

## **Solid Waste Advisory Committee**

### **October 7, 2009**

Mission Statement: *To enhance communication and the working relationship between the Department and the solid waste management facility owners/operators, through the discussion of issues and the exchange of ideas.*

#### **Committee members in attendance:**

Chairwoman, Sherrel Rhys – Lewis & Clark County  
Max Bauer - Allied Waste Systems  
Mark Nelson - Lake County  
Steve Johnson – City of Bozeman  
Rick Thompson – DEQ Solid Waste Program  
Joe Aline – Shumaker Trucking  
Barb Butler – City of Billings

#### **Others in attendance:**

Barry Damschen - Barry Damschen Consulting  
Dave Duffy - City-County Sanitation  
Martin Bey – Gallatin County – Logan, District Manager  
Robert Church – Great West Engineering  
Pat Crowley – Crowley Consultants  
David Seeberger – Allied Waste Systems  
Jim Chilton – Flathead SW District  
Ed Thamke - DEQ WUTMB  
Stephanie Reinig – Great West Engineering  
David Prunty – Flathead County  
Bob McWilliams – Beaverhead County  
Norm Mullen – DEQ Legal Department  
John North – DEQ Legal Department  
Brian Spangler – DEQ Recycling Program  
Darrell Stankey – DEQ Solid Waste Program  
MaryLouise Hendrickson - DEQ Solid Waste Program  
Bob Martin – DEQ Rule Writer  
Joe Blaine – DEQ Solid Waste Program  
John Podolinsky – DEQ Asbestos Program

**Call to Order:** Sherrel Rhys at 10:35 am, Helena, Montana.

**Minutes were read and approved.**

**P2 Update:** Brian Spangler gave his comments on his program first due to leaving early. At the last meeting he spoke of the Department of Energy stimulus money to be set aside for recycling grants. They are expecting to have them on the street by the first of November. He is scheduled this week for a meeting at the Director's office to brief him on the selection criterion. There are

200-points one can receive when the applications are being reviewed. There is \$300,000 set aside for the next two years.

Last week the Under-Secretary of Energy was at the Capitol. He is traveling to every state to make sure the stimulus money is being spent right.

Brian reported next, on the projects that Dusti Johnson is working on- The glass pulverizer in Livingston is up and running. Dusti also made a presentation at the Environmental Quality Council (EQC) three weeks ago on rural recycling. This presentation is posted on the web. At the EQC meeting a county commissioner from Lincoln County acknowledged Dusti for all the work she has done in Eureka.

The Recycling Program is working with the Department of Agriculture. They received money from the EPA to buy a trailer with a shredder and generator on it, much like the pulverizer. This will be moved around Montana to collect pesticide plastics.

Dusti is also currently working with the Department of Administration to have 132-yards of pulverized glass put into the new computer building that is being built by the state.

Brian also reported that the Recycling Program continues to work with Glacier National Park on the centennial event coming up next summer. On October 26, officials from Glacier National Park will travel to Yellowstone National Park for a first hand look at the greening activities that have been implemented in that park. A major waste issue in national parks is the high number of Coleman propane gas cylinders that are left behind by visitors. There were approximately 50,000 cylinders left behind last year. Glacier now has a program in place to recycle the propane bottles. That park is currently using a machine that punctures the cylinders and recovers propane. The empty cylinders are then crushed and recycled.

The E-waste event recently held in Helena collected 25,000 pounds of electronics. That was less than last year.

Sandra Boggs is working with the City of Great Falls to sponsor a week-long E-waste collection event. They are hoping this will increase the amount of tonnage that is collected. This is the first time this has been done in Montana.

Sandra recently attended a conference on sustainability in government hosted and paid for by ASTSWMO.

Finally, Brian announced this would be his last SWAC meeting for a couple of years. The Energy and Prevention Bureau was recently reorganized. He has been asked to head-up a program called Renewable Energy and Clean Air Program. Bonnie Rouse will be the new section supervisor for Local Government and Recycling.

#### **Solid Waste Issues From Previous Meeting:**

- Solid Waste Rules Update – Rick Thompson commented on the email he had sent out a few weeks earlier about the status of the rule making, answering issues on stringency. Rick stated

that the department would like to receive comments from the SWAC before the public hearing which is scheduled for November 4. The department had started formulating responses to the comments received, and our attorneys realized there were stringency issues that had to be addressed before the response to comments could be finalized. Rick then opened up to the meeting to receive comments on the stringency analysis prior to the official public hearing on November 4th.

