

**Montana MS4 Working Group**  
**Meeting Summary**  
**Helena, MT.**  
**June 23, 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, Montana Department of Environmental Quality, Montana League of Cities and Towns, Montana Building Industry Association, U.S. Environmental Protection Agency, Malmstrom AFB, Cascade, Missoula, and Yellowstone Counties. Upper Missouri Waterkeeper and MEIC were 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 at this meeting.

**Meeting Outcomes**

- 1) Group is current on related permit discussion with counties, MDT, and DEQ.
- 2) The group has had the chance to interact with a DNRC water rights expert.
- 3) The group has been updated on progress to develop standard forms.
- 4) The Technical Sub Group has reported on their activities.
- 5) The working group has completed review of suggested edits to Permit Sections 5 and 6 including discussion of Sections 5.b, and 6.b.i, b.iii, b.iv, and d.i.
- 6) The group has visited with Greg Davis to get input on Montana's permit.
- 7) The group has received an overview and initiated review of TMDLs in draft MS4 permit.
- 8) The group has reviewed their progress, the work yet to be done, and the time remaining.
- 9) 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.

**Follow up Items from May Meeting**

The group went through the list of action items. All had been accomplished with a few exceptions. DNRC will be asked to address capture for reuse related to water rights at the July meeting, Amanda is prepared to discuss how other states have addressed MEP, Guy is prepared to discuss case law on MEP, and the group has yet to complete their discussion on how to better coordinate permitting and inspections between DEQ and the MS4's for construction sites greater than one acre. DEQ reported that a contractor has been selected and a contract signed to develop their database. Matt Peterson clarified that the standard forms they are developing will need to match the permit language. They will be developed as templates which an MS4 could modify. DEQ agreed to review and approve the standardized forms and the MS4s may modify the forms. However, if they are modified by an MS4, the altered forms are no longer the version approved by DEQ and no longer carry DEQ approval. The altered forms may still be acceptable if they contain all of the information required by the permit. The forms should probably reference sections of the permit they were designed to address or vice versa, but Matt noted that this could be a difficult effort because there are so many portions of the standard forms that would need to reference the permit (this will be considered as the standard forms continue to be developed).

Other action items were either accomplished, will be discussed today, or will stay on the follow-up list. The group welcomed Dustin Stewart from the Montana Building Industry Association.

### **Updates on Other MS4 Permit Discussions**

DEQ had nothing new to report on the MDT permit application.

Mike Black reported for the Counties that they have discussed the draft language for Sections 5 and 6. They have chosen to wait on any suggested language. The cities and DEQ encouraged them to engage earlier rather than later. This working group process will likely take most or all of the time available before a new permit needs to be issued and there will be little to no time for them to offer substantive changes at the end of this process. The outcome of these discussions will affect Cascade, Missoula, and Yellowstone Counties.

Malmstrom AFB had nothing new to report.

### **Discussion with Greg Davis, EPA**

Vern welcomed Greg and thanked him for coming. He explained that the group had four primary questions he'd like Greg to address. The questions are provided below with Greg's thoughts.

#### *1) What is working well with the other state permits in Region 8 and what is not working well?*

Greg explained the other states' permits represent a broad spectrum. Wyoming recently issued a new permit with just the CFR's (Code of Federal Regulations) original language. The permit is not iterative. EPA has found this permit unacceptable and it is inconsistent with EPA's expectations. EPA notified the state that it would object to the permit in its current state. EPA established standing on this matter. In response Wyoming is withdrawing the permit. A new permit will be issued in two years following a process that will be modeled after Montana's.

Colorado has four permits; Cherry Creek watershed, statewide, non-standard MS4's, and the Department of Transportation. The Cherry Creek permit is very stringent because there is a water quality problem with storm water as the known source. This permit would not be applicable in Montana since there isn't a similar correlation between storm water and impairment. The statewide permit would be a good example for Montana of how an MS4 permit can be effective in the mountain west. People involved have committed to the concepts and they are now fine-tuning what can work. The counties are regulated as standard MS4's. The Colorado permit is in the third and last public notice and Greg expects the permit to be approved sometime this fall. While the target date for issuance of the statewide permit is fall of 2015, this may slide somewhat due to extensive public comment. The Fact Sheet is 250 pages

The federal facilities have a different permitting process that is more contract-driven and includes lots of legally-negotiated language.

