

**MEETING MINUTES  
WATER POLLUTION CONTROL ADVISORY COUNCIL  
Friday, November 7, 2014  
10:00 AM – 1:00 PM  
Metcalf Building  
1520 E. Sixth Ave, Helena, MT 59620**

**PRESENT**

*Council Members Present:*

*Barbara Chillcott*

*Mack Cole (by phone)*

*Mitchell Leu (by phone)*

*Earl Salley*

*Karen Bucklin Sanchez (by phone)*

*Trevor Selch (by phone)*

*Keith Smith*

*Dude Tyler*

*Michael Wendland*

*Kathleen Williams (by phone)*

*Council Members Absent:*

*Stevie Neuman*

*Montana Department of Environmental Quality Staff Members Present:*

*Jon Kenning*

*Barbara Kingery*

*Sarah Norman*

*Mark Ockey*

*Robert Ray*

*Amy Steinmetz*

*Rick Thompson*

*Eric Urban*

**CALL TO ORDER**

As he was unable to attend the meeting in person, Chairperson Trevor Selch requested that Mr. Dude Tyler take over as chairperson for the meeting. Chairperson Tyler called the meeting to order at 10:05 a.m.

**APPROVAL OF AGENDA**

Mr. Keith Smith moved to approve the agenda as written; Mr. Michael Wendland and Ms. Barbara Chillcott seconded the motion. There was no opposition; the motion carried.

**APPROVAL OF MINUTES**

Mr. Mitchell Leu moved to approve the August 29, 2014 meeting minutes as written; Ms. Chillcott and Mr. Earl Salley seconded the motion. There was no opposition; the motion carried.

**BRIEFING ITEMS**

**Landfill Permitting and Remediation –**

Mr. Rick Thompson, supervisor of the Solid Waste Management Section of the Permitting and Compliance Division, began his presentation by explaining the three programs within his section. His

program permits all solid waste facilities, including landfills. Mr. Thompson then described the solid waste management system licensing review sequence. He mentioned that solid waste permitting uses the assessment of fees. The section receives very little general fund, so the facilities licenses are what funds the majority of the program.

Chairperson Tyler asked if the Livingston tire dump was subject to this process. Mr. Thompson replied in the affirmative.

Mr. Thompson explained that once an application is deemed complete, the Montana Environmental Procedures Act process kicks in. At that point, the program has 180 days to wrap up the process and issue a license. The Montana Department of Environmental Quality (DEQ) drafts an environmental assessment (EA) and publishes it for a 30-day public comment period. The department goes beyond the requirement that the EA be sent to anyone sharing a contiguous boundary with the proposed facility site by also mailing the EA to folks within one mile of the site.

If the County Health Officer rejects the issuance of a license, the applicant must appeal to BER (Board of Environmental Review) within 30 days. There have been two situations where this has gone to BER. A third situation, the Livingston tire dump mentioned by Chairperson Tyler, has been transferred from BER to district court.

Mr. Thompson then discussed the Solid Waste Management Section applicant checklist. He mentioned that one of the primary focuses of these permits is to protect the groundwater on which the site is located. Some of the elements of the application requirements are a closure/post-closure plan, proof of insurance, and proof of closure/post-closure financial assurance. Mr. Thompson said that once someone applies for a landfill, they must ensure continued monitoring for a minimum of 30 years following the landfill's closure. Ms. Chillcott asked if bonds were used for this purpose. Mr. Thompson replied that there are 13 different mechanisms, including bonds, which ensure that there will be funds for the state to use for proper site closure if the owners do not fulfill their responsibilities.

Mr. Thompson next described items that are unique to landfill licensing. One of these elements is the liner and leachate collection/removal system. Mr. Thompson said that even in Montana, which is considered a dry state, 26% of the waste mass is liquid. Over time, as the liquid is compressed, it becomes leachate. Mr. Smith said that in Missoula the leachate is sent to the wastewater treatment plant. He asked how leachate is collected and removed in areas that are not close to treatment plants. Mr. Thompson responded that leachate is held in collection ponds that are built with a no-leak liner system. The leachate in these ponds is then typically left to evaporate.

