

Montana MS4 Working Group
Meeting Summary
Helena, MT.
May 26, 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 AFB, 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 Technical Sub Group has reported on their activities.
- 4) The working group has completed review of Permit Section 6.
- 5) The group has completed its first full review of Section 5.
- 6) The group has initiated discussion on MCMs Public Education and Outreach, and Public Involvement and Participation as time allows.
- 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.

Follow up Items from April Meeting

The group went through the list of action items. All had been accomplished with a few exceptions. DNRC will be asked to address potential water rights issues at the June meeting, and MDT has declined the invitation to address the group about their permit application. Rainie will follow up with Matt on information for the standardized forms. Remaining action items from April were either completed or will be discussed during this meeting.

Vern suggested that all of the Cities read through MDT's permit application. He's concerned about a number of items—including parity with the traditional MS4s. DEQ explained that in their view, as an individual permittee, labeling MDT as a traditional or non-traditional MS4 is not a meaningful distinction. The Cities will be able to comment on MDTs permit during the 30-day public comment period. MDT applied for an individual permit and DEQ is in the process of drafting an individual MS4 permit for MDT, but MDT will need to meet the same minimum requirements in their permit in the end just like the MS4 Cities. DEQ will update the MS4s on development of the MDT permit.. Greg Davis, participating by phone, explained that Colorado Department of Transportation (CDOT) now has their new permit. In this permit, CDOT has agreed to spend \$6.5 million per year on storm water control as the operators of construction sites for the long term. There is a great deal of flexibility in how they may do this. The group agreed that information about permits in other states is useful, but that each state is unique.

Vern made a suggestion for the group's consideration that Amanda had first suggested. He suggested that the group invite a developer/contractor to attend the meetings. This person will not be a work group member. Developers will be key in implementation of the new permit requirements. The working group thought this was a good idea. DEQ will forward one or more names from the Montana Contractors' Association to Vern. Vern identified a local individual in Billings who could fulfill this role if the MCA doesn't have someone willing and able. This person should be invited to the June meeting.

DEQ/MS4 Review and Inspection Roles for Sites > 1 acre

DEQ conducts an administrative review for completeness of the application form (NOI) and the required Storm Water Pollution Prevention Plan (SWPPP) for coverage under the Storm Water Construction General Permit. DEQ issues an authorization letter for coverage under the Storm Water Construction General Permit. Developers believe and/or use this letter as an "approval" of adequacy for the submitted SWPPP from DEQ; however the letter is not an approval of the SWPPPs adequacy. Once DEQ receives a "complete application" the developer has coverage under the Storm Water Construction General Permit. Could DEQ do a more substantive review? The Cities expressed to DEQ the need to work more closely on this because the Cities have responsibility and have difficulty working with developers who believe that DEQ has already approved their permit. Neither DEQ nor the Cities want to duplicate efforts or contradict each other. One of several things needs to happen with this situation—DEQ takes the lead, the city takes the lead, or there is closer cooperation. Jon Kenning suggested that the new web-based design might be able to include some mechanism to alert a city that DEQ is conducting an administrative review on a project and might be able to go so far as to require both the DEQ and city to concur before a permit is issued. One idea would be to add a check box for MS4 review of completeness. DEQs primary concern with this is that they have a specified amount of time in which they are required to respond. They want to make sure that the Cities would not inhibit DEQ's ability to respond in that time frame. The Cities recognize this and agreed that they would be able to find a way to work with DEQ to meet the requirements regarding response time.

Inspection on these projects is also an issue. DEQ inspects and so do the Cities. Sometimes, these inspections are not coordinated and sometimes the developer gets conflicting information from the two entities. The group consensus is that the DEQ and city Inspectors coordinate ahead of an inspection to discuss the inspection items and the inspections will be done together. Enforcement inspectors are in another division, so it may be more difficult to achieve coordination with them; however, John DeArment mentioned that he thinks it's possible to request that the enforcement division could also find ways to coordinate inspections. DEQ floated the idea that the DEQ inspectors could share their calendars with the Cities. It makes sense to coordinate closely on Notices of Termination as well. The Cities said that the applications need to be complete and asked if DEQ could do more of a review than just an administrative review.

DEQ cautioned that they have statutory time requirements they still need to meet. This topic is important and needs additional discussion. DEQ will give it more consideration and come back to the working group.

Updates on Other MS4 Permit Discussions

No update on MDT permit application. Counties and DEQ had a phone conference. Nothing specific to report. Greg Davis (EPA) mentioned that in Colorado, counties are to define their growth areas. Construction and post construction requirements will need to be fully applied in these growth areas.

