

**Montana MS4 Working Group
Meeting Summary
Helena, MT.
February 24, 2015**

Attendees: The following member/entities were present; Butte-Silver Bow, City of Billings, City of Bozeman, City of Gt. Falls, City of Helena, City of Kalispell, City of Missoula, Clark Fork Coalition, Montana Department of Environmental Quality, Montana Environmental Information Center, U.S. Environmental Protection Agency, and Yellowstone County. Upper Missouri Waterkeeper was also represented. Beck Consulting and HDR Inc. are under contract to support the group and were present. Please see attached sign-in sheet for individual attendees.

Meeting Outcomes

- 1) Group is current on related permit discussion with counties, MDT, and DEQ.
- 2) Group is current on status of other states' MS4 permits in EPA Region VIII.
- 3) Comments have been offered by the cities on EPA's draft post construction site storm water management language and discussed by the working group.
- 4) The seven cities have provided specific examples of issues implementing post construction site storm water sections of their permits and made recommendations to address them.
- 5) The public has had the chance to observe and offer comments to the working group.

Welcome and Introductions

Participants introduced themselves. Facilitator Beck reviewed the meeting outcomes and agenda. Notes from previous meeting were OK. The group reviewed the follow-up items from the January meeting, they have been accomplished. The meeting summary was posted on both the City of Billings and DEQ website and DEQ will be able to post meeting agendas prior to future meetings.

Vern and Amanda participated in the County-DEQ coordination call held in January. The counties have provided comments to the DEQ by marking up the draft Tetra Tech permit. The Counties are frustrated by their lack of statutory authority to enforce. They will be looking at counties in other states and discussing ways to address this. Vern and Amanda will continue to stay abreast of these discussions and report back. Vern said he would listen to the next teleconference on February 26. Cities would like to see parity between what is agreed to for cities and counties.

DEQ and the Montana Department of Transportation (MDT) are having separate discussions. DEQ envisions that they will issue a general permit to the MDT for certain types of activities (there are 12 or 13 of these already identified) and then issue individual permits tailored to specific sites and activities at those sites. The cities pointed out that MDT highways cross through the cities--in many cases are city streets--and encouraged DEQ to consider this nexus in their work with MDT and consider parity with MDT and the Cities.

Update on MS4 Planning in Other EPA Region VIII States (Lisa Kuzinerz, EPA)

Lisa let the participants know that Greg Davis is the storm water lead for the EPA in Montana. She works in the same unit as Greg. Lisa reported the following:

- Wyoming and South Dakota are in a similar place as each other in this process, part of the performance process.
- Colorado is far along and has put a draft out for public review. They are revising this draft now and expect to do a second public comment period. The draft Colorado permit requires identifying growth areas.
- North Dakota's permit expired in March 2014 and they have an administrative extension. N.D. is working on a similar Best Management Practices (BMP) manual.
- Utah's permit expires in July of 2015, they are working now to revise their permit.

The bottom line commonality is that EPA is pushing for more stringency and the states are pushing back. EPA headquarters continues to press for progress in the maximum extent practicable (MEP) and want specific measurability. Counties in some other states don't have the same issues as those in Montana with their regulatory authority. All permits must include the six minimum measures, but there is flexibility in how to meet them.

Amanda added that WY, S.D., and N.D. all had the original 2003 EPA template. CO and UT have added drastically different language than the Tetra Tech draft permit in Montana. Amanda can send out the CO permit, but since it is under revision again, it might be best to wait for the next version. EPA Region X has a brand new permit for the City of Boise. Eastern WA has a new permit similar to the Tetra Tech draft permit in Montana.

Update on Standardized Forms (Amanda McInnis, HDR)

Amanda provided a hand out with a list of possible standardized forms. She generated the list by reading through each of the minimum control measures to identify where it would be helpful to have consistent content (e.g. training, target pollutants, etc.) After a short discussion, the group concurred with the list and HDR will proceed with development of the forms parallel with the working group's discussions. Depending on the working group's discussions, there could be some changes to the list. The group also suggested a template for the annual reports and automating the template for SWPPP reporting. The intent of this effort is to have some common/standard documents that would be supplemented by the option to make local modifications. These could become a statewide manual. Amanda said she would make a table of the standardized forms showing the progress of each form (draft, final, etc.).

