DATE: November 14, 2012

FILE REF: NMAC

TO: File

FROM: Tom Portle

SUBJECT: Minutes of September 20, 2012 NR 135 Nonmetallic Mining Advisory Committee meeting

Following are the minutes from the NR 135 Nonmetallic Mining Advisory Committee (NMAC) meeting held on September 20, 2012 at the Moose Lodge in Muskego. The meeting, which also included a tour of reclaimed mines sites, was hosted by Payne and Dolan (P & D).

NMAC members present: Mike Erickson (Aggregate Producers of Wisconsin), Ron Garrison (Wisconsin Transportation Builders Association (WTBA), Marty Lehman (Mineral Extraction/Wisconsin Industrial Sands Association), Ed Reesman, (WTBA) and Gary Werner (Sierra Club).

NMAC new members present: Justin Cavey - County Zoning (Wisconsin County Code Administrators - WCCA), and Dr. Thomas Hunt (Scientific/Academic).

NMAC members not present: Susan Courter, (Consulting), Bryce Richardson, Wisconsin Land and Water Conservation Employees Association (WALCE); and a representative from the Wisconsin Counties Association (WCA).

WDNR staff present: Ed Lynch, Tom Portle and Phil Fauble.

WDNR Staff not present: Tom Woletz, WDNR’s Contact for the industrial sand permitting matters

Former Technical Advisory Committee (TAC) member: Rick Stadelman – Executive Director - Wisconsin Towns Association (WTA) was kind enough to join us to discuss the Town licensing ordinance option for use in towns when addressing more complex mine proposals.

Meeting organizers, lunch-time presentation and hosts: Clint Weninger and Ed Reesman of P & D.

Others present: Matt Bremer, Adams County; Gerry Kokkonen and Beth Klotz; Jefferson County.

► WELCOME - Go-around/check-in with NMAC members

The NMAC met at the Muskego Moose Lodge and the meeting began about 10:10AM. After the welcome and “housekeeping”, I acknowledged the long-standing and invaluable contributions of our recently retired members; James Burgener of Marathon County and Dr. Bruce Brown, WGNHS. Next, I introduced the new NMAC members recently appointed by the DNR Secretary: Justin Cavey and Tom Hunt - both are filling slots specified by NR 135.51. Justin Cavey, also of Marathon County, replaces Jim Burgener as the Wisconsin County Code Administrators (WCCA) representative while Dr. Hunt, an alumnus of the NR 135 Technical Advisory Committee (TAC) NR 135 rule-drafting process, replaces Dr. Bruce Brown. I also noted the presence of Rick Stadelman of the WTA. At the request of Tom Woletz, I conveyed his regrets at not being present. During the go-around Justin informed us that Becky Frisch had been hired to replace Jim Burgener in Marathon County. Justin also expressed an interest in discussing the overlap between the NR 135 program and other programs (for example Chapter 30 – NR
Next, I updated the NMAC as to the recent (August 2012) formation of an organization of Wisconsin industrial sand producers. The Wisconsin Industrial Sand Association (WISA) is comprised of: Badger Mining Corp. (BMC), U.S. Silica, Unimin Corp. and Fairmount Minerals. WISA seeks to raise the bar and promote responsible mining and reclamation. Marty Lehman of BMC indicated that the association intends to adhere to a strict code of conduct – one that promotes environmentally responsible mining, good management, environmental protection and safety.

► STATUS/UPDATE - NR 135 RECLAMATION PROGRAM - (October 2011 to September 2012)

- The last annual NMAC meeting was held in Green Lake in September 2011; the meeting and a tour of the reclaimed St. Claire mine was hosted by Badger Mining Corporation. That meeting also featured discussion of the surge in Wisconsin in industrial 'frac' sand mining, the role of NR 135, other DNR rules and other applicable regulations. This prompted a request that this meeting’s agenda include a follow-up report to the NMAC (please see below).
- Two statewide roundtable format NR 135 RA 'roundtable' discussions for NR 135 RA administrators. The first was held in Balsam Lake January 27, 2010 and was co-hosted by Polk County; the second was in Juneau on February 23 and was co-hosted by Dodge County. These were well attended again this year.
- A training & refresher for NR 135 Reclamation Program Administrators was held in April 2012 at DNR’s South Central Region Headquarters.
- September 19, 2012 - field training: Waukesha County, this included a review of reclamation test plots, innovative approaches using yard waste (composted) to reclaim former mine site in the Town of Genesee, the evaluation of reclamation success and a discussion of issues and management of invasive species.
- A phone conference providing permit technical support was held on August 29. Participants were County NR 135 administrators engaged in the permitting of industrial sand mines.
- On-site” technical support/training visits or other technical support: Walworth, Ozaukee, Pepin, Chippewa, and Crawford Counties – provided throughout the year.

► AUDITS RESULTS: NUMBERS

To date, 70 of the 70 active county NR 135 programs (100%) have been audited. The second ten-year cycle is now underway for county NR 135 programs – again, several counties more than once. In addition, 16 municipal (city, village and town) have been audited bringing the total of NR 135 programs audited to 86 (out of the approximately 92 - 95 RAs or ~91%.