TMDLs as Related to MS4 Permits

The Cities believe this topic will take quite a bit of discussion because this item could have a significant impact on each of the Cities. The internal DEQ group working on this is almost done compiling their information. DEQ referenced SB112 and a 180-day time frame for formulating a plan to deal with TMDLs for applications for new individual permits. The MS4 working group is anxious to start this discussion and does not want to wait any longer. The group decided that it would be good to have an informational overview from EPA at the next meeting with the hope that DEQ will be ready to discuss this more specifically at the July meeting. The Cities said the group should start the discussion with the wording in the current draft for the June meeting.

Progress Report from Technical Sub Group (formerly called LID)

Standardized Forms

Matt Peterson from HDR handed out a table listing the forms, progress on their development, and target completion dates. They are working on seven forms now. He sent four draft forms (two each for MCM 5 and MCM 6) out to the working group members in the past month and more will be coming. He has received comments from most of the Cities on these drafts. The Technical Sub Group has been working on these and will discuss the comments on June 10 and hopes to finalize these four forms prior to the June working group meeting.

DEQ indicated they would review the forms and indicate the acceptability of the forms to document meeting permit requirements. In other words if DEQ finds the forms acceptable and the MS4s use these forms, it will demonstrate that they are meeting the terms of their permit—giving them regulatory predictability.

Other Topics

DEQ extended an offer to all of the 7 Cities for site tours to identify outfalls and points of compliance. The City of Helena will be piloting a process to agree on outfalls and discuss specific areas of concern regarding permit requirements and compliance. They will identify and map their outfalls and submit them to DEQ. DEQ and the city will jointly review these outfalls to get agreement. This may take a field trip to view the outfalls. This will happen sometime after September 30, 2015.

EPA is almost done with the Storm Water Criteria Manual. The City of Billings has commented on the draft and Matt will send those comments out to the other Cities. The Cities should submit comments to Matt by June 9. He will compile them and send to EPA. Greg Davis told the group he wants to get the manual finished so that Montana can use it. He still has some work to do on the technical viability--checking calculations. See action items section for assignments. EPA will provide information and spreadsheets that can be incorporated into the Montana manual if desired.

At the last meeting, the working group discussed expanding the manual beyond LID and incorporating design guidance for a large array of LID and traditional BMPs. The technical sub-group discussed this at their last meeting and would like to proceed with a manual that provides guidance for both traditional and LID based BMPs but has decided it may be better to start with a smaller number of BMPs.

Therefore, the sub-group is recommending that the scope be narrowed to start small and get things working properly. The EPA manual has four controls. The technical sub-group suggested using these four and adding two more. The two additional controls would be permeable pavement and mechanical treatment. The manual will emphasize BMP selection and design guidance.

How will Circular 8 dovetail with this effort? DEQ is coordinating Circular 8 and the LID/Storm Water Criteria Manual. These two documents need to work together. The Cities asked that Circular 8 reference the Storm Water Criteria Manual that the subgroup is working on now. The Cities want the information in the manual to be acceptable to DEQ and if the MS4s use these forms, it will demonstrate that they are meeting the terms of their permit. Matt hopes that Circular 8 will fill in voids in the manual.

John DeArment will talk with the group preparing Circular 8 about coordination with the Cities' MS4 effort—perhaps it would be most efficient for them to work directly with the Technical Sub Group.

Bozeman recently designed a biofiltration swale and tried using the Eastern Washington LID Manual. They found it difficult. They emphasized that LID design requires a significant amount of effort and expertise, and while the manual was helpful, additional references were needed. The BMP Manual may be a topic for Greg Davis to address when he comes to the MS4 Working Group meeting in July. Cities need to start with the .5 inch storm as the baseline standard. The baseline is the most important thing to determine first. Many Cities have incorporated this standard, but what does it mean? Are LID practices needed? What is the treatment required? Cities are used to seeing a basic design standard. If Circular 8 references this manual, it will be acceptable so that the MS4s will know they are meeting their permit. The permit will reference the manual.

Permit Section 6. Post Construction Site Storm Water Management

The group discussed that training will likely be needed for Cities to accomplish 6.b. DEQ has offered this training in the past and it was poorly attended. They are willing to offer training in the future. DEQ will review the language here (6.b) and come back to the working group with comments.

The Cities expressed concern over the draft language in 6.b that says “determine and document compliance”. The Cities asked if it would be possible to have an MS4 person certified in this regard rather than include this language. The concern stated is that this language requires the MS4 to determine compliance with all of the rules and requirements which is a tall order. The Cities also suggested that a standard form could be used that is signed by a consulting engineer doing the work stating that they are meeting all of the requirements. The Cities believe this would meet the intent of the “determine and document compliance” draft language, and DEQ agreed that this would be an acceptable method. Vern said that he thought DEQ had used a similar system in the DEQ drinking water section years ago to insure that the consulting engineers retained responsibility for their work instead of shifting it to the Cities.

