

Notes
January 15, 2008
Accumulated Sediment Technical Advisory Committee Meeting

Attendees: Jim Bachhuber, Greg Fries, Lorie Grant, Tom Marquardt, Jim McMillan, Pat Stevens, Dan Graff, Mary Anne Lowndes, Tom Portle and Jack Connelly. Guest: Tom Jansen (WE Energies)

Facilitator: Kathleen Wolski

Kathleen introduced the meeting and indicated we'd know better by the end of this meeting whether more meetings were necessary. Tom Portle then provided background information reminding the group that we are striving for minimal language that is flexible and is augmented by a companion technical document that will guide the sediment manager to make risk based decisions for using the accumulated sediment information not in the code. Decisions will be risk based. Mary Anne pointed out that we want a code that will allow people to clean out ponds efficiently, without having to go through too many complex steps. We hope the product will encourage the clean out of the structures.

We began going through the materials that had been handed out by looking at the flow diagram first. Pat Stevens was concerned that what we've proposed may scare homeowner's association presidents away. He hoped we would look at land use as a surrogate for sampling and not make it too complicated. He's concerned that DNR can change the certification form because it is not in the code. He thought it might be difficult for a president to define hotspots or to know what is a large snow storage area or whether backing up to a corn field would be a mercury problem. Tom pointed out that the technical guide will define these issues and point out items such as where to find LUST or BRRS information. Jim thought we should add language to the top of the flow diagram indicating the sediment manager should follow landfill requirements. He also thought we should set up the language so ponds serving 10-20 parcel residential areas would be cut out of the process.

We had quite a bit of discussion on determining that the material is not hazardous waste and whether the sedimentation manager must certify that the material is not hazardous. Dan Graff indicated we can decide to not require that they certify that it's not hazardous so we decided to change the language to certify that the criteria is met not ,certify that the material is not hazardous. Dan suggested moving the criteria from the form to the rule and move the bullets in on the cert. form Part A and B into the rule. Dan would prefer to see the worksheet from the form also pulled into the code. Jim thinks the code language can be technical as long as the guide is written at a grade school level.

Greg pointed out that the accumulated sediment is often spread on city owned land and then will be stripped and moved again – diluting any contaminants that may have been found. He suggested that the material should be relatively benign before we'd allow it to be landspread.

Greg thought the cost of doing simple sampling, not requiring a drill rig, would be about \$100. Sampling for an extended list of pollutants would be expensive. It costs \$100,000 to dredge 1-2 acres, \$5,000-10,000 to mobilize the equipment and \$30-50/cu. yd. to remove. Greg believes the < 100 cu. yd. feature will help associations because they will be able to remove small amounts periodically without testing.

Greg would like us to provide more guidance and methodologies. Tom pointed out that we will refer to other codes rather than specifying methods in our code. Pat asked about the cost to run the sampling list – Greg and Jim agreed it would cost \$500-1,000. Greg said it also depends on the number of samples, depth, whether samples are mixed and number of Shelby tubes to get a representative sample and composite. NR 347 requires a drill rig that adds a lot of cost. Greg would like to know what the levels of concern are, what is too high or low.

Pat asked what sampling list is required. Mary Anne referred him to Constituent List 1. Dan suggested we put this list in the code. Dan suggested language for (2)1 that inserts Constituent List 1 into the code and adds 3. that allows the sediment manager to vary from the sampling with a written request to DNR. Tom thought deciding what are the appropriate parameters was too case-by-case to include in the code. We'd prefer to say the sediment manager must

decide what parameters to sample. Dan believes the rules clearing house would question (2)(c)1. and say we need to be more specific and add in Constituent List 1.

Much of the TAC supported completing Part A and if the accumulated sediment meets the Part A criteria, allow it to be used off-site. Tom pointed out that to move the material off-site increases the risk. Often the sediment manager will hire a contractor and not know where the sediment is placed. He prefers that if the material is moved off-site, we require that it be sampled. Tom pointed out that the majority of the accumulated sediment will be those from large ponds where sampling is a small percent of the cost. Greg agreed that the cost of analyzing the samples is small compared with the cost to remove the sediment.

There was some discussion of the 5 dry tons per acre per year and 15 dry tons per acre total loading. The TAC thought the amount allowed might be less than 1 inch which would be quite limiting. Greg thought Madison has spread sediment at thicknesses of 1-4 inches in the past. Tom indicated we would work on a practical limit. Decided to add language to (3)(a)4. saying 1. or 3. could be adjusted, not just 3. We should define “fill” and “landspreading.” Tom Jansen wanted us to take out “disposal facility” from (b). D. There was a suggestion that it be changed to “disposal site.