The Montana approach capturing, infiltrating, or evapotranspiring runoff from the first .5 inch of rainfall is good. This is not an extremely stringent starting point. Montana can implement this and figure out what works and where it works. According to Greg, "You won't figure everything out with first issuance." Some things will work and this justifies the iterative process.

The Cities raised the issue of equal treatment with adjacent county jurisdiction. Montana has no statewide requirement. Greg has seen that in Colorado, counties with MS4 permits have been part of the process from the beginning and do not have lesser requirements. The concern regarding the MS4 permit post-construction requirements encouraging sprawl into areas where there are not similar requirements may be overstated. Impacts to counties are more likely to come from tax/annexation implications than MS4 permit requirements.

*2) What input would Greg offer for the Montana BMP Manual?*

Greg received Montana's comments and had a call last week. He has asked his contractors to provide additional information on how calculations were done. They have to go with how the calculations were done for the retention standard. EPA looked at the option for flow through but they can't because the calculations are based on retention. If the process changes to detention it changes everything.

Greg started with a small number of BMPs that have been in use over time. Newer technologies can be added and it is likely Montana can get industry representatives with a great deal of expertise to draft up language without charge for the newer technologies. He wanted to provide a starting point which is often the most difficult thing. The document needs to evolve. His idea is to build ownership for implementation and get feedback on what works. Montana folks have not yet decided on how a feedback mechanism would work. This manual is close to final, for the purposes of his current contract. Greg wants to get it completed so that Montana can move ahead with their plans for it.

*3) Discuss ways to meet the storm water treatment requirements?*

The statewide Colorado permit replaced the 80% TSS reduction with a 30 mg/liter effluent total suspended solids (TSS) design standard. (The draft Montana permit requires 80% reduction in TSS if the 0.5-inch requirement cannot be met.) The Colorado approach is a design standard rather than an effluent limit requirement. The basis for the design standard is an evaluation comparing influent to effluent concentrations of TSS. The value of 30 mg/L is based on the median effectiveness of a suite of stormwater management practices (with one standard deviation applied) based on performance data from the International BMP Database. The 80% TSS removal standard is concerning as it doesn't address source control, and under the draft Montana permit a permittee could be penalized for having a clean site. The approach taken by Colorado would reduce sampling needs significantly. The cities like this concept and DEQ is open to it. Greg believes this is an environmentally sound approach because the 80% requirement is easily manipulated. This design standard approach will move us towards the pre-development requirement. It considers natural conditions related to influent. Storm water treatment requirements can become very complex and Greg believes that simpler is better. Start simple and build on the foundation. HDR will look at Colorado language and bring a new version for this requirement back to the Working Group for discussion. The Cities believe this approach is a better match for Montana than the requirements in the draft Tetra Tech permit.

*4) Maximum Extent Practicable (MEP)—what does this mean?*

Greg stated that statutory and regulatory language on MEP will not provide the answers. The guidance in these sources is limited. MEP is briefly described in the Preamble to the Phase 2 Stormwater Rule as an iterative standard. It's a permitting standard, not a compliance standard. MEP will be a technological-based standard written by the DEQ. DEQ says what is practicable based on many

considerations related to what can be achieved. Cost could be one consideration. MEP doesn't belong in the permit. Instead it belongs in the fact sheet.

MEP has been most thoroughly defined through court cases like California. Cost is typically considered in technology-based limits and not considered in water quality limits. Greg agrees with the technology-based limits for the MS4 permits. Immediately jumping to legal concerns causes people to stop talking with each other and to stop looking for creative solutions. He likes the MEP definition in the Montana draft permit. He also likes what he is hearing with the Montana MS4 Working Group process. DEQ is listening.

### **Standardized Forms and Technical Sub-Group Update**

The technical sub-group has completed the following standard forms:

- MCM 5 – Construction Storm Water Management Plan Review Checklist
- MCM 5 – Construction Site Visit Inspection Form
- MCM 6 – Post-Construction Controls Plan Review Checklist

Five additional standard forms are in progress, most have received comments which are being addressed by HDR. The group also plans to start work on an additional standard form in July (MCM 5 Enforcement Response Plan).

