

**Montana MS4 Working Group
Meeting Summary
Helena, MT.
April 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, U.S. Environmental Protection Agency, Malmstrom 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 at this meeting.

Meeting Outcomes

- 1) Group is current on related permit discussion with counties, MDT, and DEQ.
- 2) The group has been updated on progress to develop standard forms.
- 3) The Low Impact Development (LID) task group has reported on their activities.
- 4) The working group has completed its first review of suggested edits to Permit Section 6.
- 5) The group has initiated review of Section 5.
- 6) The group continued to explore how “waters of the state” relate to MS4 permits.
- 7) 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. Vern stated that the goal for today was to finish up with the language in Section 6. One adjustment was made to the day’s schedule to discuss “Waters of the State/Point of Compliance” in the morning rather than in the afternoon as shown on the agenda. The working group reviewed the follow-up items from the March meeting. All follow-up items had been worked on. Those items that will be addressed during subsequent agenda topics were deferred until those topics. Progress on the remainder of the items was reported as follows.

- Storm Water Site Plan Review checklist was sent out to the group by Matt. Matt received one comment from Patti that was incorporated. Matt will make a few more revisions and send this out again.
- Jon Kenning reported he had visited with DNRC about the water rights concerns related to retention of storm water. There do not appear to be any issues. The cities are still not clear about whether there could be an issue if the water was used (such as sprinkling a golf course) rather than just retained and then released. DNRC will be invited to attend next meeting to address this. Amanda said she would visit with Robin from HDR about this question as well.
- Vern has sent out an MOU to the cities to participate in the cost of HDR’s services. Let him know if you have questions or concerns.
- Developing an estimate for the cost to have HDR produce a Storm Water Manual was deferred because the scope is somewhat in flux.
- Matt has a draft of an enforcement response plan. Matt will send out the latest draft to the working group after this meeting. Matt asked that the group provide him comments on the draft enforcement plan by May 15.

Updates on Other MS4 Permit Discussions

Mike Black reported that the county group had not met since this group's March meeting. They will have a call on Thursday, April 30, 10:00 a.m. Vern and Amanda will participate.

There is nothing to report on DEQ and the Montana Department of Transportation (MDT) discussions. These are currently on hold while DEQ responds to other litigation. The cities continued to ask that DEQ consider consistency/parity with the MDT and this MS4 effort especially as related to MDT highways located within the cities' MS4 areas. Cities could reach out to their local MDT staff. The Cities asked DEQ if they could have a copy of the MDT application and the SWMP that was included in their application. DEQ said they would send it to Vern and he will send it to the working group. The DEQ said that the MDT application is on hold for now. Amanda said she will invite Doug from MDT for the beginning of the next working group meeting.

Carolina (DEQ) reported that the TMDL working group is working with three cities and waiting for four more to respond. They are currently pulling together background information, and outlining an approach to each TMDL. Carolina will provide an overview of the effort for this group at a future MS4 meeting when it is timely. She will provide updates to the MS4 working group at their regular meetings in the interim. It was discussed that it would be good to have Dean Yashan participate also if needed.

Update on Standardized Forms (Matt Peterson, HDR)

Matt referenced the table listing the standardized forms HDR is producing. They are working on these forms constantly now. Matt envisions the initial product to be a binder for each city organized by Minimum Control Measure (MCM) recognizing that the ultimate goal would be to have templates available electronically for the cities to use and modify. DEQ comments on the standardized forms would be helpful at some point. The cities would like to know that DEQ believes the forms are acceptable in terms of meeting MS4 requirements. DEQ suggested that HDR use and reference any applicable DEQ rules for guidelines of meeting the intent of the permit requirements.

Low Impact Development (LID) Subgroup (Matt Peterson, HDR)

The group had a conference call yesterday. Prior to the meeting HDR went through the Eastern Washington manual and did a mark-up. During the group's discussion it was discussed that they believe the manual needs to be broader, to meet the intent of the permit, but not to be so LID specific. Matt now has a list of the BMPs the cities would like in the manual. The subgroup will continue to meet and work on the manual.

The large MS4 working group had some discussion on this report. In response to a question about LID, DEQ responded that they are not advocating LID over other approaches or methods. Their goal is to protect water. DEQ wants the cities to have tools and a variety of options recognizing that one size does not fit all. This permit will be an iterative process, improving over time. Guy pointed out that the CFRs direct entities to look at returning the sites to pre-development conditions, what standard is applicable, readily available and practicable and we should be moving in that direction. Practicability depends on particular sites. The group would be interested in Greg Davis' (EPA) perspective on this.

The larger MS4 group agreed with redirecting the LID group to build a more comprehensive BMP manual rather than an LID manual—to broaden the scope, create a bigger toolbox. The latest draft EPA storm water manual has some content that will be helpful to this effort. The cities continue to want as much certainty from DEQ as possible that if they implement the practices in the manual, they will be meeting their permit requirements.

Greg Davies has a new draft of the EPA post construction document he has been working on and he needs comments back by April 30.