Ms. Kathleen Williams asked when these protective measures were enacted. Mr. Thompson said that, in Montana, these measures were enacted in 1993. Federal regulations were passed in 1989. States were then given three to four years to update their solid waste rules to match the federal regulations for municipal landfills. This change was addressed with a tiered approach, with large landfills needing to implement changes sooner than small landfills. The first implementation date for Montana was October 1993 and the last was November 1994. This change in regulation caused a reduction in the number of municipal landfills from 130 to 32. It forced communities to reevaluate their management of solid waste disposal. Cost became an issue. An acre of landfill costs approximately \$1 million. Nationally, these costs are the same per acre, as the requirements are identical across the country.

Mr. Mack Cole asked if each county has one or less landfills. Mr. Thompson replied that the counties with larger populations have landfills located within their counties. Less populated counties, however, ship their waste to regional landfills located outside of their county boundaries.

Transitioning to the topic of corrective action, Mr. Thompson said that some of the pre-1994 landfills are still open. These landfills had to retrofit to meet the new requirements, and all new cells built have also had to meet the new state regulations. Some of these old landfills were located near rivers or in coulees. These sites have had issues with releases into the groundwater. In these situations, corrective action must be taken. The City of Bozeman's old landfill is in one of these circumstances. Mr. Thompson described the process of corrective action. He noted that corrective measures are site specific. Selection of remedy is complex and based on numerous variables.

Ms. Chillcott asked how the department solicits community input. Mr. Thompson said that they follow the same process that they do with a license. They reach out to people sharing a contiguous boundary with, or located within one mile of, the facility site.

Mr. Thompson briefly talked about the selection of remedies and the implementation of the corrective action program.

Ms. Williams asked about DEQ's role related to the operator's submission. Mr. Thompson responded that DEQ staff go over the chosen alternative just as consultants would do. If the proposed submittal is not deemed viable, it is not approved. Ms. Williams then asked about the bar for approval. Mr. Thompson said that the input for corrective measures is variable, so no two submittals are exactly alike. They examine geological, hydrogeological, and chemical elements in evaluating sites. If a design does not seem plausible, it is denied. If implementation is approved, there is a review to monitor for effectiveness. Applicants must submit a list of other designs explored so that there are alternative plans available if a change of course is needed.

Ms. Williams asked if the criteria used to determine effectiveness is based on the groundwater problem being resolved to the extent that it meets standards. Mr. Thompson responded in the affirmative. Ms. Williams then asked if there are air quality aspects involved. Mr. Thompson said that up to now landfills have not been regulated for air quality issues. Ms. Williams asked if the department evaluates volatile organic chemicals (VOCs). Mr. Thompson said that they do evaluate VOCs in the groundwater or landfill gas. He explained that VOCs break down rapidly once they reach the atmosphere. If landfills have gas issues, which tend to be primarily methane, there are several methods for cleaning up the VOCs.

Mr. Thompson showed some photographs of stormwater ponds at Flathead County Solid Waste. To release from the ponds, landfills must have a stormwater industrial permit, which is issued by DEQ's Water Protection Bureau. According to Mr. Thompson, most ponds are overdesigned for capacity. Mr. Wendland asked if there is a way to reduce garbage being transported by wind at the landfills. Mr. Thompson said that most landfills have fencing around them to prevent garbage from blowing out of the sites.

Mr. Thompson said that contouring is used at closed areas to control surface water runoff and preserve the integrity of the area. Sandbags are used to slow surface water flow into the ponds.

Mr. Thompson then showed an image of a leachate pond. As Mr. Thompson mentioned earlier, in areas where the landfill is not connected to a wastewater treatment system, leachate is managed by piping it to a fenced, lined pond. In Montana, these ponds are often small due to the aridity of the state.

Ms. Williams asked if leaking is an issue for any of the state's leachate ponds. Mr. Thompson replied that he is not aware that this is a problem. When these facilities are designed, a monitoring well is usually located down-gradient of the leachate pond to detect any possible leaks.

Mr. Smith asked what was done when landfills were closed in the state around the 1993 and 1994 timeframe as a result of the new legislation. Mr. Thompson said that there were no requirements for closing procedures. At the time, state rules simply required that the landfill be covered with two feet of soil/cover material, followed by six inches of topsoil and then re-vegetation. According to Mr. Thompson, despite the lack of closure requirements, there have not been too many issues with these old landfills.

