Wednesday, April 22, 2015
Wisconsin Dells, WI

Wisconsin Manufacturers and Commerce
- Founded in 1911
- State Chamber of Commerce and Manufacturers Association
- Nearly 4,000 members statewide
- About ¼ of Wisconsin’s private sector workforce
- All sectors of economy, and businesses of all size
- Largest general business lobbying organization
- Mission: To make Wisconsin the best state in the nation to do business

Overview
- **State Issues**
  - Budget Update
  - Legislation
  - Phosphorus
  - Administrative Rules
  - Industrial Sand
- **Federal Issues**
  - NAAQS Update
  - Ozone
  - 111d
- **Tribal Issues**
  - Class I
State Budget – WDNR – NRB

• Governor Walker’s Budget proposed to make the Natural Resources Board (NRB) Advisory
• 7-Member NRB is currently the policy making body for WDNR
• Participation by businesses, especially manufacturers is heavily restricted
• NRB actions have cost businesses in the past – TSP, Mercury, Act 118 delays, etc...
• Status: Removed by JFC as non-fiscal policy

State Budget – WDNR/PSCW

• Temp. Moratorium on Stewardship (13 yrs)
• Eliminates 66 positions at DNR – Science Services, Educators, Vacancies
• DNR directed to develop plan to move Forestry Div. to North
• Budget: PSCW must study health impacts of Wind
• JFC: PSCW given rule authority on wind siting/ordered to review science on health impacts

Senate Bill 15 – Micro-Beads Ban

• Phases out personal care products & pharmaceuticals containing synthetic plastic micro-beads by 2018/2019
• Authors: Sen. Cowles/Rep. Czaja
• Industry Cooperated in Drafting
• Manufacturers/Retailers Supportive or Neutral
• Passed Assembly/Senate on Voice Votes
• Awaiting Governor Walker’s Signature
High Capacity Well Permitting

- Top policy issue for ag sector
  - Limiting growth of dairy
  - Uncertainty for transfers/sales of farms
  - Permitting delays
  - High litigation costs
- Most significant environmental policy issue to be taken up this spring in legislature
- Three bills under consideration

Groundwater Use in Wisconsin

- 250 billion gallons
- 11K Active Wells
- Down 14% from 2012
- Irrigation down 25%

Current Law 281.34/2003 Act 310

- Environmental Review Required:
  - Water Loss > 95% (Bottling)
  - W/in 1,200 ft. of Groundwater Protection Area (GPA)
  - Trout streams and Outstanding or Exceptional Resources
  - Significant Impact to Spring
**Post Lake Beulah**

- WDNR has a duty to consider harm to “waters of the state”
- WDNR must consider environmental impacts when presented with sufficient concrete scientific evidence of potential harm

**WDNR’s Regulatory Quandary**

- Agencies receive authority from Legislature, not Judiciary (What’s DNR supposed to do?)
- WDNR lacks explicit statutory authority
- WDNR has not promulgated rules to impose permit conditions

**Richfield and New Chester**

- 2014 ALJ Decisions
  - Limits placed on pumping capacity of CAFO permits to avoid impacts on other groundwater resources
  - Richfield implies that DNR should look at “cumulative impacts”
  - Richfield not appealed
  - New Chester appealed: DNR lacks authority/rules to condition permits
Legislative Response – 3 Bills
• SB 72/AB 105 (Sen. Miller/Rep. Mason)
  – Creates Groundwater Coordinating Council to advise DNR on creating Groundwater Management Areas (GMAs)
  – GMAs in Central Sands, Waukesha, Brown Counties
  – Environmental review required for any “significant impacts” on waters of the state
  – Broadly defined….all wells?
  Status – Likely DOA

Legislative Response – 3 Bills
• LRB 1446 (Sen. Gudex/Rep. Nerison)
  – Provides certainty for existing well owners
  • Owners may transfer without triggering permit review
  • Owners may replace failing wells
    – within 75 ft. of original well
    – similar depth
  • Owners may reconstruct without triggering review
  • Transferred/replaced/reconstructed wells must comply with original DNR agreement
  Status: Plan B

