

DATE: November 17, 2016

FILE REF: NMAC

TO: NMAC

FROM: Tom Portle

SUBJECT: Minutes of 2016 NR 135 Nonmetallic Mining Advisory Committee Meeting

The 2016 meeting of the Nonmetallic Mining Advisory Committee (NMAC) was held in Baraboo on November 2.

NMAC members present: Susan Courter, Tom Hunt, Kevin Lein, Marty Lehman, Bryce Richardson, Adam Tegelman, Tony Tomashek, and Clint Weninger

Note: For affiliations and contact information of NMAC members please see:
<http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/nmac.htm>

NMAC members not present: Gary Werner

WDNR staff present: Ann Coakley, Phil Fauble, Ed Lynch, Zoe McManama, Tom Portle and Roberta Walls

Others present: Jay Zambito, WGNHS; Gerry Kokkonen, Jefferson County; Steve Sorenson, Sauk County; Andy Chikowski, Badger Mining; Paul Egelhoff, Foth Infrastructure & Environment, LLC (GB location); Dan Masterpole and Christien Huppert, Chippewa County and Lane Loveland of Marathon County

Following are the minutes from the 2016 NMAC meeting:

► Welcome, Go-around

The 2016 NMAC meeting began at 10:00 with a welcome by Steve Sorenson of Sauk County; a go-around and with the introduction of a new NMAC member: Adam Tegelman. Adam was appointed as a representative of the Aggregate Producers of Wisconsin (APW) and replaced Mike Erickson.

Because of the level of recent NMAC member turn-over and given it was the first meeting for one NMAC member, the meeting opened with a brief overview provided by **Tom Portle**. This began with some history and background on the NR 135 rule-making process. The importance of the consensus process as it led to a satisfactory outcome. Next was an account of how the NMAC emerged out of the rule-making process and information on the composition of the NMAC and its mission. The DNR's role is to facilitate NMAC meetings so as to gain input on the state-wide program. Other background including information on NMAC governance was provided. Tom finished up with a few remarks on efforts at promoting continuity in managing turn-over in the NMAC membership.

► Panel Discussion on Scope of NR 135 Reclamation Programs

Tom preceded the panel presentation by laying out the legal framework of the statewide reclamation program and the legislative mandate that counties enact reclamation ordinances, issue permits and administer the reclamation programs in their jurisdiction. It was pointed out that the program was developed with the intent of affording appropriate discretion for mandatory county and voluntary municipal NR 135 programs. The DNR's role is to provide technical support to these programs. Further state law mandates that the department perform periodic performance review audits seeking program consistency and to ensure reclamation outcomes. A panel of NR 135 administrators was available to provide a perspective and additional background that would support discussion later in the meeting such as on fee variability among NR 135 Regulatory Authorities (RA)s. NR 135 administrators discussed the role of NR 135 administrators and provided a brief scope of their work activities and the often shifting demands inherent in administering their NR 135 reclamation programs. It was discussed how, even within a

given jurisdiction, such program activities may fluctuate from one year to the next and how such uncertainty in administrative activities implicitly makes it more challenging to make reasonable comparisons among counties. **Steve Sorenson** addressed permitting, reclamation plan review, permit issuance and distinctions from zoning and interface with zoning especially as it may relate to hearings concerning reclamation plans. **Bryce Richardson**, Tom and others discussed the relationship of the dollar amount of the financial assurance (FA) to the reclamation plan. There was an emphasis on the importance of having a current and adequate FA as this is a condition of a valid reclamation permit. Along this line, one routine but often time-consuming task has to do with tracking FA expiration dates. This task may be yet another factor affecting variability in administrative expenses, especially when there is a wide range in the number of permits and modes of FA on file from one NR 135 RA to the next. **Kevin Lein** talked about the field inspections to ensure compliance with the reclamation plan and permit and how the level of effort (inspection frequency and detail) required to ensure the approved plan is followed can vary considerably with the complexity of the operation, how dynamic it is planned to be and how such plans may change depending on market conditions and sometimes with the level of citizen concern. This is especially true when there is a need to address complaints. We also discussed the unpredictable and variable cost that may be incurred when enforcement is necessary including legal staff assistance. Also, corrections may necessitate a modification to the permit/plan perhaps further increasing the resource expenditure. Tom explained how state law mandates that the department perform periodic performance review audits seeking program consistency and to ensure reclamation outcomes and the importance of recordkeeping to these objectives. **Gerry Kokkonen** presented information on financial recordkeeping and we discussed the importance of being able to document NR 135 program revenue. He shared examples some of which were provided by the East Central Wisconsin Regional Planning Commission. Gerry and Steve touched on role in the collection of fees and receipt of annual reports from operators and subsequent transfer DNR fee portion and compilation of these data from their permittees for their annual report to DNR. Tom discussed how administrators were responsible for recordkeeping and other preparations for DNR audits. Good financial recordkeeping is a key factor in having the data necessary to prepare a "Fee Report" for the Natural Resources Board (NRB) as provided in NR 135.39. Gerry also presented an approach to support a Certificate of Completion evaluation and decisions regarding reclamation success. This included sampling methods, data acquisition and evaluation, and recordkeeping to back up determinations of successful reclamation such as photo-documentation. He also showed how these and other NR 135 reclamation program data may be electronically linked.

