



Minutes
Small Business Environmental Council
June 21, 2012
DNR Headquarters - GEF 2, Room 713
101 S Webster St. Madison, WI
9:00 am - 12:00 pm

Members Present: Al Shea, Jeanne Whitish, Amy Litscher, Vince Ruffolo, Richard Klinke

Absent: Shane Lauterbach, Mike Simpson, Steve Aldridge

DNR Staff: Renee Lesjak Bashel, Eileen Pierce, Lisa Ashenbrenner

Guests: William Walker, Mike Friedlander, Joe Hoch

DNR Rules Review Update - Eileen Pierce

The meeting began at 9:10 with Eileen discussing Executive Order 61. During April and May the DNR collected input on rules that could be repealed for Phase I of the process.

Jeanne asked if all of the changes would be included on one bill. Eileen said that all agencies are conducting this review, although some have different rulemaking authority than the DNR. She did not know if there will be one super rule or super bill. Al speculated that there would be one large rule package for all changes for DNR.

Eileen went through the rules that are currently being considered for repeal. They are largely rules for which grants or funding no longer exist and the funding will probably not come back. She also noted that, if funding were to be restored at some point, another rule could be written. Eileen emphasized that this was not meant to roll back any environmental regulation.

Jeanne asked for clarification on the recycling rule. Eileen said that the funding was never there for that rule.

Richard asked about the contaminated site rule. Eileen said it was obsolete and was no longer being implemented.

Eileen noted that eliminating the rules that had been identified would make things less confusing for businesses.

Eileen discussed the collection of public input that was gathered through a web survey. This process will not affect phase I of the process, but will be considered moving forward. So far there have been 73 contacts in which people visited the site and provided input. These comments will be evaluated by the Department and responses will be provided for each comment.

Amy inquired as to the likelihood of a larger fundamental change such as repealing NR 445. Eileen responded that the review was not about rolling back environmental requirements such as NR 445. Jeanne expressed disappointment that the current

recommendations were things that do nothing to help small businesses in Wisconsin. Al agreed with this comment, stating that the initial list of changes is comprised of things that should have been done anyway.

Jeanne asked if anyone was looking at streamlining requirements between agencies. Al said he didn't know what other agencies processes were, but all agencies must comply with Executive Order 61. He wants to make the council more active and suggested that the council could tell the Small Business Regulatory Review Board (SBRRB) that they hope for more coordination between agencies as a result of the order.

Eileen said the SBRRB will receive the Phase I report in July and suggested the council could bring the cross agency concerns to the board at that time. Al felt that there should be communication with the board in the next month. Jeanne suggested getting other people's input on the matter. Al felt the input should be given sooner rather than later.

Amy asked about Phase II of the process and inquired as to whether fee structures could be changed. She felt the Department should make it cost more to emit instead of charging a construction fee when new equipment is added. She asked if these comments would be addressed in Phase II. Eileen said they had gotten some of these types of comments. She offered an example of small "mom and pop" trout farms that were having a difficult time paying the \$1,000 fee and had requested fee exemptions for very small businesses.

Jeanne noted that there is confusion on certain rules within the agency as well. She gave compost specifications as an example. One staff has said they are just suggestions while another treated them as requirements.

Boiler Rule Concerns - Renee Bashel

Pat Haskin joined the meeting over the phone.

Renee gave a summary of the Boiler Area Source Rule.

Pat saw the new rule as a problem, because it would put regulations on small businesses that had not been regulated before.

Vince asked what percentage of boilers is wood fired and if anyone uses them anymore. The reply was that wood fired boilers are making a comeback.

Amy asked about natural gas boilers that are for backup use only. Renee responded that if they are for emergency / backup use only, they do not have to comply.

Pat commented that she was bothered by the fact that they were attempting to bring large (utility) and small businesses into the same category, therefore putting small businesses into a category that is much more stringent. Renee said there is a separate rule for utilities.

Vince asked what additional costs this rule would put on businesses. Renee said businesses would already be doing tune-ups. The question is whether what they are doing matches the checklists that will be required. There will be more forms that need to be sent to the EPA.

Al mentioned that there was a lawsuit compelling the EPA to make the boiler changes. He noted that environmental groups have an agenda to reduce coal consumption and have sued the EPA for not regulating boilers. Andy responded that the EPA is 10 years passed the deadline outlined under the Clean Air Act to review the regulations and there is now a court order to do so. Al responded that, if they are trying to encourage the use of renewable resources such as wood, they shouldn't be increasing the regulations on wood burning boilers.