Ms. Williams asked about the most progressive thing seen in how municipalities and counties are dealing with legacy landfills. Mr. Thompson said that when landfills close, even historically, they have been required to file a notation to the deed of the property indicating that a landfill is located at this spot. The rules then and now restrict the usage of that landfill site. In the initial years following closure, the cap has to be re-vegetated and no structures can be built on the site. Beyond that, according to Mr. Thompson, the notation to the deed is the primary thing indicating to potential landowners that a landfill was located at that site. Chairperson Tyler said that once there is a cloud on the title resulting from a landfill, developers have difficulty getting lenders to participate in projects on the property. This effectively reduces potential issues that may stem from the landfill. Ms. Williams asked if adjacent properties have any notation on their deeds to indicate that a closed landfill is located nearby. Mr. Thompson said that they do not. He said that he assumes that people who are considering purchasing a property will take note if a neighboring property indicates it used to be a landfill. Ms. Williams asked if the requirement to put the notation on the deed was part of the 1993 requirements. Mr. Thompson replied that this requirement was in existence long before 1993.

Ms. Karen Bucklin Sanchez asked about the impact of oil and gas development in Montana in terms of solid waste. Mr. Thompson said that some of the border landfills were impacted by an increase in tonnage, but this has been managed reasonably well. With regard to radioactive waste, Mr. Thompson said that Montana and North Dakota both have naturally occurring radioactive materials in their soils. These radioactive materials are brought to the surface by drilling. The water is processed, and then recirculated for fracking wells and filtered through filtered socks. The radioactive isotopes attach themselves to the socks. In North Dakota, they have a contaminant level of 5 picocuries per gram of material. In Montana the allowable picocurie level is 30. Mr. Thompson explained that a picocurie is a low level of radioactivity that is not nuclear. In North Dakota, a recent risk study has examined this waste to evaluate human risk. They believe that North Dakota will raise the acceptance level for radioactive waste going into their landfills. In Montana, the boom was not as sudden as in North Dakota. This allowed Montana to study other states, examine the science used, and establish our state levels.

Mr. Salley asked when a landfill is full. Mr. Thompson answered that landfills are considered full when they meet their design capacity criteria.

**Watershed Protection Section and Clean Water Act 319 Program –**

Mr. Robert Ray, supervisor of the Watershed Protection Section (WPS) of the Water Quality Planning Bureau, began his presentation with an overview of bureau organization and a discussion of the water quality management process. Mr. Ray said that the work of his section is directed by Montana Code Annotated 75-5-703. WPS engages in significant work both with other agencies and non-profits, such as watershed groups. Mr. Ray said that a big portion of WPS work deals with 319 funding. 319 is a section of the Clean Water Act (CWA) that provides for federal funding to be distributed through the Environmental Protection Agency (EPA) to states to address nonpoint source (NPS) pollution. It is a voluntary, incentive program. EPA provides 60% of the funding through 319 funds, and then the other 40% must be provided by state or local entities.

Historically, the section has been able to use 319 funding for Watershed Restoration Plan (WRP) development, but this has recently changed with new EPA guidance. Now project funding is no longer allowed to be used for WRPs. Mr. Ray explained that the Water Quality Planning Bureau is now looking at alternative methods for funding locally-developed WRPs.

Mr. Ray showed an image depicting the history of 319 funding. Peak funding was approximately \$3 million dollars. Funding includes program (base/staffing) funds and project (incremental) funds. Mr. Ray said that, historically, EPA has allowed the bureau to use significant program and project funding for Total Maximum Daily Load (TMDL) development. Over the years, there has been a decrease in 319 funding. Mr. Ray anticipates that 2014 funds may total approximately \$2 million dollars. The 2013 EPA guidance indicated that 50% of federal funding, which includes match, must be spent for on-the-ground project work. There has been a reorganization that has switched the emphasis from getting out from under DEQ's TMDL lawsuit to making sure that 50% of the funding is going to on-the-ground efforts to address NPS pollution.