In addition to Rick's comments, Norm Mullen stated there had been a supplemental amendment issued (supplemental rule making), with a hearing set for November 4, because in the comment period we received comments from people that believed some of the rules proposed for amendment were more stringent than comparable Federal Regulations. Montana has a statute which is applicable to solid waste, 75-10-107 of the Montana Code Annotated, that prohibits the department from adopting a rule to implement this chapter, which includes the solid waste laws and rules, that are more stringent than comparable federal regulation or guidelines that address the same circumstances unless the department makes a written finding after a public hearing and comment period. So, after reviewing those comments that some of the people in this group submitted the department published a proposed amendment seeking comment and stating that the department would offer testimony at the November 4, hearing to address stringency issues. At the last SWAC meeting people said they would like to see what we were looking at, what we were considering, both in terms of what we had done with all existing comments and what we were looking at in terms of the stringency analysis. In response to that request, a summary of the current status was prepared and sent to the SWAC a week and half ago.

Pat Crowley asked if at the November 4 hearing, would we have all the definitive evidence, the costs, and the comparison to the federal regulations, all at that time so the SWAC can have the time to comment on the stringency analysis before the closure of the comment period. Norm responded in the affirmative. Norm also stated that the comment period ends November 23, 2009.

Ed Thamke stated the reason for this memo was so we could focus on those areas that SWAC is most interested. This seemed to be the most efficient for discussion.

Pat Crowley stated he noticed in the comments that the requirement for a deed notation upon application was not addressed. Norm called his attention to New Rule XXII and XXIV that it does mention we are working on this issue. Barry Damschen asked if there would be anything on this before November. Norm stated all he could say is we are working on it, being it is a lot of work. Norm informed all he will be out of the office for two weeks, but will try to stay in touch with the rule writer and the Solid Waste Program during that time to complete the stringency analysis. The department has approximately three weeks left and we are working on this as hard as we can. He can't guarantee anything will be out much before November 4 hearing just because of the work it takes.

Norm stated the law requires we make these showings as part of stringency analysis. If you are hearing things from us that you disagree with then you can testify at the hearing or submit comments during the comment period. Most of these will not be surprises in terms of the stringency analysis. How to resolve those issues is something we are still working on.

Barry Damschen had questions about what he had read; He wanted to confirm that if a regulation was not addressed in the federal regulations, then it would be correct to assume that a stringency analysis of the rule was not conducted by the department. Mr. Damschen commented that the department therefore can do as it chooses in drafting rules that have no federal equivalent. Mr. Damschen further commented that if there are no federal equivalent regulations, one should assume that the state cannot draft regulations. Norm said that is an issue that the department is trying to address. It is somewhat of a judgment call depending on how comprehensive the regulations are, and the fact the EPA stated numerous times they intend flexibility for approved states. It is always a question, what does the Legislature mean by what is more stringent, what does the EPA intend, and how are we to address it. Norm further stated that the department has to make the appropriate decisions as to when we think something is left open to us versus as to when there is a comparable federal regulation addressing similar circumstances. Sometimes there is a difference in the circumstances so there is a judgment call. Norm stated that stringency analysis was completed for some rules whether they were considered more stringent or not. His reasoning for this action was to have a stringency justification in place just in case someone later would challenge a rule and a judge would find it to be more stringent.

Pat Crowley read **New Rule VI**; which requires the department to review all submittals. He understood it to mean,....because we are required to review the rules, the department can set any standard they want. He stated that when there is a clear federal standard such as the requirement for the location of landfills to be five miles from airports, then that is the standard the department must use when reviewing the application. Is the facility five-miles or more from the airport; then the rules must reflect that and not just say,.....because we have to review the application we can set any standard we want.