There was a brief discussion about whether DEQ was also developing standard forms. No one wants to duplicate efforts. DEQ/Jon Kenning reported that they had looked into this and due to the costs, they are not pursuing it. As long as the standardized forms are developed to include the required content, this approach will work for DEQ. Amanda/HDR will proceed with drafting the forms.

DEQ invited everyone to visit their new website. They have yet to set up the online permitting and data base, but have funding to do this next.

Formulation of the Central BMP Document (All)

The working group began discussion on the EPA draft language from the Montana Storm Water Criteria Manual and language from other BMP documents. Billings and Bozeman have manuals already. The Cities of Kalispell and Missoula had provided written comments on the EPA draft language. These comments had been e-mailed out to participants ahead of the meeting. Amanda provided a Memo with information from HDR's storm water lead (Robin Kirschbaum.) The handout contained a table comparing three Low Impact Development (LID) manuals according to several criteria. The manuals compared included the Montana Storm Water Criteria Manual, the Eastern Washington LID Guidance Manual, and the Edmonton Best Management Practice Design Guide. It looks as though the Eastern Washington and Edmonton manuals will be the best starting point.

The working group had a brief discussion on how to proceed. Vern Heisler suggested that the large group wouldn't be able to effectively craft/redraft this language and that a subgroup to work between meetings and report back to the larger group might be appropriate. Vern volunteered to convene such a group by conference call. All agreed this was the best approach. Participants in the smaller group will include Cities of Billings, Bozeman, Gt. Falls, Kalispell, and Helena. Each of the participating jurisdictions identified their primary contact for Vern. Vern will also invite Greg Davis (EPA) and Jon Kenning (DEQ) to participate as they are able. Vern said he would set up a meeting of the subgroup in the next few days. The charge of the group is to review other documents, cut and paste language as they deem appropriate and to develop the contents for a Montana LID Manual for Post Construction Site Storm Water Management. The subgroup will report their progress to the working group at each meeting. Guy Alsentier, Upper Missouri Waterkeeper, asked that the group consider retention standards.

The cities' ultimate goal of this effort would be a DEQ-approved or endorsed (language was not agreed to) LID manual. The manual may be incorporated into or referenced in Circular 8. The cities want to be certain that if they do the work identified in these documents, DEQ will be satisfied and DEQ will accept the content as acceptable for use by the cities. The cities expressed the opinion that there should be some basic minimum storm water requirements statewide that everyone should be working to meet. This helps address the parity issue expressed earlier.

The group discussed a couple of items; the fact that there is a connection between construction design and post construction site management (upfront vs. the back end of storm water), and the potential unintended consequences of pushing development outside of MS4's boundaries if requirements are different between the cities MS4 areas and adjacent county lands. DEQ explained that they are working with a number of entities on parallel tracks with these new permits. At this time DEQ doesn't envision going through rule-making to formally adopt this and weren't in a position to commit to any formal adoption of the LID manual. This is an issue of major concern to the cities, so the group will revisit it over the course of the process.

General Permit—Section 6 Post Construction Storm Water Site Management

The working group began discussion on the requirements in the draft Tetra Tech permit—working down through the boxes in the minimum measure table starting on page 25. The following comments capture the general discussion items, with Amanda tasked to revise the language based upon this discussion and bring it back to the whole group as a draft.

Section 6.a.i

- The cities feel the proposed time frame is unrealistic given how long it can take to revise existing ordinances or pass new ones—one of these two actions will be necessary to comply with this direction. Two years would be more realistic than one.
- Current ordinances don't include the word "private" and that word seems unnecessary. The end result will be the same with a rewording that uses the words "regulated project" and eliminates "private."

