RP 5:

- **Scoping Statement to Governor** – May 2012
- **Approval from Governor to proceed** – May 2012
- **Scope Statement Submitted to NRB for Approval** – June 2012
- **Rule Draft Completed and EIA Process Completed** – April 2014
- **NRB Authorization for Hearing** – July 2014
- **Public Hearings** – October 2014
- **NRB Adoption** – January 2015
- **Submit Rule to Governor** – February 2015
- **Written Approval from Governor** – April 2015
- **Rule to Legislature for review** – June 2015
- **Effective Date** – After completion of legislative review process

Rule Package 6 – Permit Processing Issues and other Permit Issuance Procedural Matters

Federal Issues:

- Issue 3 (Process for citizens to request permit modifications)
- Issue 18 (Signatures of Permit Applications)
- Issue 21 and 66 (Fact Sheets)
- Issue 22 (Sending Draft Permits to Agencies)
- Issue 45 (Permits Not a Property Interest, Permit Shield Provisions)
- Issues 47 (Signatory to Permit)
- Issue 48 and 50 (Termination of Permit Procedures)
- Issue 49 (Notification of Permit Changes)
- Issue 51(Public Info Hearing Procedures Requests)
- Issue 62 (Suspension of Permits)
- Issue 65 (Preparation of Draft Permit Required)

Rulemaking Schedule for RP 6:

- **Scoping Statement to Governor** – May 2012
 - **Approval from Governor to proceed** – May 2012
 - **Scope Statement Submitted to NRB for Approval** – June 2012
 - **Rule Draft Completed and EIA Process Completed** – December 2013
 - **NRB Authorization for Hearing** – January 2014
 - **Public Hearings** – March 2014
 - **NRB Adoption** – June 2014
 - **Submit Rule to Governor** – July 2014
 - **Written Approval from Governor** – September 2014
 - **Submit Rule to Legislature for review** – January 2015
 - **Effective Date** – After completion of legislative review process
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Rule Package 7 – Analytical Test Methods

Federal Issues: Issue 9 (Analytical Test Methods)

Rulemaking Schedule or RP 7:

- **Scoping Statement to Governor** – May 2012
 - **Approval from Governor to proceed** – May 2012
 - **Scope Statement Submitted to NRB for Approval** – June 2012
 - **Rule Draft Completed and EIA Process Completed** – December 2013
 - **NRB Authorization for Hearing** – February 2014
 - **Public Hearings** – April 2014
 - **NRB Adoption** – June 2014
 - **Submit Rule to Governor** – July 2014
 - **Written Approval from Governor**- September 2014
 - **Submit Rule to Legislature for review**- January 2015
 - **Effective Date** – After completion of legislative review process
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Rule Package 8 – Storm water Rule Revisions

Federal Issues: Issues # 23, 24, 25, 26, 52, 53, 57 and 67 (see notes below)

Rulemaking Schedule for RP 8:

- **Rule Draft Completed and EIA Process Completed** – December 2013
- **NRB Authorization for Hearing** – January 2014
- **Public Hearings** – August 2014
- **NRB Adoption** – October 2014
- **Submit Rule to Legislature** – January 2015
- **Effective Date** – After completion of legislative review process

Note # 1: The scope statement for RP 8 was published prior to June 8, 2011 so Governor approval is not required and is therefore not included in the schedule. This scope statement included changes to ch. NR 216 for consistency with federal regulations, and will address low priority or minor storm water issues raised in EPA's letter

Note# 2: For issue # 24 regarding construction site storm water permit coverage of commercial building sites and one and two family dwellings, the Department will seek removal of the note in NR 216.42(9) by January 2013 and will no longer deem the DSPS program as equivalent. In addition, DNR will continue to act as permitting authority for commercial building construction sites and will not deem the DSPS program as equivalent under s. NR 216.42(4). In January 2013, the state will seek a legislative change to clarify permitting authority, and in January 2014, submit proposed manual code changes for EPA approval - see II and III below.