Waters of the State

The group discussed two aspects of this topic. First, they talked about the “point of compliance.” To DEQ this means, “after treatment prior to discharge to state waters.” The definition of point of compliance affects language in Section 6. The cities maintain that it is sometimes impossible from a practical standpoint—for example in a redevelopment where there is no space—to treat storm water on site and that it should be acceptable to treat it in close proximity and before it is discharged to a state water. The cities believe that the point of compliance should be the outfall. DEQ pointed out and the cities agreed that all want developers to assume responsibility for how storm water they produce is treated and not push that responsibility off to the MS4. DEQ is concerned with the quality of water leaving the MS4.

The group agreed in concept that common treatment (for example retention at a site two blocks away) could be acceptable if treatment cannot be accomplished on site. Wording in Section 6.b.iv will be reworked by HDR to accurately capture this concept.

The second concern related to waters of the state was raised when Helena pointed out that it is a real problem for them when development occurs adjacent to the city, outside the city boundary, falls directly under DEQ review—and DEQ does not require storm water treatment. Helena requires treatment on all sites 5000 square feet and larger. DEQ requirements don’t kick in until the site is one acre or larger. Some developers outside the city are not required by DEQ to do anything while those inside the city are. Everyone in the working group is concerned about parity issues within and adjacent to the cities’ MS4 boundaries.

General Permit—Section 6 Post Construction Storm Water Site Management

Matt provided an edited copy of Section 6 reflecting agreed-upon changes from the previous meetings and some additional suggestions. The group went back through these edits to the language in Section 6. HDR captured the comments from this discussion. The term “high priority” will remain in the text in various locations and not have a standard definition since that could change for different MCMs. Reference to EPA’s scorecard will be deleted and reworded to emphasize identifying barriers.

All but two items in Section 6 were resolved for this stage of the permit language review. The outstanding items (where treatment will occur—on-site or in a common area and addressing barriers to implementation) will be revisited at the May meeting with the hope that Section 6 can be set aside at

that point until all permit sections have been completed and can be looked at in total. This will include looking at the timing for completion of the various requirements.

The requirements for including sections 6.d.i and ii were discussed and DEQ said they will check into this and report back to the group at the May meeting.

General Permit—Section 5 Construction Storm Water Site Management

The working group discussed Section 5.a and b making edits to clarify and improve the Tetra Tech draft permit language. HDR captured these comments and will bring the edits back to the May 26 meeting.

During discussion about “Traditional MS4s” and “Non-traditional MS4s” Kurt Moser, DEQ Counsel, clarified that counties are considered Traditional MS4’s. Up to this point many in the group had believed the counties fell into the non-tradition MS4 category.

The discussion on Section 5 ended here. The group will pick up at Section 5.c for the May meeting.

Public Comment

Robert Richards from Malmstom AFB pointed out that it would be helpful to him to know which developers have a poor record of properly addressing construction site storm water management.

Action Items and Follow-up

What	Who	When
Make edits to Storm Water Site Plan Review checklist and send back out. Add Guy to distribution list.	Matt Peterson	May
Identify examples of where water rights could be a concern. Send them to Jon Kenning.	Cities	May 15
Develop cost estimate for developing Storm Water Review Criteria Manual for State of Montana	HDR	May 26
Invite DNRC water rights person to May meeting.	Jon Kenning	May
Invite MDT (Doug) to next meeting	Amanda McInnis	May
Sign and return MOU to Vern	Cities	May
Send copy of MDT's MS4 permit to Vern for distribution to this group.	Jon Kenning	April 30
Send out table of progress on standardized forms.	Matt Peterson	May
Send Matt the requirements for information that need to be included in standardized forms.	Rainie DeVaney	
Send latest EPA draft Storm Water Criteria Manual to all participants for comment by April 30.	Matt Peterson	April 27
Send draft Enforcement Response Plan (ERP) to group.	Matt Peterson	April 24
Comment on draft ERP. Send comments to Matt.	Cities, DEQ	May 15
Check to be certain that Section 6.d. is truly required.	DEQ	May 26
Capture edits for Sections 5 and 6 as per today's discussions and bring back for May meeting	Peterson, McInnis	May 26
Send Appendix A (referenced in Section 5.a.i) to Vern for distribution to group.	Rainie DeVaney	April 30
Think about DEQ/MS4 review roles for sites >1 acre	DEQ	May 26
Arrange for May meeting lunch	Butte-Silver Bow	May 26

Wrap-up

Topics for May Agenda

- Updates
 - County-DEQ discussions
 - MDT-DEQ discussions (invite Doug)
 - Standardized forms
- DNRC water rights person
- LID small group progress
- Final look at the two remaining items in Section 6
- Complete first review of Section 5 language, review edits to Section 5 from April meeting
- Start on Public Education and Outreach, and Public Involvement and Participation as time allows
- SWPP inspection and enforcement-potentially overlapping/conflicting review roles (DEQ, MS4s)
- Public Comment period

The next Working Group meeting will be held on Tuesday, May 26, 2015, from 10:00–3:00. All of the meetings will be held at the Helena Chamber of Commerce building, 225 Cruse Ave.

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