Pat expressed concern for a packaging company in her town that employs 600 people in a 3,300 person community that might be threatened by the proposed boiler regulations. She cited a paper mill in the nearby town of Brokaw that closed down and wiped out the town. She does not want her town to lose a company because of this rule.

Jeanne asked Pat what she saw as the role of the council in addressing the issue. Pat recommended sending a letter to the EPA opposing the boiler rule, since some companies will have to close down as a result. Pat asked where the DNR stands on this rule and whether the Department felt the rules were burdensome. She stated that the new regulations are a job creator for the government, but businesses cannot afford additional constraints.

Jeanne questioned what path such a letter should take. Should the council send it to the EPA, or should the council send it to the DNR and have the DNR send it to the EPA?

Vince asked if there was a study done on why the other community lost the 600 jobs. Pat said they had not been updating equipment as they should have been. Vince asked if there was deterioration of equipment. Pat said it was a business decision to close; they were not making the money they wanted to make.

Al stated that this was an issue for many Wisconsin paper companies. Other locations are building new facilities with new equipment. It is very expensive for the Wisconsin facilities to retrofit old plants. He feels the regulations are burdensome and not based on good data. He will send information on this to Pat.

Pat feels the rule has gone beyond its intent. At a time when we are trying to create jobs, communities do not need this additional stress. She is going to send information prepared by PCA on the impact.

Renee said the group could choose to send a letter regarding the council's position to Mark Grant to see if the national group would like to support it as well.

Jeanne brought up the topic of the lawsuit against the EPA again. Renee explained that environmental groups are trying to hold the EPA to the required deadline. The boiler rule is one of the last things that haven't been finalized.

Jeanne asked if the EPA still has the ability to modify the rule. Renee said it can be litigated for years, driving changes.

Vince said the rule would put small businesses out of business and add a lot of red tape.

Renee said she will send additional information on the rule when it comes out.

Jeanne asked if Wisconsin staff was out enforcing this rule. Renee said they are only enforcing rules for major sources.

Vince noted that VOC emission limits keep getting reduced, which creates a lot of stress on businesses.

Amy asked if the council could write a letter to the National Compliance Advisory Panel (for which Mark Grant is the region 5 representative). Renee recommended sending it to the EPA and copying the National CAP. Vince wanted to be sure to discuss the jobs that would be lost due to the rule.

Jeanne inquired about who will step in when Renee leaves the council. Renee responded that Eileen and Lisa would step in.

Eileen affirmed that she is committed to the council and that the letter would not be an agency letter but rather would reflect the views of the whole group.

Economic Impact Assessment at DNR - William Walker - DNR Economist

Renee began to discuss the role of William Walker. William surveys facilities that will be impacted by a new regulation and ensures that the DNR complies with the requirement for economic analysis. He then councils rule makers on what effects rules will have on business.

Vince asked what William does if he finds rules don't comply. Renee stated that he would not sign off on the Pink Sheet approval documents in that case.

Eileen noted that the council could affect rules early in the process.

DNR Rules Review Update (continued)

The council went back to the topic of the rules review.

Amy said she supported the changes proposed in Phase I as common sense changes, but hopes that Phase II can propose changes that actually help small businesses. Jeanne said she was frustrated with the government saying they cut positions when those positions haven't been filled for years.

Eileen suggested putting the issues in front of the Regulatory Review Board. She said there is not a good way to address cross agency concerns. Renee agreed that small business input was needed.

Amy reiterated that fees should be put on emissions, not on construction. Richard agreed, saying businesses are not going to pay fees to put in equipment that will reduce emissions. Eileen said she would watch for rules on fees that come up so the council can provide input.

Richard brought up another example on fees. He said businesses sometimes miss paying a fee but they don't get notified for 5 years and then are suddenly told that they owe a lot of money since it is overdue.

Jeanne recommended the need to incentivize businesses to comply rather than fining them.

Amy asked if the council could make suggestions in Phase II of the rules review. Richard responded that in Order 61, they are looking for very specific suggestions. Eileen agreed that recommendations have to be specific and actionable but also noted that there are multiple opportunities for the council to influence fees outside of Phase II. Jeanne asked Amy if she would outline specific recommendations on the fees as she understands them, and Amy agreed to write a draft.