WPS does their work under the Montana NPS Management Plan. According to Mr. Ray, 319 requires that states have a NPS Management Plan, which is updated on a five year basis. For the 2012 NPS Management Plan, the section worked closely with the Montana Watershed Coordination Council (MWCC) to bring in public comment and to distribute the news of the plan's development. Mr. Ray said that the goal of the NPS Management Plan is to provide a clean and healthy environment by protecting and restoring water quality from the harmful effects of NPS pollution. It is a voluntary program, so a major emphasis is on establishing new social norms. One way to do this is by communicating success stories to encourage involvement. MWCC's watershed news is one approach that the section takes to spread such information to a large scale audience.

The audience for the topic of NPS pollution is varied, as are the measures of success. Mr. Ray said that they try to work from a common basis. His section communicates identified problems and then listens to the responses of folks in order to come to a common agreement on action that can be taken to address issues.

The section puts out a 319 Annual Report, as required by EPA. The audience is not just EPA, but also includes the public and legislature. It gives information on the NPS program overall and highlights specific organizations and activities. The report also lists out 5-year goals of the program. Mr. Ray highlighted some of the goals listed in the document. He also cited several recent delisting successes.

Mr. Ray mentioned that one of the other responsibilities of his section is to conduct TMDL Implementation Evaluations (TIEs). In terms of prioritization, Mr. Ray said that TIEs fall off in comparison

to NPS activity work. Staff turnover within WPS has created a temporary set-back in the work goals of the TIEs.

Mr. Ray described some other ways that WPS distributes their messages. One way is through Watershed Wednesday. This occurs in the rotunda of the capitol building during the legislative session. Other methods include logos and slogans, as well as a Wiki site.

Mr. Ray concluded his presentation by discussing two success stories. The first example was Big Spring Creek. In 2002 and 2003, DEQ was doing TMDL work for the creek. One of the listings for Big Spring Creek was PCBs. The investigation of the high PCB levels led to the discovery that the source of the contamination was the paint used in the Fish, Wildlife and Parks (FWP) fisheries raceways. The fish were highly contaminated with PCBs. Cleanup standards were identified by the TMDL program, and then the project came to WPS for implementation. DEQ worked with FWP and EPA on cleanup and monitoring plans. The stream channel was dredged for four to five miles downstream. The water was filtered and then discharged back into the creek. Now the young fish in Big Spring Creek are very low in PCBs. The older fish still have PCBs, but they are now somewhat safe to eat, as long as folks do not eat the normal projected consumption of number of fish per year.

Chairperson Tyler added that the discovery of the PCBs essentially put a hold on property values in the area. That value is now increasing again. Mr. Ray mentioned that FWP worked with the community and landowners along Big Spring Creek to remediate the properties and address concerns associated with the contamination.

The second example given by Mr. Ray was Big Creek in the North Fork of the Flathead. This was identified as a sediment impaired stream. The Forest Service (USFS) was the land management agency for that watershed, and they worked with DEQ to develop the TMDL as well as implement the reductions necessary to achieve full aquatic life support use. Big Creek was delisted for sediment in the 2012 listing cycle. Mr. Ray credited USFS as having been a huge partner of the NPS program. He said that they have been very actively involved given their budgetary constraints.

Mr. Smith mentioned that the watershed projects, in regard to TMDLs, have been predominately sediment and temperature related. He asked if there are any nutrient projects, and mentioned that Montana seems to be behind other states in starting nutrient NPS projects. Mr. Ray said that they have seen nutrient projects come through. As one example, Mr. Ray said that in 2009 or 2010 the Lewis and Clark Water Quality Protection District got a 319 grant to do some studies on septic systems in the Lake Helena Watershed. They identified different management measures that could be appropriate and explored with the community the types of heightened practices that might be used to address septic systems. Out of that 319 grant, and through the Lewis and Clark City-County Health Department, came a recommendation to require septic systems to be inspected on a five-year basis and to be pumped and repaired when necessary. This turned into a Lewis and Clark County ordinance, and it is being staged through time with the Lake Helena Watershed being the first part of the county to be managed for septic systems on a five-year basis.

Mr. Smith asked if they have gone to the level 2 septic systems with filters. Mr. Ray replied that in some cases they have. This is typically voluntary, but Mr. Ray said that new subdivisions do have to go to level 2. Mr. Smith asked about studies done in the Seeley, Swan, and Flathead areas. Mr. Ray said that there was a study done in Whitefish Lake regarding failing septic system contributions to the lake. About three

years ago, the City of Whitefish put together a critical lands ordinance outlining a number of approaches to addressing water quality.