EPA has not defined Maximum Extent Practicable (MEP) and will not define MEP. Greg (EPA) said that MEP should be in the permit language, but should not be a compliance standard. The Cities said that the MEP requirement should not be in the permit. The permit should put forth objective conditions. The Cities said that cost should not be a factor in MEP.

The Cities discussed and continued to express concern over 6.b.iv requiring treatment for projects that cannot meet 100% of the runoff reduction requirements and needed in to treat the remainder to be treated to 80% reduction in TSS. This draft language leads to needing to use LID in most scenarios. This will be discussed further at the June meeting.

Does going through the EPA Scorecard accomplish the goal of encouraging use of LID to improve water quality? (Section 6.d.i) The Cities believe that identifying barriers to meeting the terms of the permits is already happening as they work to comply. Cities feel strongly that the MS4 permit is not the appropriate driver for changes in land use policy and regulation which are suggested in the Scorecard. The group agreed that an explanation of the purpose/intent for the Scorecard and what would be done with the results/responses should be provided in the Fact Sheet. Rainie will identify some sections of the Scorecard to consideration. Matt will redraft language in Section 6.d.i based on this conversation. Section 6.d.ii will be deleted. The group will revisit Section 6.b.iv at the June meeting in context with the rest of MCM 6.

Permit Section 5. Construction Site Storm Water Management

Edits to this section should move towards the goal of creating the same expectations by developers in response to both the city and the DEQ—whether the property is within or outside of an MS4.

The group also discussed need for clarification on the terminology of Section 5.b with regard to use of the term site plan and/or SWPPP. The permit states that a site plan or SWPPP review is required for sites greater than one acre. The Cities asked if this means that they do not have to review the SWPPP as long as they review the site plan. The group agreed that clarification should be provided on this issue. Matt Peterson noted that “site plan” is a vague term and does not imply that stormwater controls would be addressed or called out. Matt suggested that the term “construction stormwater management plan” be used in place of “site plan” which is consistent with Appendix A of the draft permit. The group agreed that this would be an appropriate edit.

Public Comment

Robert Richards from Malmstrom Air Force Base reported that he uses the SWPPP form for inspection and that is working well for him.

Wrap-up

Topics for June meeting

- Standing topic updates
- DNRC water rights person
- Technical Task Group report
- Coordination between DEQ and MS4s on sites > 1 acre
- TMDL overview/educational piece (Lisa Kusnierz)
- MEP definitions used by other states, litigation on MEP

- Discussion on Section 6.b.i and iii (determine and document compliance)
- Discussion on Section 6.b.iv
- Discussion on Section 6.d.i suggested scorecard sections
- Discussion on Section 5.b
- Develop list of topics for Greg Davis (EPA Region VIII) to address in July
- Look together at where the group is in relation to all of the work that must get accomplished
- Public comment period

The next working group meeting will be held on Tuesday, June 23, 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

What	Who	When
Invite DNRC water rights specialist to address group at June meeting regarding MS4 permit and water rights issues	Jon Kenning	Before June 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	By June meeting
Visit about information for standardized forms	Rainie DeVaney, Matt Peterson	Before June meeting
Identify and invite a developer/builder representative to work with the group starting at the June meeting.	Vern Heisler (DEQ provide suggestions from MT Contractors' Assoc.)	Before June meeting
Send out City of Billings' comments on EPA draft SW Criteria Manual to others	Matt Peterson	May 29
Send comments to Matt to compile for EPA	Cities	June 9
Compile Cities' comments and send to EPA	Matt Peterson	June 16
Update MS4 group on progress with data base development at each meeting	Jon Kenning	Monthly
Update MS4 group on progression of internal discussions about how MS4s and DEQ can better coordinate permitting, inspections on sites >1 acre	Jon Kenning	As appropriate
Send out new version of Post Construction Plan Review checklist	Matt Peterson	May 29
Speak with Circular 8 group about working with the MS4 Technical Sub Group on storm water manual	John DeArment	Before June meeting
Bring examples of how other states have defined MEP	Amanda McGinnis	June meeting
Present brief summary of litigation on MEP	Guy Alsenter	June meeting
Review and consider edited language in Section 6.b.iv on "on site or regional treatment system:	DEQ	Before June meeting
Identify suggested EPA scorecard items for group discussion to accept or retain ability to choose	Rainie DeVaney	June meeting
Review language in Appendix A (since it will be referenced in the permit) Bring comments to June meeting	Cities	June meeting
Update drafts of Sections 5 and 6 based on discussion today and bring to June meeting	Matt Peterson, Amanda McGinnis	June meeting

**Montana MS4 Working Group
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