Comments were compiled and submitted for EPA's draft Stormwater Criteria Manual. HDR has drafted a Scope of Services to prepare the BMP Manual. The next major topic for the technical sub-group will be discussion on the scope of the Stormwater Treatment/BMP Manual.

DEQ reported on Circular 8. They are just starting to develop this and they are meeting internally at DEQ once a month. They said they could take in outside people for these meetings. Circular 8 will apply statewide and provide design standards on how to determine volume and the requirements for peak flows/volumes. They are not planning to address water quality because the water quality requirements vary across the state. DEQ will make the effort to have Circular 8 mesh with and compliment the BMP Manual. Circular 8 will focus on water quantity. The BMP Manual will focus on treatment Circular 8 will probably need a complimentary rule package.

### **Other Topics/Comments**

- What are the rules for designating new MS4's? Board of Environmental Review (BER) is the decision maker. Citizens can petition for this. We probably should be talking now about which areas could become MS4's in the future.
- This MS4 permitting process should avoid incentivizing sprawl. Other state policies seem to encourage it. Don't want this permit to add incentives to avoid development within MS4 areas.
- DEQ went out on a limb to request the two-year extension from the U.S. EPA and have this conversation with the cities. EPAs and DEQs expectation is that the permit will be re-issued, be more specific, more stringent, and iterative. The cities appreciate the opportunity to have this conversation and the risk taken by DEQ to enter into this process.

### **Permit Section 6. Post Construction Site Storm Water Management**

The group discussed remaining items under Section 6.

Based upon discussion this morning there will be a new direction for runoff requirements. HDR will draft up new language for consideration in July using the 30 mg/liter standard. The group agreed to replace “BMP” with “storm water management controls” and can revisit this decision if it seems necessary. DEQ will suggest some language to address the issue of regional vs. onsite treatment. There are two issues here; may not be able to treat onsite and may be able to treat more effectively as part of a regional system. DEQ is open to this idea as long as it is based on specific criteria. Matt will draft some language related to the scorecard discussion that captures the concept of the cities convening a group to discuss storm water management and learn what is or isn't working. Other edits were captured by HDR and will be reflected in the next draft.

#### **Permit Section 5. Construction Site Storm Water Management**

The bulk of this discussion went to terminology. What is the definition of a waterbody? Is it the most appropriate term? DEQ will work on this issue of language and terms. Some are clearly defined, others are not. Jon Kenning invited others to give this thought as well. Other edits were captured by HDR and will be reflected in the next draft.

#### **Total Maximum Daily Load (TMDL) Overview and Discussion**

Vern introduced this topic explaining that he expects it to be a difficult one and it's better to get started on it earlier in the process rather than later. DEQ has been compiling language in existing MS4 permits related to this. DEQ's Christian Schmidt made an informal presentation to explain the DEQ's position on TMDL's related to the MS4 permits. TMDL's are written for impaired waterbodies. They consider this a diet to get back to the beneficial uses for a waterbody. Point source dischargers including MS4s permits are assigned a numeric waste load allocation. Using available data (which varies significantly by location) they calculate the existing load allocations. The approved TMDLs that assign MS4s a waste load allocation included language that states if the MS4 complies with the permit conditions then they are achieving the waste load allocation. Then if MS4 permit conditions are met, TMDL's are met. Complying with MS4 Permit and the city's Storm Water Management Program = complying with TMDL's. Christian said with respect to impaired water bodies the focus is when there is no precipitation but flow is emitting from the storm water system. This flow is illicit discharges and these discharges need to be found and eliminated.

DEQ is considering a monitoring requirement for the MS4 permit that focuses on storm water management evaluation for the MS4s. Allowing the MS4s to monitor with the municipalities and use the data as a self-evaluative tool for SWMP improvement. Permittee monitoring is not for compliance with effluent limits or water quality standards (MS4's have to do the monitoring), but to learn about effectiveness and performance. MS4's should be learning about their own systems and how they are performing. Monitoring requirements need to be strategic—to help the MS4's learn, but not be so burdensome that there are no resources left over to make changes and improve performance.