Legislative Response – 3 Bills
• LRB 0995 (Sen. Cowles/Rep. Tauchen)
  – WDNR may create Sensitive Resources Areas (SRA) if:
    • Science shows harm to public rights features in navigable surface waters
    • DNR proposal approved by legislature
  – Environmental Review required in SRAs
  • Details to be proposed by DNR, approved by legislature
  Prior Law Elsewhere
  – Status: In Drafting...
Administrative Rule Reform

• ***Not Introduced, Subject to Change
• Significant Reforms to s. 227 in the Works
  – Public Hearings on Scoping
  – Better and Independent EIAs
  – Legislative approval for costly rules
  – Guidance transparency
  – New tools to challenge unlawful permit conditions
• Introduction Expected Soon

Phosphorus

• 2010 WDNR rule sets strict numerical limits on P discharges – multi-billion $ cost
• 2013 Act 378 - Clean Waters and Healthy Economies Act
  – Reduce Costs, Focus on non-point pollution
  • 20 yr./multi-discharger variance
  • Improve Compliance Tools
  • Fee in Lieu payment to non-point
    – $50/Lb.
    – into existing County NP programs

Phosphorus

• EPA approval required
  – State must make finding and demonstrate widespread social and economic hardship
• DNR/DOA spent last year modeling economic impacts
• Report past due, likely out in early MAY
• 30 day public comment period
• Submittal for approval to EPA
Major Admin Rules in 2015

- 30,000 Foot Overview. For more information: [http://dnr.wi.gov/news/input/ProposedPermanent.html](http://dnr.wi.gov/news/input/ProposedPermanent.html)
  - Air Permit Streamlining
  - Air Cleanup Rule
  - NO2/SO2 Adoption
  - NCCW Rule
  - WET Test Rule
  - Hazardous Waste Rewrite

Air Permit Streamlining: AM–24–12

- Exempt Natural Minors from Permitting
- Allow for certain pre-construction activities while minor source construction permit is pending:
  - Supports/foundations, laying piping/conduit, storage facilities, dismantling equipment/structures, ordering equipment, storage on site, clearing, utility work, erosion controls, paving.
- Minor Ops made non-expiring
- Permit exemption for “restricted use engines”
- Allows marine engine industry to test high S fuel
- Status: Public Hearing Completed

Cleanup Rule: AM–15–14

- Scope Approved. Updates NR 400 series to maintain consistency with CAA
  - NR 405 PSD Changes
    - Include PM2.5 in baseline def.
    - List NOx as ozone precursor
    - Update GHG Potentials
  - NR 404: Establish PM2.5 increments
  - Define VOC to exclude nonreactive compounds
  - Repeal Stage 2 vapor recovery requirements
**NO2/SO2 Adoption: AM-08-11**

- Updates standards in NR 404 and monitoring requirements in NR 484 to maintain consistency with NAAQS
- Adopts new 1-hour SO2 standard set at 75 ppb
  - 3-yr av. 99th percentile of yearly distribution of 1-hour max
- Adopts new 1-hour NO2 standard set at 100 ppb
  - 3-yr av. 98th percentile of yearly distribution of 1-hour max
  - Existing annual standard kept at 53 ppb
- Hearings in May/June, Final late 2015/early 16
- Cost Impacts on Minor Sources: $750K - $7.5M

**NR 106 Rule: WT-31-10**

- Part of Response to July 18, 2011 EPA 75 potential deficiencies letter
- WPDES Permit Changes
  - Phases out (with some exceptions) mixing zone allowances for bioaccumulative chemicals of concern in Great Lakes System
  - Remove special definition of “representative data” for potential to exceed for mercury
  - Big Change: Eliminates NCCW exemption in NR 106.10(1)
    - Current Rule: No WQBELs on NCCW unless additives added by discharger
    - Chlorine excluded from definition of additive
  - New Rule: You will be responsible for what's in your municipal or groundwater intake
- Status: On hold due to industry concerns

