

Summary

Air Management Study Group Meeting

Tuesday, December 3, 2013

9:00 am

Room G09, GEF 2, 101 S. Webster St., Madison WI

Attendees

Renee Bashel, SCS Engineers
Bill Baumann, DNR
Anne Bogar, DNR
Eric Bott, WMC*
John Budzinski, DNR
Tim Clay, Cooperative Network*
Tyson Cook, Clean Wisconsin*
Kendra Fisher, DNR
Brian Freitag, InSinkEerator
Arthur Harrington, Godfrey & Kahn*
Kristin Hart, DNR
Pat Henderson, Quad/Graphics
Tracey Holloway, UW-Madison*
Erik Hoven, Dairyland Power

Jeff Jaeckels, MGE*
Jerry Medinger, ALA in Wisconsin
Andrea Morgan, EPA
Todd Palmer, Michael Best*
David Seitz, TRC Environmental Corp
Andrea Simon, Trinity Consultants
Renee Smits, Spectrum Engineering
Bart Sponseller, DNR
Andrew Stewart, DNR
Patti Stickney, SCS Engineers
Scott Suder, Wisconsin Paper Council*
Robert Thiboldeaux, DHS
Mark Thimke, Foley & Lardner
Karen Walsh, DNR

* Air Management Study Group (AMSG) members

Action Items

Air permit streamlining

- The Air Program is accepting **additional permit streamlining ideas** until **December 10** (DNR followed up with a reminder email on December 6). Send ideas to or discuss them with the relevant staff member:
 - NR 406 - Construction Permit Team Leader – Steve Dunn
608-267-0566, steven.dunn@wisconsin.gov
 - NR 407 - Operation Permit Team Leader – Barb Pavliscak
608-935-1927, barbara.pavliscak@wisconsin.gov
 - “Cause or exacerbate” – John Roth
608-267-0805, john.roth@wisconsin.gov
- The Air Program would like AMSG members to comment on the streamlining ideas collected at public listening sessions. By **January 6**, please send the following information to Karen Walsh (karen.walsh@wisconsin.gov, 608-267-7547):
 - List the top 5 to 10 streamlining ideas you believe the DNR should address
 - Note which of these ideas should be addressed in the first streamlining rule package (in Natural Resources Board order format by March/April 2014)
 - List any ideas you believe DNR should not pursue

The ideas are listed in a handout posted on the AMSG website under the December 3 meeting (<http://dnr.wi.gov/topic/airquality/amstudygroup.html>).

- Kristin Hart will schedule January workgroup meetings
- DNR will move forward with streamlining items considered clean-up and those required by legislation

Next quarterly AMMSG meeting

Wednesday, February 26, 9 am, DNR South Central Region Service Center:

Gathering Waters/Glacier's Edge Conference Room
DNR South Central Region Service Center
3911 Fish Hatchery Rd.
Fitchburg, WI

Meeting Summary

Opening remarks and agenda review

Bart Sponseller, Bureau Director

Administrative items

Anne Bogar, AMMSG coordinator

Updates & announcements

Air Program updates

Anne Bogar, AMMSG coordinator

Bogar provided updates on current Air Program topics. The presentation slides are available on the AMMSG website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>. Information supplementing the slides is summarized below.

Air quality mapping

At past AMMSG meetings, members expressed interest in improving DNR's outreach on air quality improvements. Holloway volunteered to work with the Air Program to develop a mapping tool that could be posted on DNR or external websites. The tool would be designed to help the public understand DNR's air quality data. A student of Holloway's will be developing some sample interactive maps to show air quality improvements over the last 20-30 years. The sample maps will be presented at the next AMMSG meeting on February 26 for member feedback.

Billing for Title V sources

Wisconsin's 2014-2015 budget bill authorized DNR to collect new annual fees from Title V sources, including fees from sources that do not have reportable emissions but contribute to DNR's workload.