#### **Surface Water Revised Classification Statute –**

Mr. Eric Urban, supervisor of the Water Quality Standards Section of the Water Quality Planning Bureau, gave an overview on what DEQ has for legislation. There are five bills, one of which pertains to the Water Quality Act.

The first bill is the “Orphan Fund.” This is a fund available for cleanup of superfund sites in case the responsible parties cannot be located. The department is asking to make some modifications allowing for these funds to be used in a couple of additional circumstances. This includes situations where the responsible parties can be identified but are unable to complete the reclamation work. It also includes instances where there are immediate health risks and it is prudent to get funds for remediation more quickly than is possible for the responsible parties to provide.

The second bill is an expanded use of the petroleum mixing zones. Currently, there are a couple of instances where the mixing zone regulations are not allowed. This bill would reduce specificity to expand aquifer allowances.

The third bill is the air quality fee structure. DEQ will be asking for adjustments to the authority on fees. Currently, the air structure only collects permit and annual fees. There are other things that demand DEQ staff time, however, so DEQ is going to be asking to restructure the system of fees collected.

The fourth bill pertains to Brownfields. DEQ is going to be requesting to use Brownfields funding in expanded areas. Ms. Amy Steinmetz explained that these funds are federal dollars that can be used to clean up contaminated community sites. Recipients of these funds are limited to nonprofit organizations. Some communities are in positions where development corporations, their city, or their county can serve as gateway organizations for funding allocations to nonprofits. Other communities do not have anyone who is in a position to do this for them. In these situations, the department could act as the small entity and be able to grant the loan money.

The fifth bill pertains to the Water Quality Act. According to Mr. Urban, the Water Quality Act section 75-5-302 was originally developed with great purpose but now needs updating. Within Section 75-5-302, there is a portion stating that whenever a waterbody use is to be changed the department must demonstrate that the waterbody was originally misclassified. This is a state requirement, which was likely in place before the CWA.

Mr. Urban said that this bill would not change the federal requirements. To change a use class, there is a specific federal process that must be followed. There are six tests to go through, and it must be determined that the waterbody does not pass one of these tests in order to change its use class. These federal requirements will not be affected if the requested change passes legislature. Uses cannot be changed without first going through BER and then the federal approval process. Mr. Urban emphasized that this bill would not open up a floodgate for use class changes.

Mr. Urban displayed a 1967 map showing surface water use classifications for specific streams in Montana. Over time, the state took this map and applied the use classes of specific streams to entire watersheds. This raises the question of whether this was the original intent.

Chairperson Tyler asked about the use class issue related to a treatment facility in Conrad. Mr. Urban replied that DEQ has had an idea of Use Attainability Analyses (UAAs) for a long time. Use classes are a way of lumping uses together, and the use has a number associated with it to protect that use. Today, there are 17 use classes where most criteria apply. The intent is that the use class system identifies various differences across the state. Mr. Urban said that the reality is that this system is pretty generic. The situation in Conrad occurred when the water treatment facility sought relief from certain criteria. They asked DEQ to investigate a specific area, and if applicable, to change the use class and criteria of that stretch of waterbody. It is the only use change that DEQ has made. The overall result was that they ended up changing the watershed description rather than the use class or the related criteria applying to the water treatment facility.

Ms. Chillcott asked if there are specific examples of why the existing requirement is a concern. Mr. Urban responded that the New World Mine site is one specific area where this is an issue, but he believes it has potential in other areas as well. At the New World Mine, the state and federal government have put tremendous resources toward reclaiming the mine site. At this point, the work is pretty much done in this area. The problematic part of this area is that there is a naturally occurring background of acidic water at the site. The difficulty is in determining which portions are the naturally occurring elements and which are caused by human activity. At this point, Mr. Urban said that he feels they have done all economically feasible work possible at the site. He would suggest reclassifying the site at this point, and then setting the necessary criteria to maintain the new standards.

