

## Remediation and Redevelopment Program – Rule Development Meeting (Kickoff Meeting)

February 5, 2019 | 10:00 a.m. to 1:00 p.m.

Wisconsin Dept. of Natural Resources  
GEF 2 | Room 513  
101 S. Webster St. | Madison, WI 53701

Meeting materials are available at: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>.

**Attendees:** Lynn Bradley (General Engineering), Dave Crass (Michael Best), Mike Dew (Pace), Frank Dombrowski (WE Energies), Beth Erdman (General Engineering), Judy Fassbender (WI DNR), Darsi Foss (WI DNR), Christine Haag (WI DNR), Mark Hampton (Pace), Art Harrington (Godfrey & Kahn), Kris Krause (TRC), Gena Larson (WI DNR), Erika Lawson (Tetra Tech), Mark Mansly (Tetra Tech), Dave Misky (RACM), Laurie Parsons (OBG/Ramboll), Bob Pearson (WI DOT), Michael Prager (WI DNR), Jeff Ramey (OBG/Ramboll), Tina Reese (The Reese Group), Molly Schmidt (WI DNR), Alyssa Sellwood (TRC), Sarah Slack (Foley & Lardner), Sharlene TeBeest (WI DOT), Mark Thimke (Foley & Lardner), John Zordani (Michael Best Strategies)

### Meeting notes:

#### 1. Welcome and Introductions (Skwarok/Foss)

Staff and guests introduced themselves.

#### 2. Presentation: [Overview of Rule Development](#)

##### a. Rule Drafting Scope and Process (Schmidt)

[See presentation].

##### b. Key Topics Overview (Foss/Prager/Fassbender)

[See presentation].

Staff and attendees discussed the following key topics that rulemaking is intended to address:

Polycyclic Aromatic Hydrocarbons (PAHs) – Rule revisions will further evaluate PAH approach. PAHs are always found in a mixture. Health risks for PAHs are based off 7 common compounds. An alternate calculator will be developed. Not limited by single contaminant (Benzo(a)pyrene). Guidance already exists on this topic. Code revisions would clarify where this process comes from.

Will there be exposure value revisions only for PAHs? No, exposure values will be revised across the board. Average weight of humans increasing. EPA values have changed. Assumptions for calculations will be updated.

VPLE – VPLE, state cannot obtain insurance for sediment. RP would need to provide financial assurance. New code would set expectations for those RP insurance requirements. Sub group will likely be needed for this topic.

Financial Assurance – Will post-closure financial assurance be required in all cases? No. Interim/remedial/closure approvals are points in the process where financial assurance may be required for specific types of contaminated sediment types, as described in the presentation.

Will the financial assurance options be the same for all scenarios? Will DNR be using existing tools? This will be decided in rule development.

Continuing obligations, sediment -- Will numeric criteria for sediment be developed? Not likely, given the timeframe for rule making.

Reminder for mid-process projects, closure happens based on what the rule is when closure is presented.

Emerging contaminants – existing rule already allows for developing process for substances where NR140 doesn't have existing standard. This rulemaking would be further clarification for these scenarios.

Will this be an opportunity to clarify continuing obligations when sediment is in a navigable waterway, including property boundaries with sediment and when an RP would be responsible for clarifying ordinary high water mark? Yes, this may be addressed with rule revisions.

Rule revisions will include other smaller things not discussed in the presentation.

### **3. Question and Answer (Schmidt/Foss)**

Attendees asked whether staff would be looking for people to draft or will you be looking for people to react to what DNR drafts. Staff responded that DNR would look for input on drafts and will take the lead on drafting. Sub-groups may be created to help with more complicated topics.

Keep in mind, authority for changes is limited to what is in the scope statement.

### **4. Act 204 definitions (Schmidt)**

- a. Introduction of draft rule
- b. Input

With the implementation of 2011 Wis. Act 21 and the historic use of notes throughout NR700 (some are quite long), what will the departments position now be with respect to notes in the rule? Act 21 says the department only has the authority to implement things explicitly required by law. Guidance from LRB explains that notes are not considered part of the rule. Notes should be used as reference. Notes are not enforceable. This could/will be looked at as DNR opens sections for revisions.

### **5. Conclude and Adjourn (Skwarok/Foss)**

Next meeting topics can be found on [DNR's website](#). DNR has scheduled a meeting with Kenn Anderson, insurance broker prior to the meeting. If you have ideas for what other states have done successfully for financial assurance, please forward.

Next meeting, March 5<sup>th</sup>. GEF II, G27A.

Please send any written comments to [DNRRRNR700input@Wisconsin.gov](mailto:DNRRRNR700input@Wisconsin.gov).