Norm commented there is a difference in what Pat is looking at versus the subsequent requirement. Because we are charged with reviewing license applications to determine if they comply with Montana law under 75-10-221 and 75-10-224, which are licensing review and statutes. If we have a substance of rule that requires something we will review and approve it as part of a license application. That does not answer the question as to whether the underlying requirement is more stringent. It is only a review and approval question. We are looking at review and approvals from a stringency standpoint. When EPA first put out its proposed regulations, state agencies were very active in determining requirements over which the states would have review and approval authority. This was in 1988 and 1991, and the thought then was that states might not have all the resources in place to implement all the provisions of the then pending regulations. So, the EPA wanted there to be supplemental demonstrations and submissions that did not need state review for everything. Then the EPA came up later with a licensing rule that required states to adopt permitting requirements that make sure all those licensing requirements were going to be effective. There is a gap as to how it works. The department is analyzing review and approval where it is a licensing requirement as if it is needed; we are finding those requirements to not be more stringent.

Pat asked if the phrase he had read aloud has to do with department approval as part of a license application. What about requirements that are not part of a license application? Norm replied

those are different issues, and the department would have to make a different stringency analysis on the latter.

Everyone thanked Ed for taking the time to write the memo. Each thought it was really a good detail of the rulemaking.

Barry Damschen asked Norm to explain what is going on thus far with his comments about liners and groundwater monitoring. Ed explained that we had listened to the comments. Norm stated this is generally design driven. The department will be adopting the EPA approach; largely one cannot pollute groundwater or drinking water sources. So, as part of the design of submission for non-municipal Class III or Class IV landfills, this submission will require showing there will not be pollution of drinking water sources.

Barry commented there would be a demonstration just like doing one for an alternative liner. Norm said it really is an alternative. Everything is driven by meeting groundwater standards. Right now the groundwater standards are the Maximum Contaminant Level (MCL), set in what has been Table 1 to the design rule. That is going to remain, but we have stated the Montana water quality law is in conflict with what we have been doing and we will have to address how to deal with the Montana water quality law from the standpoint of having groundwater standards met. That is a big issue that is not being addressed in this rule making. This is just a heads up. If one is building a Class IV landfill, there will have to be proof that it will not pollute the groundwater.

Pat Crowley stated that we can do that by using leachate characterization data published by the EPA.

Norm stated that it is site specific. And he had not looked at the issue. If one reads the EPA preambles and rule making notices, they talk about needing to model and etc, based on the site specific information.

Ed Thamke pointed out that this issue was not part of this rule making. This is just something that we are struggling with right now to get to the heart of the matter.

All agreed to review the **MEMO** of the Rulemaking. Rick began with:  
**ARM 17.50.502** - No comments.

**ARM 17.50.503** – Pat commented that the definition for waste groups needed clarification.

**ARM 17.50.509 3&4** – Norm stated there won't be an adoption notice on November 4. It will take several months. November 4 is only for the stringency hearing. Ed stated that he thought there would be some of the originals from the original notices. We made a lot of those decisions. This stringency cut us off before we finished the analysis. Norm stated in his view of the November 4, hearing would be to discuss stringency and introduce findings required by law; the extent of anything else would be informal. Norm felt that getting this stringency analysis done would take up all our time. Ed asked if there was a problem because the justification had not gone through legal screening. John North commented that he does legal review of adoption

notices. He doesn't see there being a problem with either of these while attending the meeting. Ed stated that the stuff that is already prepared still has to be deliberated in-house. and he would prefer that it not be released for public discussion at this. Ed stated that the department was very close to closing that original loop, but was derailed. Ed further stated the department would like to get to where we were on the original notice with the understanding that this is not final, this is where we are. He tried to do that in the Memo, as much as possible. Ed asked Norm if this caused him heartburn. Norm stated that he understood the group wanting to see it, and there can be formal discussions about these things now or even between now and then. He just thinks, from a logistical stand point, this will be a lot of work and will interfere with getting the stringency analysis done. Ed commented that on those elements we have made a decision, we are looking at the approval process as far as the stringency analysis, but we had already made some of the decisions, like the airport separation, and the 5-year O&M plan review and update. If we would just update this Memo on those issues specifically and expand on those elements that have already been seen by Norm. And you guys take it at face value this is a non-formal memo. This is only for discussion purposes. We can expand on this so you will have a lot of the questions answered.

Pat commented that if we have made a decision on the 5-year O&M plan review. Rick stated that we can do an informal email update, this being before the next SWAC. Pat asked if and when the supplemental notice is put out that supplements the notice concerning stringency, will that open up a comment period on the stringency issues, but not necessarily continue the comment period on all the other topics from before. If he read through the rule again and discovered that he forgot to comment on something and it wasn't related to stringency, would that comment period that had been closed be the rule. John North stated, yes, the supplemental notice said stringency stuff, and then there are other things. Pat wanted to know if this was just applicable to this comment period, not back through the whole period.