Ms. Chillcott asked about the logistics of changing a class. Mr. Urban responded that this is currently classified a B-1 stream. To downgrade the use will be a big challenge. The department would go to BER to present the current conditions of the stream. They would make an economic argument tied into information about the natural background conditions of the area. The presentation would emphasize protecting the conditions that currently exist in the area. Then the department would develop the criteria necessary to maintain current conditions.

Mr. Urban said that while this is a unique situation, there are some other areas in the state where streams are classified above what is naturally possible to achieve.

The other situation mentioned by Mr. Urban is that of fish-less areas where effluent is going. To change the use to not protect the fish that currently do not exist in the area, DEQ would have to demonstrate that the fish were never in that area. Under the proposal, DEQ would use scientific knowledge and current data to demonstrate this historically. They would set criteria and uses to what they have today. This allows for increased administrative efficiency. The goal is to take the 17 classifications and to create definition within the classes. This would allow DEQ to bring the use classes up to date using our current technologies and knowledge.

Ms. Williams said that the goal of the CWA is to restore water quality to fishable and swimmable status. She expressed that her understanding is that classifications are supposed to reflect the capability of the water rather than today's conditions. She said that when Mr. Urban referred to using current conditions as the basis for determining the classification of the New World Mine, she began wondering if this would set a precedent for deviating from the goal of the CWA. Mr. Urban responded that in the case of the New World Mine, the site is naturally unable to meet the uses, or there is a manmade element that is not allowing for those uses to ever be attainable. He said that the federal process is to restore waters, but the UAA process is composed of the six pieces where uses can be changed. The UAA process is there

to protect against deviating from the intent of the CWA. Current federal rulemakings are requiring states to set uses to highest attainable use.

Ms. Williams then asked about public involvement. Mr. Urban said that any time one deals with the CWA, there will be a lot of public interest and concern. At this point, they have not done a lot of public outreach. Only recently has the department decided to move forward with this bill. The current use class system does not line up with the sophisticated criteria now available. Ms. Williams suggested, as the public member of the council, that this go out to the public prior to the department taking this bill to legislature.

Chairperson Tyler said that in places like the New World Mine, the idea is not that the department is just quitting while significantly more could be done. Mr. Urban said that instead the department has done all that they can and now they intend to take steps to keep from backsliding. Keeping the current classification would simply generate additional work to try to meet standards that are not achievable.

Ms. Chillcott asked how this approach compared to what other states do in these circumstances. She asked if other states have a notion of naturally occurring plus social economic components. Mr. Urban replied that this is the six step piece of the Code of Federal Regulations, so every state has to make the same demonstration to change a use.

### **ACTION ITEMS**

Following a short break, Chairperson Tyler announced that he had to leave for another meeting. He requested that Mr. Selch take over as chairperson for the remainder of the meeting.

#### **Subdivision Rules and Vessel Pump-Out Rules–**

Ms. Barbara Kingery of the Subdivision Review Section of the Public Water and Subdivisions Bureau clarified a comment previously made during the meeting. With regard to the topic of level 2 septic systems, Ms. Kingery said that, to her knowledge, there is no ordinance for this in Lewis and Clark County. When a developer or individual applies for a septic system, these have to go through a nondegradation analysis. In some situations, it is appropriate to put a level 2 system in to control nutrients going into the groundwater. This is determined on a case by case basis.

Ms. Kingery then began her presentation on proposed changes to Circular DEQ 4 and the departmental rules that go with it. She started by briefly describing the background that led to the proposal of adding vessel pump-out information as a new chapter to Circular DEQ 4. Ms. Kingery said that while they are opening Circular DEQ 4, there are other minor changes that she would like made for purposes of grammatical correctness and clarification.

With regard to the vessel pump-out stations, Ms. Kingery said that they have been trying to gather input where ever possible. Following the distribution of a draft document, a stakeholder meeting was held in September 2014. During that meeting, a draft of rules and guidance was created.

There are three known existing boat pump-out stations in the state that are open to the public. When the federal Clean Vessel Act was passed by the government, it also set up a pocket of funding that individuals can apply for in order to install these stations. These three different stations have received these funds. The premise of the pump-out stations is to protect the surface waterbody. If you have a boat pump-out station, you will need to put it into a holding tank. These holding tanks can only be

pumped by a licensed pumper. There needs to be a secondary containment system for the configuration. There are other elements in the design standard. Overall, at this time, the proposed rules are focused on starting out simple with the understanding that the department can go back and make amendments as needed in the future.