In December, the Air Program is sending notifications to all Title V sources about the new fee requirements. The notifications are source-specific and identify how a source will be affected, based on information in the DNR database regarding the source's status. The standard, official

billing notifications are sent to sources in January. The Air Program is open to additional suggestions about how to get the word out to sources about the new fees.

Bogar clarified that annual emissions reporting and fees based on annual emissions (i.e., tonnage fees) still apply. Stewart also clarified that there will be no additional reporting requirements, and that the December notifications will provide an opportunity for sources to work with DNR if there are any inconsistencies regarding DNR's assessment of the source's status.

Bill Baumann is the DNR contact for Title V fees: (608) 267-7542,
William.Baumann@wisconsin.gov

Notification of opportunities for 25% ROP & exemptions

Wisconsin's 2014-2015 budget bill requires that the DNR notify sources that may be eligible for the 25% registration operation permit (ROP) or permit exemptions. All potentially eligible sources with a valid email address were notified by email. A postcard or letter will be sent to sources with undeliverable or missing email addresses.

Construction permit customer survey

The Air Program has been administering a survey to construction permit holders to collect feedback about the permitting process.

50% ROP

The Air Program will be moving forward to develop the 50% ROP. Kristin Hart will be organizing an AMSG 50% ROP workgroup meeting after January 1, 2014.

Member updates (as relevant)

NASA Air Quality Applied Sciences Team (AQAST)

Holloway described AQAST, a NASA program that she and Sponseller are participating in. The goal of the program is to make air quality data, including satellite data, more useful in air quality management. She said that she would be happy to provide information if members have any questions or ideas about the roles of satellite data in permitting or other regulatory processes.

In response to questions from members, Holloway explained that carbon monoxide, nitrogen dioxide, particular matter (specifically, aerosol optical depth), and formaldehyde (an indicator of VOCs) are the four pollutants detectable by satellite that have the most direct regulatory link. Formaldehyde and nitrogen dioxide ratios have been used to understand ozone formation. Methane, sulfur dioxide, and ozone are also detectable, to various degrees.

Regarding detecting sources using satellite data, she provided some examples. It is possible to see how nitrogen dioxide emissions have changed as a result of fracking. It is also possible to see how emissions over Beijing changed during the Olympics.

Alternative enforcement options

Bill Baumann, Compliance, Enforcement & Emissions Inventory Section Chief

Baumann provided an update on the Air Program's proposal to work with the AMSG to develop alternative enforcement options. He explained that the study group began discussing the issue at the first AMSG meeting in May 2013, when he was providing an overview of the Air Program's Compliance, Enforcement & Emissions Inventory Section, and mentioned citation authority in the asbestos program. Harrington wondered whether citation authority would be useful in the Air Program. EPA expects DNR to seek

forfeiture for high priority violations (HPVs), but there is no mechanism for addressing lower priority violations.

Baumann described how the Air Program, in discussion with the study group, determined that acquiring administrative penalty authority would probably require legislation, and therefore would need broad support from stakeholders. However, based on members' response to a DNR questionnaire about pursuing the proposal, the Air Program concluded that there was not broad support for this effort.

Baumann explained that DNR will continue to use the existing stepped enforcement process, including referral to the DOJ for more significant violations. He concluded by saying that the Air Program will not be pursuing this issue further with the AMSG. Baumann thanked members for considering the topic and providing feedback, and thanked Harrington for working on the issue brief.

Air permit streamlining

Kristin Hart, Permits and Stationary Source Modeling Section Chief

Kristin Hart reported on the permit streamlining listening sessions held throughout the state in October and the permit streamlining workgroups meeting held on November 12. The presentation slides are available on the AMSG website at <http://dnr.wi.gov/topic/AirQuality/AMStudyGroup.html>.

Hart provided an overview of the scope of the permit streamlining initiative (slide 9), adding that the new NR 445 language has been mostly worked out already. She explained that the current role of the AMSG is to shift from gathering streamlining ideas to prioritizing them (slide 10). She described several of the ideas suggested by members of the public at the listening sessions (summarized in slides 13-17).