Barb Butler asked,...in the Memo, if the areas where the rule is not a federal statute, and therefore does not trigger stringency, but you are throwing something out there, the fact you brought up stringency can we comment on it. It goes back to what Pat was saying, there is a circular. Ed stated if it was part of the supplemental notice, yes. Barb again, if there is a federal rule and you are proposing a state rule, is the new state rule more stringent because there is a federal equivalent. If you say we are going to start doing something new, and there is no federal equivalent to compare it to, where does that rule fall.? Norm stated you can comment that you think it is more stringent or you can comment that you don't think it is justified under the stringency type findings. Mark Nelson stated that we can argue the facts or the law. Norm agreed. All agreed it to be okay.

**NEW RULE IV (1) – Approval of a demonstration that airplanes will be protected from birds within a lesser setback.** Norm stated this is approval of the same federal standard, not a substitute. No questions or comments for this rule.

**NEW RULE V – Approval of a demonstration regarding floodplains.** Norm stated this was the same, except for the paragraph at the bottom where folks commented we were having reviews for existing facilities. Because of that comment, we are describing what we are doing.

**NEW RULE VI – Approval of demonstration allowing a landfill unit in wetland.**

This is a federal standard.

**NEW RULE VII – Approval of a demonstration for an alternative setback for location in a fault area.**

Pat stated that he would wait for the justification. Norm commented the requirements are same as the federal. Norm continued that with a project, this is saying that if you build a landfill within a certain distance of a fault, you have to demonstrate to the department that it is designed properly. EPA stated for wetlands specifically in their preamble language we need to make a successful demonstration to the satisfaction of the state director. This was just in the preamble language and not in the rule. Then they say elsewhere, all these demonstrations are meant to be self implementing, but then they talk elsewhere in the rules about how the state director is suppose to be involved in these decisions. It is inconsistent, so we figured when there is a demonstration showing it fits or it doesn't fit within a setback or making a showing where it won't be disturbed by a fault, it is part of an application showing us EPA requirements and we will review it and approve it as part of the application.

**NEW RULE VII – Restrictions concerning locating a Class IV landfill unit in fault areas.**

Same as the previous rule.

**NEW RULE VIII – Concerning approval of a demonstration allowing location in a seismic area.** Related to previous rule.

**NEW RULE VIII** – Related to previous rule.

**NEW RULE VIII** – Related to previous rule.

**NEW RULE IX – Concerning approval of a demonstration that the structural components of a unit located in an unstable area will not be disrupted.** Related to previous rule.

**NEW RULE IX – Restrictions concerning locating a Class IV landfill unit in unstable areas.** Related to previous rule.

**NEW RULE XI (1)(h) – Location restrictions concerning locating a Class III landfill unit in wetlands.** No comments.

**NEW RULE XIII – In response to comments.** Barry Damschen responded that this was one of his comments. There was some confusion on the definition of contaminated soils. Norm thought we just needed the special waste definition because contaminated solid will be address in a separate subchapter, and we had not defined it in this rule making..

**NEW RULE XV (2)(c) – Intermediate cover requirements at a Class II landfill unit that will not receive waste for 90-days.** Norm asked if anyone has an issue with the intermediate cover. He stated there is no comparable federal requirement. The department figures it is justifiable. Pat commented that the EPA does not talk about it; all it says is daily cover and final cover. All felt it was justifiable.

**NEW RULE XVII (4)(c) – Concerning submission and approval of a remediation plan for an exceedance of the concentration limit for explosive gases.** Norm stated that the Department is working to develop the necessary justification required, this will be seen on November 4.

**NEW RULE XXII (1) – Concerning exclusion of bulk or non-containerized liquids, unless approved.** No comments.

**NEW RULE XXIV (1)(a) – Concerning a deed notation to be recorded by the owner of the land where a facility is located.** Pat commented that the EPA says deed notation is not required until a facility closes and any current facility potentially in this spot where the lack of a deed notation is problematic. If someone closes and fails to file a deed notation the simplest solution is to give the department the authority to file it. Barry Damschen felt the requirement is justified. Bob Church agreed and will provide agreement comment to the Department. This would not apply to the existing facilities; only to new facilities or expansions of existing facilities. Norm stated that we do not have that authority in the law to file deed notations.

