

WDNR Joint Agriculture & Non-Agriculture NR 151/153 Advisory Committee Meeting  
WI DNR South Central Office, Fitchburg WI  
February 18, 2008  
10:00am – 3:00am

In attendance:

Gordon Stevenson, WI DNR  
Bob Masnado, WI DNR  
John Pfender, WI DNR  
Jim Bertolacini, WI DNR  
Carol Holden, WI DNR  
Mary Anne Lowndes, WI DNR  
Corinne Billings, WI DNR  
Laura Lueders, WI DNR  
Richard Castelnuovo, DATCP  
Tim Parsons, WI DNR  
Sandy Cihlar, Producer  
Lisa Schultz, DATCP  
Rodney Taylor, DOT

Perry Lindquist, Waukesha County  
John Norman, UW  
Jeff Maxted, UW  
David Botts, APWA  
Shirley Krug, MMSD  
Paul Kent, MEG  
Jim Bachhuber, Earthtech  
Nicole Richmond, WI DNR  
Kevin Kirsch, WI DNR  
Larry Buetzer, Janesville  
Rick Eilertson, Fitchburg  
Andy Yench, UWEX  
Pat Stevens, WI Builders

**I. Welcome - *Andy Yench, University of Wisconsin Extension***

**II. Presentation: [NR 151 & NR 153 and their relationship to Wisconsin's Impaired Waters Program.](#)**

**A) Introduction (slides 1–9) - *Gordon Stevenson, Wisconsin DNR Runoff Management - Section Chief.***

Gordon explained that the State of Wisconsin is developing a Wisconsin impaired waters program.

Bob Masnado, Wisconsin DNR Water Evaluation Section Chief, announced that the 2008 Impaired Waters List will be released February 19, 2008 in draft form. The 30 day comment period will begin tomorrow and close March 19<sup>th</sup>.

**B) Overview of Impaired Waters Program**

**1. Evaluate Waterbodies (slides 10–19) - *Mary Anne Lowndes, WI DNR Runoff Management.*** Lowndes gave an explanation of use designation and criteria for water quality standards, assessment methodology, and public input opportunities. She then explained the implication of listing waters.

**2. Establish Maximum Allowable Pollutant Load (TMDL) (slides 20 -30) - *Kevin Kirsch, WI DNR Runoff Management.*** Kirsch explained that a TMDL is a model of how much of a specific pollutant a waterbody can assimilate. He explained the process of allocation among point sources, nonpoint sources and a

margin of safety (Wasteload allocation + Load allocation + Margin of safety = TMDL) as well as public opportunities for involvement.

**3. Develop and Implement Plan (slides 30–52) - Corinne Billings, WI DNR Water Evaluation.** Billings explained the development and implementation of watershed based strategies based upon the TMDL.

**Committee Questions/Discussion:**

- MS4 to MS4 pollutant trading can be done currently without a statutory change.
- It was asked if there have been successful examples of nonpoint and point trading. There has been a pilot project in the Red Cedar Watershed since 2000. There is trading between the City of Cumberland and farmers throughout Barron County. Barron County is the broker. The City must get twice as much P from the nonpoint source than they are permitted. Every three years they must find other producers to work with. [A link](#) to more information about this project will be placed on the rule revision webpage.
- While we know that TMDL decisions may be appealed, the specific points in the process when appeals may occur are being clarified at this time. Our DNR attorneys and EPA attorneys are discussing this issue right now.
- For clarification, the UW Pleasant Valley Creek paired watershed project is looking at how best management practices within the watershed are affecting water quality. It is not a part of the TMDL process.
- There is not a process as of yet to determine what size of a watershed is appropriate for TMDL development. WI DNR future decisions will be based upon lessons learned during the priority watershed program and the Wisconsin Buffer Initiative.

**C) TMDLs and NR 151 Performance Standards (slides 53- 66) - Kevin Kirsch, WI DNR Runoff Management.**

**Committee Questions/Discussion:**

- The WI DNR was asked to summarize the difference between using “alternative” which replaced the word “enhancements” in NR 151.005. When a TMDL is conducted, an evaluation is conducted that assumes that the existing statewide nonpoint source performance standards have been met. If meeting the statewide standards is not sufficient to meet a TMDL, the only way to meet the TMDL is with alternative standards.
- Nutrient management will also be a tool to assist in meeting the TMDL objectives on the agricultural (nonpoint source) side.
- As land shifts from one land use to another we must shift load allocations. Load allocations must take into account the total crop rotation.
- New phosphorous criteria will become the target values for water quality.
- The PI=6 is nothing new. That is the statewide requirement now under the statewide 590 nutrient management standard. The new language is not going to help you meet a target value. It just makes it possible.