Section 6.a.ii

- The cities again raised the concern over parity on requirements between traditional and non-traditional MS4s.

Section 6.a.iii

- Need to be aware of the relationship between this section and illicit discharges.
- While ERP will be a common document, it's not desirable to standardize because each ERP should be built specific to the jurisdictions' ordinances and situations.
- Common definitions of levels of violation would be a good thing, but beyond that leave it to the individual jurisdiction on appropriate actions.
- Again look at the timing, the ERP would logically follow any new or updated ordinances.
- Change the deadline to the third permit year.
- This section is awkwardly worded. Amanda will reword to better clarify informal and formal measures and that the list of activities are examples not requirements.

***Cities are to provide copies of their existing ordinances to DEQ for information.* DEQ will look at what is required and by what time in the proposed new permit. It makes sense to look at all of the requirements and prioritize those that are most important to occur sooner compared to those of lesser importance. None of the cities currently have a comprehensive ERP.

- The group discussed the potential for litigation by developers. The question was raised about what enforcement ability/authority the cities have vs the DEQ's authority to enforce. This isn't totally clear now.

Section 6.a.iv

- Change the deadline to the 4th permit year

Section 6.b

- Change the minimum measure language to remove the duplicated "and incorporates"

Section 6.b.i

- No new standardized checklist appears needed here. Billings, Bozeman, and Kalispell already have their own checklists. A template for those who don't have one could be helpful and then they could modify it locally. (Billings checklist was handed out as an example)

Section 6.b.ii

- Not needed for the cities, so could eliminate (unless needed for non-traditional MS4s.)

Section 6.b.iii—discussed earlier

Section 6.b.iv

- The cities support having specific numbers included in the permit. This helps address the parity concerns. There is a need to continue to ask the question about unintended consequences. Should there be a different performance standard for new development vs redevelopment?
- What is the origin of these particular numbers? And are they the most appropriate? DEQ will check on this and report back.
- The cities expressed concern over the language "...first 0.5 inches of rainfall from a 24-hour storm preceded by 48 hours of not measureable precipitation." Jon and Rainie from DEQ said they would research this language and report to the March working group meeting. This item will be discussed by the group at the March meeting.

Section 6.c.i

- The cities asked, what do "high priority" and "life of the practice" mean specifically? Life of the practice will be removed from the minimum language box on the table to clarify. High priority means having the greatest potential to impact water quality and the permittee would define this. The cities expressed concern over the ramifications for "high impact". This language will be discussed at the March meeting.

The discussion on Section 6 ended here. The group will pick up at this point for the March meeting.

Cities' Examples of Problems Complying with Permit Language

Billings—Boris Krizek

Boris presented a situation from the City of Billings involving a three phase subdivision with the phases draining to a constructed pond. The outfall from the pond then drains into an existing ditch. He pointed out difficulty in determining the compliance point and maintained that it should be where the subdivision discharges from the pond rather than discharge into the pond from individual lots or phases.

Helena—Ryan Leland

Ryan presented a situation in the City of Helena related to use of retention ponds owned by the city, but also considered state waters. His question is where do the water quality benchmarks apply?

There was no time for in depth discussion of either of these examples, but DEQ commented that it's most helpful to them to understand situations when the cities have confusion or trouble complying with the language in the permit (or proposed Tetra Tech permit.)

Wrap-up

Topics for March Agenda

- Updates
 - County-DEQ discussions
 - MDT-DEQ discussions
 - Standardized forms
- LID small group progress
- Continue with Section III language
- Waters of the State
- Public Comment period
- Start on the next minimum control measure Section 5. Construction Site Storm Water Management as time allows

Lisa Kuzinerz offered to talk about Total Maximum Daily Loads (TMDLs) at a future meeting. This is probably most appropriate when the group talks about monitoring—possibly in April.

The next Working Group meeting will be held on Tuesday, March 24, 2015. All of the meetings will be held at the Helena Chamber of Commerce building, 225 Cruse Ave.

**Montana MS4 Working Group
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February 24, 2105**

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