**NEW RULE XXIV – Requirements that a deed notation for a Class II landfill unit must be recorded prior to closure.** Same as above.

**NEW RULE XXV – Liability insurance requirements.** This information has always been required as part of the application. Norm Mullen says this is something that is necessary to protect facility assets and subsequently financial assurance. Liability insurance is needed in the event something happens that takes all the facility assets. The Department will leave this in because it sees this as being necessary, but additional thought is required before additional requirements/ restrictions/ minimums are placed on the facilities.

**NEW RULE XXVII (2)(a) – Concerning confining waste to areas where it can effectively be managed.** No comments.

**NEW RULE XXVIII and NEW RULE XXIX (2) (h) – Bulk liquids restrictions for Class III and IV landfill units.** No comments.

**NEW RULE XXVIII (1)(f) and NEW RULE XXIX (1)(e) – Requirements for a Class III or Class IV concerning deed notations.** Same issue except for Class II and IV landfills. EPA does not require deed notations for these.

**NEW RULE XXVIII (1) (b) – The requirements for a Class III landfill unit that there is placement of six inches of cover every three months.** This is the Department's take on what EPA defines as periodic cover. Also, an issue of safety according to the EPA. Barry Damschen would like to see this as a requirement on a case-by-case basis and to see flexibility and common sense. There is also concern with vermin habitat if waste is not covered at least quarterly.

**NEW RULE XXVIII (1)(d)(ii) – Requirements for a Class III landfill unit concerning access.** Pat commented as to where EPA has not addressed, have they deliberately left this



requirement out. Ed responded saying...issues that are important to the state are those we'd like to keep in. Pat commented that we should justify this.

**NEW RULE XXVIII (1)(d)(iii) - Requirements for a Class III landfill unit concerning run-on control systems.** No comment for justification only.

**NEW RULE XXIX (1)(a) - Control for aesthetics for a Class IV landfill unit.**

No comments.

**NEW RULE XXIX (1)(b) - Concerning the application at a Class IV landfill unit of an approved cover at least every three months.** No comments.

**NEW RULE XXIX(1)(c) - Requirement for a Class IV landfill unit for the exclusion of liquids, and other materials that may be "conditionally exempt small quantity generator wastes" that may be disposed of at a 40 CFR Part 257, subpart B, landfill unit.**

Justification – Class IV landfills shouldn't be accepting liquids.

**NEW RULE XXIX (1)(d) - Requirement for a Class IV landfill unit concerning financial assurance.** No comments.

**NEW RULE XXIX (2)(a) - Requirement for a Class IV landfill unit concerning waste screening.** Have a screening protocol in place; case by case; EPA doesn't have any screening criteria.

**NEW RULES XXXIII and XXXIV - Requirements that a Class IV landfill unit have a liner, and other prescriptive design elements, other than those necessary to prevent contamination of a ground water drinking water source.**

Based On Performance Design - None

**NEW RULE XXXII (4) - Concerning a demonstration that the owner or operator meets the requirements for a small community exemption.**

Norm Mullen – Approval concept; stream line the process.

**NEW RULE XXXIII - In section (1) concerning the approval of a design of a Class II or Class IV landfill unit.** No comments.

Also, in section (1), the Department removed the reference to applicable ground water quality standards (GWQS) because the reason for adopting the GWQS was not discussed in the statement of reasonable necessity. The Department believes that the Montana Water Quality Act requires the use of GWQS, and intends to propose adoption of the GWQS as the appropriate design, monitoring, and corrective action standards in a future rulemaking.

Pat Crowley asked -so 1a is going out? Norm Mullen - it is only in XXXIII 1 - eliminated due to inconsistency with federal requirements. Robert Church commented that looking at alternative liners approach has changed a little bit. Norm Mullen agreed. Norm also stated that equivalency is not allowed. Show us through engineering. Ed stated there is more work for everybody. Pat asked, how many times will we have to do the demonstration on the same liner. Ed stated that it is site specific.

In response to comments, in section (3), the requirements concerning the relevant point of compliance were revised by removing language concerning the "vertical surface". In response to comments, and based on its stringency analysis, the Department intends to delete section (4), which required that an alternative liner provide ground water protection equivalent to the prescriptive liner. Instead, a design will be required only to meet the performance standard in New Rule XXXIII (1).