The following sections address the streamlining ideas Hart presented in her slides, as well as members' ensuing discussions. The member comments and discussion are summarized by topic (not by the order in which comments were made during the meeting). The summaries supplement information in the slides. The final section addresses the discussion of AMSG members' roles in the streamlining initiative and the proposed work schedule.

Permit application process and review (slide 14)

Hart clarified that the application process and review ideas listed on slide 14 would not require a rule change, and that some of the ideas are actually topics being addressed by the Air Program now. Specifically, the Air Program is working on improving electronic application submissions. The program has also been talking for several years about addressing plan inclusion in permits (currently, if you include a plan in the permit you cannot change it without revising the permit).

Cook commented that the public process ideas that do not require a rule change should be the highest priority because they can be addressed right away. The Air Program should aim to not only maximize transparency, but also assist the public with specific applications. This would allow citizens to be more informed and prepared for the public comment period. He encouraged the DNR to take advantage of opportunities to provide more plain language information to the public.

Hart said that in the past, the Air Program used a public notice format that included a plain language description of the project. She is not sure why the program started using a shorter public notice format. She explained that the facility and project are described in the Preliminary Determination, and suggested it may be possible to automatically pull that description out and provide quick links to projects. She thinks the technology is now available to facilitate this kind of effort.

Harrington wondered whether it would be helpful to confirm to the public that there will be an opportunity for public comment on a permit before any pollutants are emitted.

Sharing draft permit with applicants

Hart stated that the Air Program should be sharing all permit drafts, but if that is not the case, the issue needs to be addressed.

Harrington stated that he thinks it is very important to allow a permit applicant to react to the permit draft and be as comfortable as possible with it before it goes out for public comment. He thinks the DNR has been good about this, and that it ensures efficiency and prevents difficulties associated with changing the permit after it goes out for public comment. He has seen this issue quite a bit in water permitting.

Hart would like the Air Program to have a streamlined system for making a pre-draft permit a public document. This would be done using WARP. Cook emphasized that, from the public perspective, there is a need for transparency, and asked how the streamlined system would ensure this. Hart responded that documents on WARP are publicly viewable. By making the pre-draft available to applicants through WARP rather than by email, the document would be public.

EPA review of permits

Harrington asked DNR and EPA staff to comment on DNR's and EPA's draft permit exchange process. Hart responded that EPA is notified that a draft permit is available for viewing during the 30 day comment period. For part 70 permits, EPA has 45 additional days to review the draft. Morgan added that EPA's review is mostly completed during the public comment period.

Palmer asked how many permits EPA typically comments on. Morgan responded that EPA comments are relatively infrequent. EPA looks at all PSD permits, and about 20 percent of Title V permits, but does not comment on nearly all of them.

Pre-permit activities and permit content (slide 15)

Allow more construction prior to permit issuance

Hart clarified that currently, minor sources can get a waiver to commence construction before a permit is approved, but cannot begin operating equipment. She explained that the definition "commence construction" could affect the activities that could take place before a permit is issued. Another approach would be to remove the "undue hardship" requirement for obtaining a waiver.

Palmer said he thinks this is a great idea to pursue. He asked what the impediment to DNR is of allowing construction prior to issuing a construction permit for non-PSD or NSR sources, if the risk of not getting the permit falls on the regulated entity. Bott added that statute provides DNR with flexibility in allowing construction before permit issuance that has not been used to date.

Hart said that NR 150, which covers environmental assessments, is under revision, and that is an area the Air Program will have to examine. She agrees that DNR has the flexibility to define certain pre-construction activities for minor sources. She said there is also a federal definition that probably should not be borrowed word-for-word, but does include some language about the definition of commencing construction.

Hart continued that once construction has started, it is more difficult to make a facility stop. With a climate like Wisconsin's, it would make sense to allow more construction before the permit is issued. She said that a large proportion of facilities request the waiver and that she could look up that number.