This panel discussion segued into the NMAC suggested items and some follow-up from the 2016 NMAC meeting.

► NMAC Suggested Topics Pertaining to NR 135 Program Implementation for 2016 NMAC Meeting

We discussed the various follow-up actions per recommendations received at the 2015 NMAC meeting. One is that NMAC members were well represented at both 2016 NR 135 administrator roundtables in Wood and in Jefferson Counties and the agenda items reflected discussion and advice the department received at the 2015 NMAC meeting. That being the case, the intention is that the 2017 NR 135 administrator roundtables will also reflect discussion and advice at this year's NMAC meeting.

Then there was a continuing discussion, as was begun in the 2015 NMAC meeting, regarding the appropriate level of variability among NR 135 RAs when it comes to program revenue generated by fees on unreclaimed acres and plan review. We continued discussing some of the challenges that are associated with consistency from one jurisdiction to another and how it really begins with begins with internal consistency within the jurisdiction. One approach to this was covered by **Lane Loveland** of Marathon County who shared some insights and remarks in a discussing the Knowledge Transfer (KT) documentation he received from Justin Cavey. We discussed that this approach should be promoted in the interest of internal consistency and its usefulness when new NR 135 administrators take on the administrative tasks. Kevin provided a detailed explanation as to how administrative expenses vary in Trempealeau County. In response to questions by the NMAC, **Dan Masterpole** of Chippewa County explained how the fee structure evolved in response to need and in accordance with the wishes of his committee with jurisdiction of such matters. As there was a question on the use of outside consultants to review reclamation plans and the possible cost associated with this option Kevin explained the rationale and the timeliness factor inherent in this approach. In fact, he cited an instance when the consultant caught an item previously missed. Tom recounted a situation where there was very frequent turn-over of NR 135 staff in that jurisdiction so the plan review contractor provided a measure of stability.

Discussions on this matter begin with the codified mechanism for the DNR to address the balance between program revenue and administrative expenses. This starts with obtaining financial data through the audit process. Such data are used in preparing the periodic “Fee Report” to the NRB. This report is prepared by the department, in consultation with the NMAC. A close balance between revenue and expenses is the desired outcome and is quantifiable. Another test is the “reasonableness” of fees. This will need to be further explored. There was discussion of some inherent limitations of the “Fee Report” since it is tied to periodic program audits. That said, we did document progress in that it appears that administrative expenses are, in general, becoming more closely balanced with program revenue based on comparison of the 2008 and 2013 Fee Reports. A key part of the discussion is the opportunity for operator review and input provided in the NR 135 code. When seeking to change fee schedules, NR 135 RAs need to have written documentation of estimated program costs and the need for any change in revenue. Because this material needs to be available for public inspection, operators should be afforded the opportunity to review documentation supporting changes in fee schedules. Further, any decision on fees would be made at a public meeting and so there is an opportunity for input before the County or Municipal Committee/Board with jurisdiction makes a decision on revising either fee language contained in the ordinance or when changing an external fee schedule. Tom indicated that NR 135 RAs should make sure permittees are aware of proposed changes and permittees need to take responsibility to be informed and participate. Because this would be in “real time” it should be more effective than relying completely on periodic audits and the “Fee Report” to the NRB.

Susan Courter suggested that DNR program audits and oversight might be a tool to promote greater consistency. **Ed Lynch** mentioned other approaches including the Green Tier Charter model. He also alluded to the NR 135 programs’ limited resources. **Ann Coakley** weighed in on the importance that county and local units of government have reasonable discretion in determining how best to administer the program in their jurisdiction. Such discretion and flexibility was built in to the program and regulations. **Roberta Walls** spoke to the need to have flexibility to address the needs of the public and their expectations.

Another follow-up item discussed was the appropriate distinctions between operations of the mine and its reclamation. There was discussion on ways to make such distinctions. There was no agreement on a need for any guidance on this matter. **Marty Lehman** concisely stated that a sensible approach, one that is already available, that is the distinction in what should and should not be discussed during an informational hearing on the reclamation plan under NR 135.20(c). In short, only reclamation issues would be discussed. This excludes, as beyond the scope of NR 135, issues such as traffic, setbacks, dewatering, hours of operation, and blasting. **Tom Hunt** cautioned against attempting to make too fine a distinction between operations and reclamation when dealing with complex landforms and interdependent and integrated systems. There are other instances where operations and reclamation may overlap. As a practical matter, operations and reclamation are often inseparable being integral to reclamation and are part of the necessary and logical over-lap when operations are planned in a cost-effective manner to facilitate reclamation. It is important to communicate clearly, what is and is not germane, especially when there is a combined zoning and reclamation hearing. Land use decisions made at the county or municipal zoning level and are different in kind and in authority.