For the period between October 2011 and September 13, 2012, seventeen NR 135 Regulatory Authorities (RA)s received performance review audits although three were incomplete (please see below). These included the NR 135 programs of: eight counties, eight towns (two follow-ups) and one village.

AUDIT RESULTS: Findings summary – October 2011 to September 13, 2012:

COUNTY LEVEL – Results for the eight counties reviewed: Two were excellent, one very good, one well-run but with a significant FA issue, three were in substantial compliance and one was in partial compliance with FA and permitting issues.
MUNICIPAL LEVEL: CITY, VILLAGE AND TOWNS
Some recent observations, outcomes and issues with the nine Municipal NR 135 reclamation programs (8 towns and 1 village) reviewed:

- Two town follow-ups showed marked progress and were now in compliance;
- Two towns chose to rescind their reclamation ordinances with the NR 135 reclamation program returned to the County;
- Two Towns entered into intergovernmental agreement with County but retained their reclamation ordinance; and
- Two towns & one village - working to have sufficient program information to review.

In summary, with few exceptions, in which only minor enhancements were recommended, one or more deficiencies – some serious are typically found during NR 135 reclamation program performance review audits. While deficiencies are somewhat more likely at the local or municipal level, when they do occur at the county level their overall impact may be more serious.

► DISCUSSION ON OPTIONS TO ADDRESS MUNICIPAL NR 135 PROGRAMS WITH COMPLIANCE ISSUES
I described issues with that have come up in recent NR 135 reclamation program audits. Ed and I discussed options to resolve compliance issues when City, Village and Town NR 135 Reclamation programs when NR 135 audits reveal noncompliance. We discussed the required process and possible options to resolve such matters. This will involve a requirement to consult with the NMAC, per in NR 135.47, as part of the resolution process. We discussed options that could, if necessary, improve the efficiency in the consultation with the NMAC. This would involve an agreement with the NMAC that if certain compliance deficiency criteria were present, on how this would take place. A draft of these criteria was circulated to the NMAC.

► UPDATE ON INDUSTRIAL ‘FRAC’ SAND MINES AND SUPPORT FACILITIES IN WI
- I provided an assessment on the adequacy of the NR 135 Reclamation rule and program to cover these larger and more complex mines. That’s because the rule contains uniform statewide performance standards. A complete and adequate reclamation plan must be submitted to demonstrate compliance with these. The reclamation standards, being performance based, and when coupled with the post mining land use achieved through plan implementation is a flexible mechanism. That’s because the approved plan is essentially “negotiated” between the applicant and the NR 135 reclamation permitting authority and the plan is the basis for the enforceable reclamation permit and is backed by financial assurance.
- Ordinances – Rick Stadelman of WTA was able to provide information on the Licensing Ordinances that have become available and answer any questions. These ordinances may contain language addressing operational concerns and may be enacted by towns with village powers.
- I mentioned that some local entities within counties have recently chosen to enact NR 135 Reclamation Ordinances that appear to distance themselves from county regulation. Ordinance Review: Two new ordinances reviewed (one city, one town) and another city under review (completed October 2012).
NR 135 ACTIVITIES PLANNED FOR FALL 2012 & FOR 2013

- An article was prepared and sent to Rick Stadelman to be published in the December WTA magazine. Its aim is to remind towns that have voluntary NR 135 ordinance of basic NR 135 program requirements. It was felt that this would be a good reminder due to the turn-over among administrators and the time elapsed since ordinance adoption.
- Presentation: December 2012 – Aggregate Producers of Wisconsin (APW) annual meeting: “The NR 135 Reclamation Program: Ten years later”.
- At least ten NR 135 RA performance review audits will be conducted; priority will be those municipal programs that have yet to receive an audit.
- 2013 NMAC Meeting - Annual meeting in September. Prepare five-year report to Natural Resources Board (NRB); consult with NMAC on then submit to NRB.

Final go-around – next meeting.
The NMAC agreed that the next annual NMAC meeting should be in September 2013. I indicated that this will be a more of a typical meeting (no tour) since we need to consult in the preparation of the 2013 Fee Report for the Natural Resources Board. Feedback: there continues to be over-all satisfaction with the administration of the NR 135 program.

Lunch and Presentation. The NMAC appreciates Payne & Dolan’s hospitality in organizing the meeting, tour and providing lunch. During the working lunch Clint Weninger (P & D) gave the NMAC some background on sites to be toured and a good representation of a gravel pit that has been fully reclaimed and developed (to residential land use) – a site we ended up not having time to visit.

Tour included: An active gravel pit with an asphalt plant and a recently reclaimed gravel pit; revegetated with a lake; stable but pending final reclamation. This will ultimately be residential but final stages of development are delayed.

Return to Muskego Moose Lodge & Adjourn NMAC meeting (about 3:15).