Harrington stated that the definition of undue hardship could be interpreted stringently. Palmer responded that he thinks the intent is to allow pre-permit construction activities.

Hart mentioned two possible approaches: 1) tweak the waiver rule and remove the undue hardship requirement, and 2) redefine "commence construction". She said that keeping the waiver requirement in place makes sense because it would provide the Air Program some opportunity for review.

The group clarified that this is a non-major source issue. Hart pointed out that the federal and state definitions of commencing construction are different. Unlike the federal definition, NR 406 allows facilities to enter into contracts before the permit is issued.

Bott said he thinks the group should pursue opportunities to address both the waiver and the definition of commencing construction.

Cook stated that he is not sure this is a straightforward issue. There are economic and environmental costs if construction starts but the construction permit is not ultimately approved. There is no opportunity for public comment before beginning construction. He recommended backing down and moving more slowly on this issue because there may be a lot of issues that need to be considered.

Cook said that once you start construction you are setting some things in stone. It would be more economically beneficial to wait until the permit is issued before undertaking some activities. Harrington responded that it could be made clear that is a risk the facility has to take. Cook agreed that is true, but commented that there are economic and environmental costs if the permit is not approved, especially in a greenfield, where ecosystem services have been disturbed.

Suder stated there is a benefit to having the jobs available at the construction site. There is an opportunity for public comment at the local level. In some instances, if you do not pour concrete you will not have the jobs.

Cook responded that he is concerned about cases where facilities do not get approved to construct in the way they already started constructing.

Hart suggested that maybe the Air Program could define a different process for greenfields. She does not want streamlining work to conflict with NR 150, but she thinks there are ways to approach this issue while protecting the environment. She agreed that the issue may be more complicated than it seems.

Allow for easier changes to parametric monitoring parameter ranges in permits

Hart explained that this idea is related to the minor revision process. Currently, the minor revision process is not very useful. Approaches to addressing this could involve streamlining the administrative procedures for minor revision as well as defining differently the types of changes that can be made under a minor revision. She clarified that the streamlining initiative would have to leave the major source minor revision definition alone.

Exemptions and general permits (slide 16)

Exempt “like-kind” replacements from NR 406

Hart explained that there is a like-kind replacement for PSD sources, but not minor sources. Printing facilities would like to see in-kind replacement. This could get complicated but might not be impossible. It may need to be addressed in the second of the two streamlining rule packages.

Palmer brought up the current exemption for like-kind replacement in NR 406. Hart clarified that the exemption is for part of a basic emission unit, not a whole unit. She suggested that clarifying the language regarding the existing code may be a good idea. Palmer recommended that the Air Program examine the language regarding like-kind replacement in NR 406, because he thinks the existing rule could be used more broadly than it has been in the past.

Improve printer GOPs

Hart explained that this idea does not require rule changes, and that the Air Program is working on it.

Permit renewals and guidance (slide 17)

Simplify renewal process

Hart added that this idea could include addressing revocation for facility closure.

Make more [minor source] permits permanent or have longer (10 year) renewal periods

Hart explained that right now the Air Program does not have the resources or time to do permit renewals for minor source operation permits. Some people think 10 year renewals are better than permanent permits because they would allow facilities to make updates to permits and also allow public comment on the entire facility permit.

During the priorities discussion, Hart clarified that registration operation permits (ROPs) and general operation permits (GOPs) do not expire, and this has been approved by EPA. She also pointed out that there are reasons both the public and industry might want permits to require renewal.

Hart clarified that the Air Program is not going to change the permanency language regarding permit conditions.