Pump-out units are extremely varied in style. Mr. Kingery described some of these different configurations. She asked if WPCAC (Water Pollution Control Advisory Council) members had experience with the systems, or advice to share. Ms. Chillcott asked if only three stations will be affected. Ms. Kingery responded that these three stations are just those that are currently licensed. If folks are part of a subdivision or a public water system they will come into DEQ for review. Otherwise, there will be a county review prior to permitting. The county will review the system in accordance with DEQ 4 and then will permit it as they would any other septic system.

Ms. Williams mentioned that the material received by WPCAC members covered the definition change. She asked about the material addressing the proposed requirements. Ms. Kingery replied that the main part is in Circular DEQ 4. Mr. Smith added that the document that was emailed to WPCAC included both the Administrative Rules of Montana (ARM) as well as DEQ 4.

Ms. Kingery then discussed a few changes that she would like to see made in DEQ 4. One of these changes is in Appendix C, which deals with groundwater observation wells. When a county looks at climate data in relation to a septic system, they can decide if that is a year for which they want to accept groundwater monitoring. DEQ rules require that there be at least four feet between the bottom of a drainfield and groundwater. In the past, they used snowpack data and the National Oceanic and Atmospheric Administration reported that information on a 30-year historical average basis. Now, this is no longer averaged. Instead they are now using a 30-year median. The reason for this is that snow melts more in the shape of a median curve rather than distributionally. Now that the reporting has changed, a 30-year average is no longer always available for every site. So, Ms. Kingery would like to change DEQ 4 to allow either the median or average to be used.

Most of the other changes to DEQ 4 are grammatical or small, non-substantive alterations.

Ms. Kingery then talked about the changes to the department subdivision rules (17.36 ARM). A few things were left out during the formal rule making process of the rule package that was adopted in September 2014. These have already come to WPCAC, and they are again included in the package at this point. Some other changes related to the pump-out rules, DEQ 4, and nondegradation rules are also included.

Ms. Kingery said that they would like to add definitions to ARM for the vessel pump-out rules in order to match DEQ 4. They also would like to add an hourly fee for the review of boat pump-outs. Both Public Water and Subdivisions charge \$105 per hour. The other fee that they are proposing is for review of nondegradation. With every septic system, the department grants a mixing zone. Rule dictates standardized mixing zone sizes dependent on the size of lot and type of system. The rules also allow for proposals of a site-specific mixing zone, the applications for which tend to be lengthy and time intensive. There are increasing numbers of requests for review of site-specific mixing zones. So, they would like to propose a \$200 fee to compensate staff for time spent on this work.

Ms. Bucklin Sanchez asked if the change in fee assessment is because of the variability in time taken to review different applications. Ms. Kingery said that they have a provision to assess fees hourly. As they

are unsure how long it will take to review the boat pump-out stations, they decided it would be fairer at this point to assess fees on an hourly basis as opposed to charging a set fee.

Mr. Smith asked about the differences in the fee schedules in 17.36.802 versus 17.38.106. Ms. Kingery explained that 17.38.106 is the fee schedule that applies to public systems while 17.36.802 is the fee schedule that applies to subdivisions. If there is a public system within a subdivision, one would go to the public water fee. If a boat pump-out station does not serve 25 or more people 60 days a year, they would use the subdivision fee schedule. The public side is more costly because their fee schedule is set up in accordance with existing chapters of DEQ 4. The idea is that the public systems will be impacting larger populations.

Ms. Kingery explained that she is seeking a WPCAC motion to proceed to BER for review. They intend to take Circular DEQ 4 and the amended public water rules (17.38) to the board. The subdivision rules, including 17.36, are department rules so they do not need to go before BER.

Mr. Cole asked what types of fees are collected and how they are used. Ms. Kingery explained that both Public Water and Subdivisions do not receive general fund money. They are strictly a fee-based program. Fees assessed are used to pay for salaries, operating expenses, legal costs, and enforcement. Mr. Cole asked how much this totals annually. Ms. Kingery replied that they have been in a deficit for the past five years. Last fiscal year, they received approximately \$600,000. They anticipate \$700,000 for this next year due to an increasing number of recent applications.

