

Montana MS4 Working Group
Helena Chamber of Commerce, 225 Cruse Ave.
Modified Summary for July 28, 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, Yellowstone County. 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 agreed to language in permit Sections 5 and 6.
- 6) The group has initiated review of permit Sections 2 and 3.
- 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.

Water Rights and MS4 Permits

Millie Heffner, DNRC Water Rights Bureau Chief, attended the meeting and addressed questions about an MS4's re-use of water for storm water treatment. If the water is solely retained for storm water treatment and then is released back into the water body, there is no conflict with water rights. Language in the current (and proposed permit) offers the MS4's an option of re-use to meet the treatment standard. MS4s will likely want to use this option. An example of this would be applying the water to a park or golf course. Millie commented that water rights for municipalities frequently include more than one type of beneficial use—for example drinking water and irrigation. However, applying water to a new park or new golf course or another new use could be considered an expansion of use and may require a new water right. It could be considered a pre-capture of someone else's water right. A new use would not automatically be granted because senior water rights are protected. In basins that are closed, it would be difficult or impossible for an MS4 to obtain a right for a new use (re-use of the runoff as per MCM 6.b.iv). Most of the MS4s are in closed basins. Kalispell is not. Millie emphasized the importance of consulting DNRC when the MS4s are unsure or have questions because each scenario is different.

A point was raised during discussion that a private developer, rather than a municipality, may need to choose re-use to meet MS4 permit requirements. The cities observed that this challenge could result in driving development (for example big box stores) outside of city limits—to avoid the need to comply.

DEQ and DNRC have a Memorandum of Understanding with respect to wastewater whereby DNRC does an evaluation to determine whether a new permit would be required. The two agencies do not have a similar agreement related to storm water.

The discussion raised an issue of concern to all of the parties. The proposed MS4 permit language allows the MS4s an option to re-use storm water to meet the total suspended solids (TSS) requirement (MCM6.b.iv.) The MS4s may need the re-use option to meet the requirement. If a new water right is needed to exercise this option, it may not be feasible--especially in closed basins.

The group asked "How long can a municipality retain water before affecting a water right?" Millie explained that the Water Court is being briefed on retention for flood control now. The Attorney General's opinion is that flood control is not a beneficial use. A decision is expected soon.

The Cities discussed the possibility of needing some type of legislative action to say that water rights are not required for water re-use. Millie and Jon Kenning will continue a discussion on the issue of a new water right for re-use. The MS4s asked that they bring some ideas back to the Working Group at the August meeting.

Follow up Items from June Meeting

All items were accomplished except those in process (coordination of permitting process between MS4s and DEQ), those to be discussed today, or those scheduled for future agendas. See Action Items list at the end of this meeting summary.

The group had a discussion about HDR's Scope of Services to prepare a manual. HDR did prepare a Scope of Services which Vern has. He did not distribute this because too many questions remained about the specific end product and he wanted to discuss it at the working group before sending out the draft scope. Vern stressed the importance of having HDR get started soon on whatever product the Working Group would like to have. There is a wide range of opinion on how detailed the manual would be. This greatly affects the scope of services. Some cities would like only minimal information, others want a more extensive resource with tools. HDR pointed out that with the new permit, contractors will be asked to do new things in terms of design and practices. The contractor community is not experienced with this and should be provided with tools to be successful that include approved BMPs. The Working Group had a discussion on this and did not reach agreement. Most agreed they wanted a basic manual to include references and with the option for MS4s to add or customize their own forms—similar to what was done for the Montana Public Works Standard Specifications. They did not agree on the inclusion of design specifications.

The Working Group will revisit the Scope of Services topic at the August meeting to give HDR direction.

The cities reiterated the importance of DEQ's blessing on the products so the cities can have certainty if they follow the manual they will be complying with their permit. DEQ has said, and said again at this meeting, they will review the standard forms for adequacy and can envision referencing the manual in the fact sheet.

Rainie DeVaney reported that DEQ had considered the suggestion to change "BMP" to "storm water management control" in the permit. DEQ would like to continue using BMP and not make this change. BMP is more consistent with the federal regulations. **Updates**

Mike Black, Yellowstone County, reported sending information on MS4s to the other affected counties. He has not received any comments from them. Jon Kenning reported that DEQ and the counties will try and get their attorneys together to discuss the issue of county authority as relates to MS4 permits.

Malmstrom AFB had nothing new to report.

DEQ has taken no action on MDT's permit application due to other priorities (responding to litigation.)

Technical Sub Group Report

The technical group has not met since the last working group meeting. Lizzie Adams (HDR) handed out a summary of the status of work on the standardized forms. All but one of the forms for MCM 5 (Enforcement Response Plan) have been completed. The forms for MCM 6 have been completed. Forms associated with MCMs 2, 3, 4, and 7 will be developed as the Working Group addresses the topics.