► Follow-up From 2015 NMAC Meeting

First, **Roberta Walls** gave an update on the Stormwater WPDES General Permits (GP) for nonmetallic mining. There are now two separate GPs to be sensitive to the industry diversity and differing needs, GPs now may address metals monitoring and whole effluent toxicity. Next, Roberta updated the NMAC on the Strategic Analysis pertaining to ISM as of the meeting date, a draft still available for review and comment. To a degree this document is an enhanced version of a similar 2012 document. It is more comprehensive and complies with NR 150 requirements and expands into forestry and fisheries. It also addresses primary and secondary impacts and effects. Another follow-up and update on of solid waste at mines and attendant issues was provided by **Zoe McManama**. At the NMAC’s 2015 meeting there was agreement at the 2015 meeting that it was important for the department and the NR 135 RAs to work together to ensure that the responsibilities of each are met. Towards this outcome, this was a major topic on the agenda of the 2016 NR 135 administrator roundtables. For the 2016 NMAC meeting, Zoe provided an update of solid waste issues since that time. This included a growing awareness of the fact that, in some portions of the state, solid waste ends up at quarries and sand or gravel pits. Zoe indicated that there are some enforcement scenarios in process. The NMAC mentioned the possibility of RA outreach to operators as one way to address this issue and as a way of minimizing this trend. Such efforts may be timely as with higher tipping fees and considerable travel distance

to licensed landfill facilities there is a tendency to use open burning or mines or other locations to cut costs. Other factors that can contribute are lack of knowledge on the part of administrators, operators and lack of support by local boards with jurisdiction when it comes to enforcement. Once again, this points to a need to optimize communication with the department.

► Update on Beneficial Use Code for Industrial Byproducts NR 538

Phil Fauble apprised the committee that the NR 538 rule for industrial byproducts was in the process of being revised. He again emphasized that materials used in reclamation at nonmetallic mine sites need to be addressed in the reclamation plan. This is true whether the material is simple “clean fill” or if a DNR approval is needed such as for NR 538 beneficial use of industrial byproducts, for example spent foundry sand. In that case there often needs to be a joint DNR/ NR 135 RA approval to support the use of industrial byproducts in mine reclamation.

► Regular “place-holder” agenda items - Legislative update (if applicable) and any other business (as permitted by law) - None at this meeting.

However **Lane Loveland** used the five minute “public input” slot to expand on information on knowledge transfer documentation he shared earlier in the meeting.

► Update for NMAC and Plans for Coming Year

To save time **Tom Portle** provided a handout summary of the department’s activities on the statewide NR 135 Reclamation Program provided to the NMAC and gave a few brief remarks on the last year’s activities. Twelve NR 135 audits were conducted including a follow-up/training for a Town program. One NR 135 County RA was audited pursuant to a complaint. Of the remaining ten, five were conducted to meet the minimum once per ten-year statutory requirement and five were conducted per other scheduling considerations. Besides the 2015 NMAC meeting outreach included NR 135 update presentations to both a Wisconsin County Code Administrators (WCCA) District meeting in December 2015 and at the WCCA Fall Conference on October 13, 2016. In addition, two NR 135 RA Administrator Roundtables were held. These were in January in Wood County and in February in Jefferson County. These were well attended and the agendas were diverse and detailed. NMAC members attended each of these Roundtables and materials from presentation at these events were widely distributed.

Activities planned for the coming year were also addressed: At least ten NR 135 Reclamation Program Audits will be conducted. There will be two traditional NR 135 Administrator Roundtables. The first will be in Waushara County in January 2017 and the second in Rock County in February. In addition, two “targeted” Roundtables (to topic as needs dictate) will be held in the Northern tier of the state. Also, a NR 135 primer will be presented at the WCCA Leadership training in January 2017.

► Final Go-around – Feedback & Schedule Next Meeting

Tony indicated the program was perceived as a major success and has shared it with the state of Minnesota as they work on possible options for nonmetallic mining reclamation. Clint expressed satisfaction with program and meeting. Adam alluded to the practicality of separating reclamation from operations in practice. Marty suggested that perhaps an operators group could contribute to education of northern tier operators on the waste management issues. Tom Hunt spoke to similar solid waste problems in other states and approaches such as the use of abandoned mine funds to clean up and reclaim such sites. Susan supports the knowledge transfer approach presented by Lane. Kevin felt that education should play a major role in addressing the consistency matter and how it is perceived. Finally, one post-meeting comment received was very positive. Dan Masterpole commented that “It is very gratifying to see the council function as intended ... to identify issues from the stakeholders ... and to provide feedback to the program”.

Consensus is that the next annual NMAC meeting should be held in October 2017.

The 2016 NMAC meeting **adjourned** about 3:00.