Ms. Steinmetz reiterated that Ms. Kingery is seeking a motion to take amendments to subdivision rule 17.38 and Circular DEQ 4 to BER. Mr. Smith made a motion to proceed; Mr. Salley seconded the motion.

Mr. Wendland expressed concern that if there is too much regulation, folks could be pushed to dump wastes illegally. Ms. Kingery said that since 1991, the legislature has required DEQ to adopt rules for vessel pump-outs. They simply had not worked on adopting those rules until now. Mr. Smith clarified that this does not regulate the boat owners. Instead, it regulates the pump-out facilities. Mr. Wendland said that there are likely pump-out stations that are not currently following regulations. Ms. Kingery said that she anticipates this to work similarly to septic systems. These will need to be permitted through a local septic permit process. There are many septic systems out there that pre-dated the permitting process in their counties. Generally, when these are found, they are required to come into compliance if the system is not functioning properly. For existing boat pump-out stations, as long as they are not causing problems, Ms. Kingery said that she does not anticipate someone would go after the station.

All were in favor of the motion; the motion carried.

#### **First WPCAC Meeting of 2015 –**

The next BER meeting is December 5, 2014. At that time, they will decide the date of their first meeting of 2015. Without being certain of BER's meeting schedule, the next WPCAC meeting date can only be tentatively selected. Ms. Steinmetz said that she believes that the first 2015 BER meeting will not likely occur until after January 20. To allow time for council comments, the first 2015 WPCAC meeting would need to be held before January 13, 2015. Ms. Steinmetz suggested January 9, 2015, as the next tentative meeting date. There were no council member concerns with that date. Ms. Steinmetz also mentioned that she had booked a room for a conference call on December 19, 2014, in case the first 2015 BER meeting took place earlier than January 20, 2015. Ms. Steinmetz said that following BER's December 5 meeting, she would let WPCAC members know which date would be selected.

**Public Comment –**

There was no public comment.

**Agenda Items for Next Meeting –**

Ms. Steinmetz said that, with legislature in session, she believes that the next couple of meetings will be fairly quiet in terms of action items. Mr. Smith mentioned that he would like an update for the council regarding comments on Waters of the US, as the public comment period closes November 14, 2014. Ms. Bucklin Sanchez expressed interest and mentioned that Mr. George Mathieus had been scheduled to follow up with Mr. John North. Ms. Williams replied that Mr. North had sent her some short answers to her previous questions. Ms. Williams stated that she would send those comments to Ms. Steinmetz for distribution to WPCAC members. Ms. Steinmetz said that she would see about getting Mr. North or Mr. Mathieus to come speak at the next meeting.

Ms. Steinmetz added that the upcoming meetings would also cover any legislative session items affecting DEQ. If council members have any additional suggestions for briefing items, those can be sent to Ms. Steinmetz or Chairperson Selch via email.

**ADJOURN**

Chairperson Selch sought a motion to adjourn the meeting. Mr. Salley moved to adjourn; Mr. Leu seconded the motion. All were in favor; the meeting adjourned at 1:25 p.m.

**REFERENCED LINKS FOR MEETING MATERIALS**

(Sites last 11/20/2014)

**November 7, 2014 Agenda -**

[http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/AGENDA\\_11-7-14.pdf](http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/AGENDA_11-7-14.pdf)

**Agenda Links:**

Approved Minutes from August 29, 2014 -

<http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/8-29-2014ApprovedMinutes.pdf>

Landfill Permitting and Remediation -

<http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/LandfillPermitting.pdf>

Watershed Protection Section and Clean Water Act 319 Program -

[http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/2014WPCAC\\_WPS\\_Overview.pdf](http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/2014WPCAC_WPS_Overview.pdf)

Subdivision Rules and Vessel Pump-Out Rules -

[http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/SubDiv\\_AgendaForm.pdf](http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/SubDiv_AgendaForm.pdf)

[http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/DRAFT\\_Subdiv\\_rules.pdf](http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2014/November7/DRAFT_Subdiv_rules.pdf)

Submitted by,

Sarah Norman 11/20/2014