MCM 6: Post Construction Site Storm Water Management

Language in Section 6.b.iv and 6.d is the only language that has not been finalized for MCM 6. The cities want to be able to decide if they can treat on-site (to meet the 30 mg/liter requirement) or have the option to work within a larger area to meet the requirement. The group briefly revisited their earlier decision to use 30 mg/liter as opposed to 80%--electing not to change that decision for now. Rainie provided some new draft language to be added to this section. Some felt the language was too extensive. Working Group members will review Rainie's draft and get comments to Vern before the next meeting. The group will revisit this one final time in August. The suggested language worked out by Rainie and Matt for 6.d was accepted.

MCM 5: Construction Site Storm Water Management

After internal discussion, DEQ is most comfortable leaving the words "water body" in the permit language. MS4s will define their own water bodies. This more general approach will allow the cities to prioritize as they believe best. This is a common sense thing that can be discussed between DEQ and the individual MS4 if/when issues arise. The terms "water body" will not be changed in the permit.

Everyone agreed that there is still a need to improve how coordination between the MS4s and DEQ occurs with permit management—especially termination—since DEQ doesn't have much latitude on the front/application end of the process. DEQ and the MS4s all want to ensure that a permittee fulfills their requirements. The DEQ's data base contractor is on the job now and the new data base will likely provide an avenue to help address this coordination issue. DEQ welcomes MS4 inspections of state permits and sharing information. The Working Group decided that developing mechanisms to better coordinate on permit administration and termination would be a task appropriately assigned to the Technical Sub Group.

Special Considerations Section--TMDL Language

The group had an initial discussion about this topic at the June meeting. DEQ is reworking and shortening the language in the draft Tetra Tech permit. The DEQ will bring a draft to the August meeting and the Working Group will address this at the August meeting.

MCM 2: Public Education and Outreach

The group agreed to retain the majority of language in the draft permit. There was a short subsequent discussion about the wisdom of cooperatively developing some of the public education material to implement this MCM. Much of the information is common, but target audiences will differ. DEQ expressed concern that standardizing all of the Public Education and Outreach activity would not meet requirements for individual MS4s. The Cities said that the bulk of the information would be the same for the Cities and as such would like to see some standardization. In addition, each MS4 would need to add information specific to their area. The review of this MCM is done.

MCM 3: Public Involvement and Participation

The group agreed to retain the majority of language in the draft permit. DEQ said that advertising in 3.b.i could be done in the brochures, websites and other documents produced by the MS4s. Reference to an Intranet will be deleted. The review of this MCM is done.

MCM 1: Program Management

The group agreed to retain the majority of language in the draft permit. Section ii specifying MDT will be deleted from this permit. Changed “quarterly” to “regular” in 1.a.iii. The review of this MCM is done.

MCM 4: Illicit Discharge Detection and Elimination

After starting into a discussion on this language, the DEQ said they would like to discuss this MCM internally and bring back a new draft for the August meeting for discussion. Language in 4.a will be checked by the DEQ for consistency with state statutes and federal regulations.

Public Comment

The public was given the opportunity to comment. No comments were made.

Action Items and Follow-up

What	Who	When
Identify solutions for addressing the storm water re-use and potential conflicts with water rights issue.	Millie Heffner, Jon Kenning	Fall 2015 or sooner
Send out HDR draft Scope Of Services for the manual.	Vern Heisler	August 1
Frame a Scope of Services discussion for decision at August meeting	Vern Heisler, HDR	August
Send information on BMPs related to 30 mg/liter to Vern. Distribute to Working Group.	Lizzie Adams/ Vern Heisler	August 1
Provide comments to Vern on DEQ’s draft language for 6.b.iv.	Working Group members	August 15
Work with DEQ to utilize new data base to improve	Technical Sub Group	Concurrent with development of DEQ’s data base

coordination on administration and termination of permits for sites > one acre		
Develop language for the TMDL section	DEQ	August
Assign Technical Sub Group to work with DEQ on addressing coordination of permits through data base design	Vern Heisler/Matt Peterson	On-going
Send data base contract with scope of work to Vern. Distribute to Working Group.	John DeArment/ Vern Heisler	August
Look at developing common body of information for MCM 2: Public Education and Outreach	Matt Peterson/Technical Sub Group	September
Look at CFRs and ARM language related to MCM 4. Provide to Vern for distribution ahead of August meeting.	DEQ/ Vern Heisler	August 15
Research and report back on how other states handle disinfected water permits and overlap with MS4 permits	Amanda McInnis	August meeting

Wrap-up

August meeting topics

- Scope of Services for preparation of manual
- MCM 6 language – on-site vs. regional treatment, 6.b.iv
- TMDL language in the Special Considerations section of the permit
- MCM 4: Illicit Discharges
- Coordination of permit administration and termination (Technical Sub Group and DEQ-if timely)
- Re-use implications and water rights (if timely)

Helena will provide lunches in August.

101 and 201 courses will be offered in Missoula September 1-3. Check the DEQ website for more information.

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Helena, MT.
July 28, 2105**

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July 28, 2105**

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