DEQ intends to make substantial changes to the Monitoring section language in the draft Tetra Tech permit. The language in the Colorado permit will be helpful here. They will provide this to Vern for distribution ahead of the August meeting.

DEQ will also be making substantial changes to Permit Section IV, Special Conditions. Much of this language places DEQ responsibilities on MS4 permittees. They will provide this to Vern for distribution ahead of the July meeting.

A comment was made that EPA has new direction encouraging disaggregating co-permittees. There should be discrete responsibility and a transparent process for doing this.

**Remaining discussion topics and time left to complete this process**

Members of the group are concerned with ensuring the two-year deadline for getting a new permit in place is met. Vern suggested holding meetings longer than one day if necessary and the group was receptive to this if needed.

The group brainstormed a list of things that still need to be accomplished. They are placed in a rough chronological order below. If progress is slower than expected the topics will bump back. At this point, the group will stay with the current one-day meeting format and adjust as necessary. If longer meetings are necessary, they should start in the fall—not wait until winter or spring. This will ensure the public notice requirements can be met and still have a revised draft permit in place by the June 2016 deadline.

Topic	When
BMP Manual, Progress with other MS4 permittees in Montana	Each meeting
Finish Sections 5 and 6	July
Permit Sections 2 and 3	July
TMDL's	July
Monitoring	August
Permit Sections 1 and 4	August
Reporting requirements and program effectiveness assessment	September
Comprehensive look at timeframes for implementing tasks (year one, two, three, etc.)	Fall 2015
Review total draft permit for consistency of terms, format, organization, etc.	Winter or Spring 2016
Implementation—reaching out to stakeholders who will be needed to be successful	Spring 2016

**Public Comment**

There were no public comments. Missoula County found the discussion interesting and said the counties will be following the group's progress.

**Wrap-up and Announcements**

- DEQ will be offering construction inspection training September 29-30 in Bozeman. This training will be designed for MS4's and DEQ has suggested that each MS4 send someone to the training. Check the DEQ's website for more information.
- Butte-Silver Bow announced that they would be displaying artwork around their drop inlets during the Folk Music Festival as part of their education effort. The Festival will be July 10.
- DEQ reported that the annual billings to the cities contained errors and will be re-issued.

The next working group meeting will be held on Tuesday, July 28, 2015 from 10-3:00. All of the meetings will be held at the Helena Chamber of Commerce building, 225 Cruse Avenue.

### Action Items and Follow-up—Carry Over and New Items

What	Who	When
Invite DNRC water rights specialist to address group specifically regarding capture for re-use	Jon Kenning	For July meeting
Discuss and consider better ways to coordinate the permitting, inspection, and termination of permits (for sites > 1 acre) between the DEQ and MS4s.	Jon Kenning/DEQ internal	Ongoing
Update MS4 group on progress with data base development at each meeting	Jon Kenning	Monthly
Present brief summary of litigation on MEP	Guy Alsenter	As requested
Continue to update drafts of Sections based on discussion and bring to following meeting	Matt Peterson, Amanda McGinnis	Monthly
Re-send corrected notes from May meeting	Vern Heisler	June 28
Send out HDR's Draft Scope of Services on development of BMP Manual	Vern Heisler	June 28
DEQ send new draft permit language on "regional" vs on-site treatment to Vern. Vern forward to all.	DEQ, Vern Heisler	Ahead of July meeting
HDR draft new language (based on CO. permit) for the 80% requirement section	HDR, Vern Heisler	Ahead of July meeting
DEQ hold internal discussion about terms and definitions of water body, surface water, state water, etc. as relates to permit sections 5.c.iii,iv	DEQ	Ahead of July meeting
Reword permit section 6.c.iv (inspection after storm event) as per discussion	Matt Peterson	For July meeting
Take new look at Monitoring and TMDL sections of permit, redraft and provide ahead of appropriate meeting (July for TMDL and August for Monitoring)	DEQ	Ahead of July, August meetings

**Montana MS4 Working Group  
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June 23, 2105**

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