**NEW RULE XXXIV (3)(b) - The minimum slope of the base of the overlying leachate collection layer equal to at least two percent.** Bob asked does it have an effect; if you remove the collection system you should remove the removal system. Barry responded if you have a trench with an approved no migration demonstration. Bob stated his concern is the two percent slope.

**NEW RULE XXXIV (3)(b) - A maximum side slope on the liner less than or equal to 33 percent.** The comment was that the design engineer will take care of site specific design elements of each facility.

**NEW RULE XXXIV (3)(c) - Concerning requirements to "provide for secondary containment, monitoring of leachate and removal system components, and monitoring of leachate in collection sumps within alternative liners."** In response to comments, this subsection was removed.

**NEW RULE XXXIV(4) - Concerning the need for Department approval of recirculation of leachate at a Class II landfill unit, and (5) and (6), concerning approval of construction quality control (CQC) and construction quality assurance (CQA) manuals for assuring construction in accordance with design.** (4) The Department is working to develop the necessary justification required under the stringency statute to retain this requirement. (5) and (6). No comment.

**NEW RULE XXXIV (5) - CQC and CQA requirements for design and construction of a landfill unit.** No comment.

**NEW RULE XXXVIII - Subsection (4)(a) concerning approval of a ground water monitoring plan, (4)(b) an update to that plan, and (6) the number, spacing, and depth of ground water monitoring wells.** No comment.

**NEW RULE XXXIX (1) - Concerning the requirement for a ground water sampling and analysis plan (SAP), and the requirement for approval of an SAP.** No comment.

**NEW RULE XLIV (1)(d) - A progress report on corrective action due by each April 1.** The Department believes it would be difficult to make the necessary findings required under the stringency statute to justify retaining this requirement. Therefore, the Department is removing the requirement. No further comment.

**NEW RULE XL(5)(b) - Concerning approval by the Department of assessment monitoring if significant changes from background are found through ground water detection**

monitoring, and (7), concerning avoiding assessment monitoring through the approval of a demonstration that another source caused the significant change. No comment.

**NEW RULE XLI section (5) - Concerning approval for the return to detection monitoring if assessment monitoring reveals concentrations of all constituents in Appendix II to 40 CFR Part 258 to be at or below background values, (6), concerning approval of the continuation of assessment monitoring if such concentrations are above background values but below protection standards, and (7)(b), concerning approval of a return to detection monitoring based on a demonstration that another source caused the ground water contamination.** No comment.

**NEW RULE XLII (1)(b) - concerning approval of an assessment of corrective measures.** The Department is working to develop the necessary justification required under the stringency statute to retain this requirement. Barry Damschen asked if there were similar rules in the federal regulations. Norm stated the department wants to be able to review these.

**NEW RULE XLIII (1)(b) - Concerning approval of a selected remedy report addressing ground water contamination.** Same issue as above.

**NEW RULE XLIV - Subsection (1)(a) concerning approval of corrective action ground water monitoring program, (1)(c) concerning approval of interim measures to correct ground water contamination, (3)(a) concerning approval of a certification concerning the impracticability of achieving ground water remediation goals, (3)(b) concerning approval of implementation of alternate measures to protect health and the environment, and (3)(c) concerning approval of implementation of alternate measures to control sources of contamination, (7) concerning approval of a certification that the remedy has been completed, and (8) concerning approval of a release from requirements for financial assurance for corrective action.** Same as above.

**NEW RULE XLV (1)(b) - concerning approval of a hydrogeologic and soils work plan.** Same as above.

**NEW RULE XLIX - Section (4) concerns approval of a closure plan for a Class II or Class IV landfill unit, (5) concerning approval of closure construction plans, specifications, reports, and certifications, and (10) concerning approval of a certification of closure completion.** Same as above.

**NEW RULES XLIX, L, and LI - Concerning approval of closure and post-closure plans for Class III and Class IV landfill units.** Same as above

**NEW RULE L - Section (3) concerning approval of a post-closure plan, (5) concerning approval of a certification that post-closure care has been completed, (6), concerning approval of necessary amendments to a closure or post-closure plan, and (7) concerning approval of post-closure construction plans, specifications, reports, and certifications.** Same as above.