**NCCW Rule: WT-11-12**

- Part of Response to July 18, 2011 EPA 75 potential deficiencies letter
- Impacts NR 106, 205, and 212
- More whole effluent toxicity (WET) tests required of more sources
- Toxicity Reduction Evaluation (TRE) studies required of some sources
- Status: On Hold (Tied to NR 106 Rule)
NR 600 Update: WA-40-10

- Comprehensive update of rules regulating the generation, transportation, recycling, treatment, storage, and disposal of hazardous waste and used oil.
- Purpose: Update NR 600 to maintain consistency with federal regulations.
- Details TBA...

PM2.5 Background Concentrations Updated

- Eliminates TSP
- PM2.5 High Value (Urban)
  - 24-hour: 23.6 μg/m³ (Was 28.9)
  - Annual: 9.4 μg/m³ (Was 10.2)
- PM2.5 Low Value
  - 24-hour: 19.8 μg/m³ (Was 25.6)
  - Annual: 7.6 μg/m³ (Was 8.7)
- Sources May Request Alternatives
- Bottom Line: Sources Can Emit More

Geographic Changes to Note

- New High Areas
  - Stevens Point
  - Greater Racine Area
  - Pewaukee
  - ***New High is 20% lower than old low
- New Low Area
  - Altoona (Eau Claire Area)
50% ROP Coming Soon

• New Registration Operation Permit expected in next 30-90 days
  – Streamlined permit
  – 50% of Federal Threshold
  – Puts Wisconsin on same footing as neighbors
• Helpful modeling reform may also be on the way.
  – Stay tuned…

Industrial Sand Issues

• Strategic Analysis
  – NRB Order
  – Requested by MEA
  – 1 year process, scoping closed April 20th
  – Update of 2012 Report
• Stormwater General Permit
  – Differentiates Aggregate and Industrial Sand
  – Sand GP Draft Raised Major Concerns

Tribal Air/Class I Overview

• What is Class I?
  – The highest air quality designation under CAA
• What is PSD?
  – Prevention of Significant Deterioration (PSD) is a permitting program created to maintain ambient air quality in areas meeting NAAQS while allowing for economic activity
• PSD Increment:
  – Maximum allowable increase in emissions in an area
  – Allotted to permit applicants in area
  – Permit applicants must demonstrate that they won’t contribute to exceedance of NAAQS
Tribal Air/Class I Overview

• EPA has established increments for SO2, NO2, PM that vary based on Class:
  – Class I: Pristine areas, National Parks
  – Class II: The rest of the country
  – Class III: areas targeted for industrial development (theoretical)
• Class I Designations can significantly limit future emissions/economic development

Class I Overview

• Why 300 Km?
  – Limits of air Dispersion Modeling

Class I Overview
AQRVs

- Air Quality Related Values (Unique to Class I)
  - Resources that a Class I manager wishes to protect:
    - Visibility
    - Aquatic Systems (Acid Deposition)
    - Vegetation (Secondary Ozone)
- Threshold Effects Levels (TELs)
- Deposition Analysis Thresholds (DATs)
  - Define impacts to AQRVs

Tribal Class I Nationwide

- Few Tribes have pursued Class I
  - Forest County Potawatomi (WI, 2008)***
    - ***Most developed program
  - Assiniboine & Sioux (MT, 1984)
  - Northern Cheyenne (MT, 1977)
  - Confederated Salish & Kootenai (MT, 1982)
  - Spokane (WA, 1991)
  - Yavapai-Apache (AZ, 1996***Reversed)
    - Bad River and Fond du Lac Bands of LSC
    - Currently seeking Class I

Redesignation Process

- Issue Notice, Seek Comments, Data
- Consultation/Public Hearings
  - States, Tribes, Local Governments
  - Regulated Entities?
- Respond to Comments
- Resolve Disputes
- Final Rule (EPA)
**FCPC Class I History**

