

ENVIRONMENTAL REVIEW ADVISORY COUNCIL
October 27, 2022

Members Present:

Jeb Williams, Director, North Dakota Game & Fish
Jessica Bell, Rainbow Energy Center
Randy Binegar, formerly of the Mandan Marathon refinery
Steve Dale, Wahpeton, represent cities and counties
Tom DeSutter, Agronomy & Soil Sciences
North Dakota State University
Julie Ellingson, Stockmen Association
Ed Murphy, State Geologist
Randy Hansen, Waste Management Industry representative
Dan Wogsland, North Dakota Grain Growers Association

WELCOME

The meeting was called to order by Dave Glatt and was then turned over to Terry O'Clair.

APPROVAL OF MINUTES

Motion to approve the March 8, 2022, meeting minutes. All ayes. Motion carried.

Dave Glatt shared highlights of what has been done since the last meeting and shared information on how North Dakota's geology will impact our carbon neutral plan.

OLD BUSINESS

Environmental Restoration Fund Rules
Above Ground Storage Tanks Update
TENORM Permitting Update
Regional Haze Update

Karl Rockeman: Environmental Restoration Fund

There was no attendance and no comments at the public hearing. We submitted the draft rules to the Attorney General's Office for their review and approval. They requested two changes:

1. The first section is 33.1040101. A line at the end of that was unnecessary since it reiterated the rules. They asked that we remove that statement.
2. The second is in 33.104015, the use of the fund for mitigation activities. In the second to the last line, it says the department will determine on a case-by-case basis if the location is appropriate for mitigation activities. They felt that case-by-case basis was too broad and there is some language earlier in that section that explains how we would determine the appropriate location. These will be going to the Legislative Council for inclusion at the December 15th Administrative Rules Committee meeting.

The balance in the fund is \$1.5 million. It's capped out at \$5 million. This fund will be used after existing funds, Brownfield funds, and EPA funds are already used. In the past, penalties collected have gone back into the general fund. We're able to allow a certain amount to go into this one first and once this hits \$5 million the remainder would go back to the general fund. This

helps remediate brownfield sites so those monies can go back on the tax rolls. If the property owners don't have money for cleanup, or it's an abandoned property, the funds will aid in cleanup so the property can be used again.

Chuck Hyatt: Above Ground Storage Tanks Update

The new rules will apply to storage tank systems that are registered with the tank fund. The tanks that are not registered, for example, some farm tanks, would not be subject to these rules. Existing systems are not required to upgrade to the new standards, but if they do not meet the new standards, systems must perform leak detection and annual tightness tests. We anticipate going out for public comment and a hearing at the end of March 2023 with the rules going into effect in October.

Some of the state's major contamination issues are related to above ground storage tanks. They can be leak from the bottom and go undetected. Anytime you bring up a new regulation for something previously unregulated, there are disruptions. If we want a viable insurance fund, we have to mitigate the risk. Minimum standards are set so the insurance fund doesn't carry extra liability.

TENORM Permitting Update: Dave Stradinger

The solid waste and radiation control programs received two TENORM landfill applications. One is from Secure Energy Services, and they have gone through all the required processes. We're ready to issue the permit for the landfill modification and the radioactive material license. The last piece that we're waiting for is the financial assurance piece for the Radiation control program. We should have it shortly.

The other application was from Wisco. They also want to modify their landfill permit to accept TENORM waste and obtain a license to redirect materials. We've done the initial reviews of their applications and are waiting for their responses.

We had a TENORM processing facility application tied to the NDIC, but they withdrew their application. Both of the TENORM locations are in Williston.

Regional Haze Update: Jim Semerad

We just finished the consultation period with a federal aid manager. We're working on responding to comments and moving towards a public comment period. On August 10, we adopted a State of Implementation Plan revision to address regional haze for North Dakota. The SIP revision demonstrated compliance with the regional haze requirements for the second planning period.

Several states missed the submittal deadline, and EPA's currently working with those states. Next for us is a progress report for round two. It is due January 31, 2025. We will begin preliminary work on it next year.

SUPREME COURT UPDATES

West Virginia v. EPA
Sackett v. EPA
National Pork Producers Council v. Ross

NEW BUSINESS

Radiological Health Rule Revisions
Proposed Rules for PRTCF
Supreme Court Updates
Environmental Justice/Title VI
Upcoming Budget/Legislative Session
EPA/Federal Bipartisan Infrastructure Bill

DIVISION UPDATES

Air Quality Update

- Jim Semerad discussed how increased wildfire smoke impacted the state's ambient monitoring.
- He also highlighted construction permits and how former oil refineries are able to transition to renewable fuel processing with soy and corn oils.
- The division has been successful in partnering with industry to audit OOOO programs to minimize emissions.

Accounting Update

- Beth Jacobson reported that the accounting division is closing out their current biennium budget and planning to present/defend the upcoming DEQ budget and the executive recommendations during the upcoming legislative session.
- There will be a lot of grants and contracts associated with the IJA/Infrastructure funding.

Chemistry Update

- Jim Quarnstrom said the Chemistry Lab is about 5% ahead of last year's sampling pace. They will end up will 10,000-11,000 analytical samples this year. New lead and copper rules will increase L&C sampling by about 10-fold (starting 2024/2024).
- They signed a contract for a new Laboratory Information Management System. The vendor is onsite for requirements gathering. This will be fully implemented by June 2023.
- There is a new building proposal for a new combined bio and chemistry lab. There is \$60-75 million in federal funding available and the Governor's Office is in favor of pursuing this.

Municipal Facilities

- David Bruschwein discussed the State Revolving Fund (SRF) Intended Use Plans (IUPs). The Clean Water SRF received their base funding for 2022 and that has already been spent. They applied for the 2022 supplemental funding and are planning for the 2023 IUP. The Drinking Water SRF received their base funding for 2022 and will apply for the bill funding in November.

- The new revised Lead and Copper Rule will go into effect in 2024. EPA's goal is to have all lead service lines removed. It will require communities to inventory those lines.
- The Municipal Facilities Division is participating in the Clean Water Needs Survey.

Waste Management Update

- Chuck Hyatt said the division is working on cleaning up the existing Hazardous Waste Rules.
- They are working on assisting tow companies that help with the Abandoned Auto Fund program. They were allotted \$250,000 in the past biennium for this fund and have already allotted \$199,000.
- They are working on a way to make pilot projects easier to implement while still providing reasonable oversight.

Water Quality Update

- Karl Rockeman discussed Non-point Source Pollution program. They are transitioning staff due to a retirement, etc. There is more interest in the west lately for those projects.
- The EPA is pushing for new mercury criteria. This posed some challenges to our existing rules and Clean Water Act definitions.
- There has been an increase in pipeline spills and this is posing response challenges for the division. There is ongoing enforcement work.
- Karl gave a brief recap of the history of the Clean Water Act –which is celebrating its 50th anniversary this year.

Director's Update

- Dave Glatt discussed the Governor's Carbon Neutral by 2030 plan. There is a lot of opportunities in North Dakota. Carbon sequestration could potentially involve agriculture and carbon credits.

There were no public comments. Dave Glatt suggested the that next meeting date be closer to legislative crossover, which is generally the end of February or early March 2023. Terry suggested a date be chosen closer to that time frame.

Julie Ellingson motioned the meeting to adjourn. Dan Wogsland seconded the motion. Motion carried.

Submitted,



Joanie Sanda, Secretary