Dan is concerned about the lack of definitiveness – whether a material can be used or not. As a lawyer, he’d prefer to see what is the criteria to fall within to use the exemption. If it doesn’t fall in this range, take it to a landfill. Tom J. would like to see the levels that are a problem. Pat asked if we had researched other states and Tom indicated we had done some of this but would need to do more before going to the board to request hearings.

Jim Bachhuber questions the value of sampling for pathogens and believes it should be part of Constituent list 2, not 1. Tom said you can sample for fecal coliform and then if something shows up at high levels, sample for more. Tom believes NR 204 and 214 are close to this code because they address fines and organics (unlike NR 538).

Lorie asked what incentive there is to follow this code. Mary Anne pointed out that under NR 151 facilities need to maintain the ponds to get grant money and to get credit or we’ll assess them. Lorie also suggested we provide a document that lists the steps a sediment manager should follow. Greg indicated that if they hire a consultant and the DNR does not provide #5 “Use and risk scenarios and attendant management implications” then the consultant will be conservative. What to do with the data and where it ranks is key. Tom reminded the TAC that the department is not in a position to invest the resources to embark on an approach similar to that which was done for NR 538.

After the break we addressed NR 500.105(3) requirements for beneficial use because a huge volume of projects will fall under this area of the code. Tom pointed out that (3) provides the information on how to interpret the data that was collected according to (2). Lorie wanted to make sure we added a provision to not allow one field to be used multiple times – add a check and balance. Mary Anne said the farmer would have a nutrient management plan they would need to follow and account for the nitrogen they were getting from all sources. We will add (3)2.iv. that requires them to be consistent with the management plan and other application of nutrients.

UPSHOT [Notes addressing follow-up to Jan. 15 meeting]

Perhaps the most significant change is that DNR management decided to create a separate chapter NR 528 rather than pursue the exemption option.

The TAC first reviewed the draft rule language at the January 15, 2008 TAC meeting, but we have made substantial changes since then based on input from WMM and Watershed. The proposed rule provides an approach that sediment managers would be responsible for following on their own. Originally, we had much of the sediment and site evaluation in a companion guide document. Based on feedback, we’ve added more requirements to the draft rule language. All decision-making criteria referenced on the certification form is included in draft rule language. Landspreading site evaluation, application rates, site management considerations, recordkeeping and a requirement that the DNR provide technical resources to assist sediment manager has been added.

For next steps, we decided that DNR will work on revised code language and work on the guide document. We'll do the code language relatively quickly but the guide will be time consuming and may take a couple of months. We'll then send language out to the TAC and ask for feedback. Depending on what we hear from the TAC, we will either have a conference call, meet in person in 2-3 months or continue to communicate via email..

Summary of Amendments to Rule after January 15 ASTAC Meeting Rule Changes

ITEM	ASTAC MEETING	DNR INTERNAL REVIEW	ACTION	NOTES
Definitions - Incomplete definitions	Add and further develop definitions	Too many definitions; excess detail within	Addressed in applicability Definitions reworked	
Eliminate facility from rule and substitute site		Rule language clarified to substitute site for facility.		
Language/bullets from certification form	Restate bullets from Cert. form into rule	Bullets from Cert. form add sustentative requirements.	Added to rule	
Criteria separating simple vs. more complex sediment management project	Decisions and what expectations are in various situations		Parameters to be sampled for in accumulated sediment now incl. in rule language	
Parameters to be sampled for			Parameters to be sampled for in accumulated sediment now incl. in rule language	- External list is eliminated
Drop references to external document and add parameters to rule			Now incl. in rule language Nearly all notes dropped More generic reference to technical assistance document in rule	- Assistance to be provided in technical support document
Hazardous waste	Remove reference to certifying for not a hazardous waste	Agree – keep in guide document	Language removed from rule	Kept in tech. doc. and referred to in cert. form
Criteria separating simple vs. more complex sediment management project - Clarify certification forms			Rule language reworked Restructure rule to make it clearer where the line is between simple, clean and more complex decisions	Clarifies what expectations are in various situations Some assistance may still be provided in technical assistance document

Minutes for Jan. 15, 2008 Accumulated Sediment Technical Advisory Committee Meeting

Ceiling levels for sampled parameters	Wanted drop dead levels	More clarity on criteria desired	Ceiling levels for 6 parameters – if exceeded go no further	Sediment would have to be land filled or similar more restrictive mgt. option
Landspreading site evaluation, application rates, site management considerations.- Technical resources to assist sediment managers.		Require DNR to provide	Rule language to require DNR technical assistance	Items such as where to find LUST or BRRTS information in support document
Nutrient mgt. – excess nutrients a risk.	Consider other sources of nutrients Nutrient management plan		Nutrient management plan reference now included in rule language	
Records retention	Period for record retention		New rule languages	Decided to stick with 20 years (to roughly match maintenance frequency)