- 1992 – Redesignation Request
- 1994 – Technical Documents
- 1995 – EPA Proposes Redesignation
- 1997 – WI/MI File Dispute Resolution
- 1999 – WI MOU, MI to court
- 2008 – EPA approves Class I
- 2009 – MI loses appeal
- 2010 – 2nd WI MOU
- 2011-2015 – AQRVs and TELs

**FCPC MOU**

- FCPC agree to geographical limits
  - 10 miles
  - 62 miles
- State grants greater involvement in permitting
- Both agree to process to negotiate AQRVs moving forward and on dispute resolution

**FCPC AQRVs**

- Three AQRVs approved by FCPC in 2012 and sent to DNR for review:
  - Visibility Standards (Haze)
    - Consistent with other Class I Areas
  - Deposition and Methylation standards for S, N, and Hg
    - Unique and Incredibly Stringent
  - Vegetation standards for ozone: W126 and N100
    - Unique and Uncertain
Stringent HG Standard Concerning

FCPC Listens to Concerns
- FCPC listens to concerns of WMC, WPC, employers in NE WI
- FCPC Negotiates with DNR
  - Consensus reached on most points
  - Negotiations extended twice
  - Final agreement expected early this May
- WMC expects significant improvement
- Remaining disagreements could go to arbitration (Scientific Review Panel)
- Results Matter – This could be a template

Bad River and Fond du Lac Class I
Federal Air – NAAQS Update

- Intro
  - What are NAAQS?
  - What are Criteria Pollutants?
    PM10 and PM2.5, NO2, SO2, Lead, CO, Ozone
  - Air Quality is Getting Better!

Federal Air – NAAQS Reviews

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Last Review Completed</th>
<th>Major Milestones</th>
<th>NAAQS Reviews</th>
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<tr>
<td>NO2</td>
<td>Oct 2010</td>
<td>Spring 2014</td>
<td>Workshop for next early 2015</td>
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<tr>
<td>SO2</td>
<td>Sep 2010</td>
<td>Winter 2014</td>
<td>Workshop for next early 2015</td>
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<tr>
<td>CO</td>
<td>Apr 2014</td>
<td>CASAC</td>
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<td>PM2.5</td>
<td>Dec 2012</td>
<td>CASAC</td>
<td>Workshop for next early 2015</td>
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Federal Air – NAAQS Milestones

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<tr>
<th>Pollutant</th>
<th>Final NAAQS Date</th>
<th>Designation Effective</th>
<th>Affiliated Milestone</th>
<th>Affiliated Date</th>
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<td>Oct 2013</td>
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<tr>
<td>CO</td>
<td>Nov 2015</td>
<td>Nov 2015</td>
<td>Dec 2025</td>
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<tr>
<td>Ozone</td>
<td>Oct 2015</td>
<td>Dec 2017</td>
<td>Dec 2025</td>
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4/23/2015
Federal Air – Current NAAQS

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<tr>
<th>Pollutant</th>
<th>Background Level</th>
<th>Maximum</th>
<th>Level</th>
<th>Time</th>
<th>Focus</th>
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<tr>
<td>CO</td>
<td>8 hour</td>
<td>9 ppm</td>
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<td>Not to be exceeded more than once per year</td>
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<tr>
<td>Lead</td>
<td>primary and secondary</td>
<td>1-hour</td>
<td>2 µg/m³</td>
<td>Not to be exceeded</td>
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<tr>
<td>NO₂</td>
<td>primary and secondary</td>
<td>1-hour</td>
<td>0.05 ppm</td>
<td>Not to be exceeded</td>
<td></td>
</tr>
<tr>
<td>O₃</td>
<td>primary and secondary</td>
<td>1-hour</td>
<td>0.05 ppm</td>
<td>8-hour Filtered High Day Maximum Average over 8 years</td>
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<tr>
<td>PM₂·₅</td>
<td>primary and secondary</td>
<td>24-hour</td>
<td>15 µg/m³</td>
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<td>24-hour</td>
<td>25 µg/m³</td>
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<td></td>
<td></td>
<td>secondary</td>
<td>1-hour</td>
<td>Not to be exceeded more than once per year</td>
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**WI Nonattainment Areas**
- Sheboygan
  - 1997 8-hour Ozone
- Kenosha (E of 90/94)
  - 2008 8-hour Ozone
- Rhinelander
  - 2010 SO₂
- ***Brown County***
  - 2010 SO₂ Concern
  - 76 ppb in 2014