Eileen again suggested that individual concerns be brought before the Small Business Regulatory Review Board which can be accessed through the governor's website. She also stated that once the council figures out what they want to say regarding improving coordination across agencies, she would help them figure out the best route to make recommendations.

LINK: <http://bestpractices.wi.gov/Small-Business-Regulatory-Review-Board>

Economic Impact Assessment at DNR - William Walker - DNR Economist

William Walker joined the meeting and the council members introduced themselves.

William introduced himself and gave an overview of what he does. He puts together guidance documents interpreting economic requirements of new regulations. The documents address how the proposed rule changes the law, who will be affected, and what affected parties will need to do. He then does economic analysis to determine if the rule is a good idea, looks at the impacts, and determines the most efficient way of doing things. He signs off on the rules when the ideas are being proposed and again after the final analysis. There is a question within the Department regarding who should sign off on small business issues. William does not feel it should be him. The majority of DNR rules do not have an economic impact, so it is important to figure out which rules really need to be looked at.

Jeanne asked how William defines "a lot of money" when he is determining impacts. William stated that it is divided into three tiers. Minimum impact is less than \$50,000, moderate impact is between \$50,000 and \$20 million, and significant impact is over \$20 million. While the statute doesn't specify, the DNR will look at it as the dollar amount for everybody affected over a one year period.

William noted that most DNR rule making involves tiny changes and he asks the affected parties how they will be impacted. He has not done analysis on a large rule yet.

Vince questioned whether a rule ever gets reversed as a result of the analysis. William explained that this has not happened at the DNR. At the federal level, the analysis is done early. He did not know what would happen if it was discovered that a rule was bad late in the process.

There was debate about the role of the Governor in this issue. William said the Governor has influence over the rules in the beginning of the process but does not have veto power at the end. However, the legislature does. Renee thought the Governor has two chances to review a rule. She will check on what the process is. [RENEE: Based on a draft flow chart of the new process, the Governor has a review at steps 2 and 24 out of a 33 step process.]

Amy asked if small business review was another way to influence rules. William said yes, the board determines if there will be significant effects on small business.

William further explained that DNR staff members are the ones who actually do the analysis, since they are the experts in the area. William outlines the process.

Jeanne said it is a waste of resources for a rule to make it all the way to the end of the process before it is found to be a bad idea. Renee felt this should be done before working through the draft rule process.

William thought there could be a checklist for small businesses. Amy agreed that there should be a process for assessing small business impact to give guidance to the experts doing the analysis.

Jeanne asked to see a proposed rule at the scope statement stage so they could see what it looks like and formulate general concepts. William suggested that when the council members read the documents, they should write down their reactions about how they look and provide feedback.

DNR Rule - Small Business Impact for NO2 - Mike Friedlander / Joe Hoch - DNR

Mike and Joe joined the meeting and provided a one page handout on the proposed rule on the adoption of ambient air quality standards for sulfur dioxide and nitrogen dioxide. They want feedback on the economic impact analysis.

Mike explained that before there is a public hearing, it is necessary to identify businesses that will be affected, get feedback on compliance costs, and summarize the data.

Joe added that they did not need the feedback today but they wanted to get this on the council's radar.

Jeanne questioned what difference it makes to do an economic impact analysis if these changes are being mandated by the federal government and state law.

Eileen said the agency is obligated to estimate the impact by state statute.

Vince noted that even if you find significant impact, there is nothing that can be done about it. Renee said that may be true for this specific rule, but it may be different for other rules. Joe said that the impact could at least be taken to the EPA to let them know what the rule is costing the state.

Jeanne asked if an economic impact analysis needs to be done if it is a federal mandate, and Joe said he could put the question to the secretary's office.

Vice Chair Nomination / Vote

Jeanne announced that she had asked Amy if she would be interested in being the vice chair and she said yes. Amy's only concern was that she was relatively new to the council. There was a motion to nominate her. The motion was seconded and the vote was unanimous.

Other Issues

Renee asked if the council members thought the level of detail in the minutes was appropriate or if there was too much detail. Vince thought the detail was good and Jeanne felt more detail was better.

The next meeting was set for September 11.

Renee asked if one of the council members would be interested in attending the Region 5 Small Business Program meeting this fall in Chicago. Vince expressed interest given his proximity.