- If PI = 6 does not achieve the target in a TMDL then a lower watershed PI will be established.
- Once a statewide phosphorous standard is established, will all waters not meeting this standard by definition be impaired? Based on the current definition of impaired water, the answer is not clear.
- For clarification, the Wisconsin Buffer Initiative identified about 1600 watersheds as the most likely to respond to nonpoint source best management practices. This was done without TMDLs in mind. The TMDL discussion has evolved after the completion of the WBI.
- The county will likely be playing a major role in identifying specific producers who will be involved in trading. The TMDL objective is not about getting the biggest bang for your buck; it is about getting the credits needed to meet the target water quality objective. County staff knows who they should be working with and who they can work with productively. There was discussion regarding the mechanisms of pollutant trading. If the producer has been given cost-share and reached compliance, at what point do they have to continue to be in compliance without cost-share/pay from a municipality?
- A TMDL is considered approved after EPA approves the TMDL. EPA approval means that point sources will need to meet allocations in their next permit cycle. EPA does not approve implementation plans. There is an implementation component into the TMDLs. For example, in the Lower Fox TMDL.
- How does one account for a construction site that is a 3 month project into a TMDL? Answer is not clear. If the construction site is within a permitted municipality, it will be incorporated into the municipality's waste load allocation. If it's a 100 acre project in an unpermitted municipality, after construction it will become part of the load allocation. The un-permitted municipalities do not have any reduction requirements in their developed urban area. There are 120 permitted entities in the Rock watershed alone. It is not possible to track the construction projects as well.
- Agricultural facilities within an impaired watershed cannot have an increase in P or sediment until the TMDL is done. WI DNR is working on how to interpret and implement.

**III.** Because of the weather, attendance at his meeting was not large enough for the need to break the advisory committee members into small groups to discuss the focus questions. Attendees were given a few minutes to think about focus questions and to fill out the [focus questions worksheet](#) provided. Then their thoughts were gathered and placed on flip charts.

**Question 1A: Do you foresee any potential barriers to implementing the TMDL language in NR 151?**

**Answers:**

- There is a lack of landowner incentives and consequences (agricultural)

- There is a lack of communication/outreach to landowners regarding TMDLs. Engage and empower the agricultural community.
- There is a lack of DNR resources (dollars and staff) to operate successful program.
- The process is still too general. The public needs more specifics to make a commitment to support and implement.
- The implications of a TMDL are still not well understood. There are too many unknowns.
- There is a lack of incentives for counties to participate.
- There is a fear of how low the limits will become.
- There is concern with the excessive cost-share requirements in ATCP 50.
- The costs associated with increased compliance beyond statewide standards for the agricultural and non-ag community are unknown.
- There is uncertainty of what scale implementation will take place on, the whole basin or portions of a basin?
- There are questions regarding the application of the Wisconsin Buffer Initiative. Is it being appropriately applied? Are other states doing anything similar?
- There are unknowns about pollutant trading.
- Agricultural community is concerned about being held to higher standard without proper rule-making process.
- The whole program is way too complex and needs to be made more user friendly (ie SNAP-Plus).
- There is concern that land that is temporarily meeting a lower PI (ie CREP enrolled) will not be able to be put back into production because it would result in higher PI.
- There is concern that measuring success and tracking compliance of the agricultural community is difficult.
- What will the return on investment be of this effort?
- There needs to be more information on the impaired waters program online.

### **Question 1B – How might those issues be resolved?**

#### **Answers:**

- We need to identify a designated source of funds.
- There needs to be a statutory change to allow statewide use of pollutant trading.
- There needs to be more time for and an increased effort to educate the public and producers. Discovery Farms should be involved.
- There should be workshops involving both point and nonpoint sources together held statewide with stakeholders to discuss problems/solutions.
- There needs to be more WPDES permit guidance relative to TMDLs.
- ATCP 50 needs to be “fixed” to increase incentives, decrease cost-sharing, and for more guidance for local programs.

- There should be citizen meetings on land use to take advantage of existing practices and local knowledge.
- We need to be exploring new technologies (ie manure disposal/use) and best management practices.
- Other groups (not just state agencies) need to be involved in educating the public about TMDLs. We should be educating each other.

**Question 2 – How can agricultural, urban & environmental stakeholders work together during implementation?**

**Answers:**

- All are trying to accomplish the same goal; we need to work on communication and finding the point of commonality.
- Counties, cities, agricultural interests, etc. need to come together during the plan development to direct the dollars and resources where it makes the most sense.
- We need to bring builders and others beyond agriculture and municipalities to the table.
- During the allocation phase, stakeholders need to establish trust, goodwill, and cooperation.
- There needs to be more incentives to bring stakeholders together. We need to strengthen the county's program.
- Learn from the Minnesota Clean Water Legacy model and the Lower Fox model.