**Ozone**
- What is Ozone?
  - Natural and Manmade
- Attainment and Nonattainment
- NA NSR, LAER and RACT
History of Ozone Regulation in WI
- 1979 1st Ozone Standard 120 ppb
- 1991 Eastern WI into nonattainment
- 1996-2009 Back into attainment
- 1997 Standard drops to 80 ppb → nonattainment
- 2004-2012 Back into attainment
- 2008 Standard drops to 75 ppb
- Sheboygan and E Kenosha into nonattainment
- How are we doing now?
  - 33% reduction nationally since 1980, 70% since 1970
  - 19% reduction in SE WI in past decade

65 ppb Standard
- 40 WI Counties into Nonattainment
- 90% of Counties Nationwide
- Even Yellowstone and Grand Canyon

Most Costly Rule Ever?
- 2011 EPA Cost Estimate: $19-$90 Billion
  - Utility MATs - $10 Billion
  - All Prior CAA - $7 Billion
- NAM: WI Hard Hit:
  - $30 billion gross state product loss from 2017 to 2040
  - 4,421 lost jobs or job-equivalents per year
  - $10 billion in total compliance costs
  - $580 drop in average household consumption per year
  - $1 billion more for residents to own/operate their vehicles

4/23/2015
They’re Going to have to get Creative with Compliance

GHG Regulation (111d)
- WI Target: 34% Reduction from 2012
- How? Building Blocks:
  - Coal Plant Heat Rate Efficiency Up 6%
  - NGCC up to 70% of capacity
  - More Renewables
    - Continue Operating Point Beach (Nuclear)
  - Energy Efficiency

Concerns
- Inequity
- Compliance Cliff
- Threat to Reliability
- Stranded Costs
  - $3.3 Billion on Air Pollution Controls
  - $4.5 Billion on Clean Coal and NGCC
- 2012 Baseline
  - No Credit for Past Action
    - $2.3 billion renewables
    - $500 million energy efficiency
Why do Manufacturers Care?

- WI is coal reliant (60% of capacity)
- Manufacturers rely on affordable power and WI is a manufacturing state:
  - 9,400 manufacturers
  - 475,000 jobs
  - 17% of the states workforce
  - 85% of Wisconsin’s exported goods
  - #1 Economic Driver
  - Milwaukee is 5th nationally in Manufacturing
  - 34% of Energy is sold to Industrial Customers

WI Disproportionately Impacted

- Heritage: WI in top 5 most impacted states, #1 per capita manufacturing job loss
- NERA: 16% Rate Hike in WI
- MacIver/Beacon Hill: $100,094/yr per manufacturer and 21K lost jobs
- Energy Ventures: $485/yr monthly bill
- PSCW Modeling: $13.44 billion (before transmission/pipeline costs)

Benefits?

- Based on methodology EPA used to set 2012 light truck standard, in 2050 we will have reduced:
  - Atmospheric CO2 by 0.5%
  - Temperature by 2/100th of a degree (0.016 F)
  - Sea rise by 1/100th in. or 3 sheets of paper
- To put it another way, in 2030…
  - USA reduction offset by 13.5 days of projected Chinese emissions
  - Each ton USA reduces to be met with 16 increased tons globally
Legality

• Harvard Law Professor Laurence H Tribe Testimony to Congress:

“Burning the Constitution should not become part of our national energy policy.”

Likely and Pending Challenges

• Outside-the-Fence
  – BSER only applies to sources
  – Energy Efficiency is not a compliance technology
• 111b (New Sources) is Unlawful
  – CCS inadequately demonstrated
  – Funded by US DOE
• Sources already regulated under 112
  (Murray/WV AG Case)

Thank you! Questions?

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