**Federal Legislation Update:** Ed Thamke - Ed stated it was an interesting struggle to determine the regulatory scheme for coal combustion wastes (CCW) i.e. will CCW be a RCRA C or D waste or regulated as both. We will be able to distribute to those that are interested, the ASTSAWMO position from the state's perspective about existing capacity at landfills. Montana and a lot of others do not have TSDs, we don't have the capacity. Are the landfills looking to modify their license to have RCRA 'C' license. On average it takes about 10-years. This position paper is coming out and it does a good job spelling out the issues. In regard to CCW, they (EPA) are still looking to make commitment at the end of the calendar year. Ed asked if anyone was interested in any other federal rules.

**(Tape went blank for the next two topics:)**

- Coal Combustion Wastes
- Green House Gases

**- Hindrances to the Disposal of Asbestos Containing Material - Disposal at Class II Landfills:**

John Podolinsky shared with committee that his section regulates materials that contain more than one percent asbestos. The landfills share the same regulatory burden that DEQ does. The landfills make the decision as to whether to accept the waste or not. Most landfills require packaging of vermiculite for disposal. Mark suggested that this be a question to be added to the landfill application; what type of training operators would want in dealing with the vermiculite. John said that as soon as the testing has been done properly and the material is less than one percent asbestos, our regulations go away. OSHA still regulates any material that contains any amount of asbestos.

John commented that he could build into the DEQ Asbestos web site a section listing which landfill takes friable or non-friable waste. And through the O&M Plans, to state how each, friable and non-friable, even vermiculite, are dealt with. Steve Johnson thought the point was being missed. If all the landfills accept the same materials and these being handled the same at each landfill a lot of the job would be done. John stated they can only do what the Regulations allow.. John stated they advise the regulated community that landfills might require additional packaging of ACM. He also stated that he advises people to call and check with the landfill before showing up with ACM for disposal.

Barb Butler asked, out of the Class II landfills that take asbestos how many of those have different packaging requirements for different types of asbestos. With some of the landfills requiring asbestos to be bagged, are there some that do not have that requirement. John answered that they just don't know. Most thought there weren't many in the state that did not have these requirements. John stated that this is a C&D waste and can be disposed in a Class III and Class IV landfill. If someone comes in that doesn't have it packaged and are told it cannot be accepted, and they call the Program, they will be told we have no control and to go back to the landfill to ask how they want it packaged.

Ed commented that the Asbestos Program would be putting out a news letter, the first ever for this program. In this there will be a lot of efficiencies that we are trying to incorporate, e.g. on-

line accreditation. With these new efficiencies, this will free these guys to have more of a presence in the field where there can be more compliance assistance.

**- Beneficial Use Determination:** Mary Louise Hendrickson stated the Beneficial Use Determination draft policy was updated incorporating the comments that were received.

**New Agenda Items:**

**- Legislatively Approved Use of Junk Vehicle Reserve Funds:** Darrell Stankey reported on this issue. At the end of the 2009 Legislative Session there were some moves made in the Committee that went through and made amendments to House Bill 2, the main spending bill for the state. There were two appropriations made that came from the junk vehicle fund. The first was a \$300,000 hit on the fund that was transferred to DNRC; essentially, for remediation type activities. The second one was a \$2.5 million appropriation; this was moved to the Department of Commerce. The total amount taken from the fund was \$2.8 million.

Sherrel asked if there were programs where the money could be tied up so as not to lose it. Ed stated that he would like to see some of it go to counties for helping to run their programs.

Steve asked how many fluid retrieval systems were in the state. He thought this might be a possibility for funding to tie up the money. Darrell thought this might be something within the Program to see about providing some way to put in ground water monitoring wells at the junk vehicle yards. Steve thought they should forget the ground water wells and put in the fluid retrieval systems.

Ed stated that House Bill 75 modified the Environmental Rehabilitation Grant account. This is an account that is funded through enforcement actions taken against mining operations and septic pumpers. The account was modified to include clean-up of solid waste facilities. We have that option now for situations where there is no funding to clean up solid waste violations.

**Agenda Items Next Meeting:**

S.W.A.C. will meet again on Wednesday, January 6, 2010 at 1:30 pm in the Director's Conference Room 111.

**Adjourn: 3:00 pm**