Guidance versus rule

Regarding streamlining ideas that involve providing more guidance, Harrington asked whether the Air Program has had internal conversation about the difference between the need for guidance or a rule. He referred to ch. 227, *Wis. Stats.* and changes to the definition of what constitutes a rule. He pointed out these changes were intended to formalize DNR processes in rule rather than allowing behind-the-scenes guidance documents to guide the agency's work. This has been an issue in the brownfield area. He asked if anyone has thoughts or concerns about this issue in terms of how streamlining ideas are approached. To clarify, Palmer cited s. 227.10(2)(m), *Wis. Stats.*, that the Department must find explicit authority in rule or statute for any provision in a permit. Harrington added that he thinks there is a tendency to do as much as possible in guidance to give certainty to the regulated community and the public due to the lengthy process it takes to write a rule.

Hart suggested that the study group could help determine whether new guidance should be a rule. For example, for exempt replacements the Air Program currently relies on guidance. But staff would like to define some terms in rule so that the program is not relying solely on guidance. The term "reconstruct" is used, but not defined in NR 406. Harrington agreed that this point is consistent with his concern about the guidance versus rule issue.

Hart asked members to let the Air Program know if they have recommendations about whether something should be a rule rather than guidance. Sponseller seconded Hart's statement, asking members identify whether the streamlining ideas and priorities they submit to the Air Program should be addressed in guidance or rule.

Sponseller also noted that the DNR has a website for public comment on program guidance. As a part of the process, the Department considers whether something should be a rule or guidance.

Modeling (definition of cause or exacerbate)

Holloway asked whether modeling was a significant topic among the streamlining comments received at the listening sessions. Hart responded that it is a statutory requirement to demonstrate that source will not cause or exacerbate violation of ambient air quality standard. There is not anything in rule saying the determination requires modeling, though modeling is the most valuable tool the Air Program has in making the determination. At the same time, the program recognizes that modeling addresses the worst case scenario rather than actual conditions. So the program is collecting ideas about defining "cause or exacerbate", and looking at whether the determination could involve tools other than modeling.

Holloway asked if there was a particular theme to the comments on modeling. Hart responded that it depends on the facility. Some want to know what information the Air Program needs to perform modeling, others want to know how to do their own analysis. Others want to address the "cause or exacerbate" definition. PM_{2.5} is a big issue because it is more difficult to model and show compliance with the standard.

Administrative revision for construction permits (slide 18)

Hart explained that this idea originated in the Air Program, not the listening sessions. There is currently no administrative revision process for construction permits. An administrative revision process would allow revisions to change mistakes in a construction permit.

Palmer stated that there is an existing revision process for construction permits. He said he would encourage the Air Program to look at existing language because it is possible it could be used more broadly than it has in the past.

AMSG role and next steps (slides 18-24)

Hart outlined the next steps for the streamlining initiative. She explained AMSG members' roles and outlined the proposed work schedule through April, 2014. The Air Program will be pursuing two sets of rule revisions. The first rule package will consist of revisions that can be completed relatively quickly and easily ("fast track" revisions). The goal for the first package is to make final recommendations on rule content by the end of January so that the rule language can be drafted by April. The second rule package will consist of revisions that are more complicated and require more significant discussion. For more information about the next steps, see slides 18-24 and the action items on p. 1 of this document.

Hart noted that many of the ideas presented on slide 19 are ideas that can be pursued quickly without a rule change and may simply require outreach to make the public more aware that the Air Program is already doing these things. She also stated that two areas of permit streamlining the Air Program will definitely address are the natural minor exemption (which will not be complicated and is required by legislation) and rule clean-up.

Hart said that the Air Program will start working with individual workgroups in January, 2014, and may even break the workgroups into specific topic areas (beyond the general 406 and 407 categories).

Harrington asked whether ideas originating from outside the study group should be brought to the Air Program through the group or separately. Hart responded that the program is accepting ideas from anyone.

Harrington also asked whether there would be an opportunity for others to present ideas at the next meeting. Sponseller responded that the Air Program needs to start prioritizing ideas, after having spent a few months collecting ideas from the public. He encourages people to send ideas to the Air Program either through AMSG members or directly. If new ideas for the first rule package come up in January, it may be possible to add them to the list.