The second set of information is the status of the statutory changes requested:

II. STATUTORY CHANGES:

Statutory Changes Regarding Storm water– WisDOT permitting exemption

Federal Issue: Issue # 23 & 26 (DOT)

Proposed Schedule:

- **Begin administrative and transitional measures** – March 2012
- **Submit legislative change recommendation**– January 2013

Statutory Change Regarding Storm water – Commercial building regulation

Federal Issue: Issue # 24 (DSPS)

Proposed Schedule:

- **DNR will continue permitting** – Continuously
- **Submit legislative change recommendation**– January 2013

Other Statutory Change Regarding NPDES Program Issues

Federal Issues: Issues # 6, 27, 48 and 50

Statutory changes were already enacted to establish terminology consistent with federal regulations (e.g. "termination, revocation and reissuance and modification"). This addresses part of issues 48 and 50.

Statutory changes will again be requested by January 2013 to address EPA's comments on Issues 6 and 27. As part of this statutory request, the Department may also request additional statutory changes that were already covered by the Attorney General's Statement simply for clarification purposes. The Department may also request that other issues included in the rule making packages above be addressed through statutory changes so they can be resolved more quickly.

The last category is the other actions proposed to address the remaining issues:

III. OTHER ACTIONS:

A. Manual Code Change Recommendation Schedules:

Manual Code Change – Other environmental programs, ss. NR 216.21(4) and NR 216.42(6)

Federal Issue: Issue # 24 Storm water

Proposed Schedule:

- **DNR to develop manual code**– December 2013
- **Seek EPA approval** – January 2014

B. Communication Change Schedules (Completed):

Approval Letter Change 1 – Authorized Local Storm water Programs

Federal Issue: Issue # 25 (ALPs)

Proposed Schedule:

- **Approvals clearly stipulating DNR as permitting authority** – March 2012 and forward

C. Memorandum Of Agreement Addendum:

Some of the issues included in rule making packages may be resolved more quickly through an Addendum to the MOA between EPA and DNR.

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May 18, 2012

Susan Hedman, Region V Administrator
United States Environmental Agency
77 West Jackson Boulevard
Chicago IL 60604-3590

Subject: Rule Making Schedule for EPA's Permitting for Environmental Results Initiative

Dear Dr. Hedman:

My letter of October 14, 2011 provided a plan of action in response to your letter dated July 18, 2011 that identified 75 issues relating to Wisconsin's legal authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program. During subsequent discussions with the Department of Natural Resources staff, EPA requested that the Department provide a more specific timeline with milestones for the rulemaking component of our plan. The attached document provides our projected timeline and milestones for eight rule packages and includes other actions that we believe will satisfy the needs of both EPA and the Department.

We recognize that EPA would like rule changes to be completed within a two year timeframe, however, the Department's current rulemaking procedures from start to finish take a minimum of 31 months. Accordingly, Department staff will proceed with rulemaking as expeditiously as possible and will strive to complete rules earlier than projected, but a two year time frame simply cannot be met under existing state rulemaking procedures. The Department is, however, willing to resolve some of the issues more quickly through an Addendum to the Memorandum of Agreement to administer the WPDES Permit program if EPA would like to pursue this action. Also, EPA has already received an Attorney General's Statement from Wisconsin which resolved a number of issues.

It should be noted that rule packages #1, #2 and #3 and #8 were already in progress when DNR received EPA's July 2011 letter. Therefore those packages are projected to be completed earlier than the others. The dates for some of the other packages are staggered to provide staff sufficient time to draft rules, balance permit workloads and allow for adequate public participation and consultation from EPA.

In summary, the Department is proceeding to make rule changes as quickly as possible. We look forward to continuing to work cooperatively with EPA and will provide biannual updates on our progress.

Sincerely,

Cathy Stepp
Secretary

Attachment