

FINAL MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL – Nutrient Variances
Thursday, April 13th, 2017
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:

Stevie Neuman (phone)

Earl Salley (phone)

Karen Sanchez (phone)

Trevor Selch

Craig Workman (phone)

Montana Department of Environmental Quality Staff Members Present:

Paul LaVigne

Timmie Smart

Amy Steinmetz

Mike Suplee

Eric Urban

No Members of the Public Present

CALL TO ORDER

Chairperson Trevor Selch called the meeting to order at 9:09 a.m. The only agenda item was Dr. Mike Suplee explaining the triennial review and updates to Circular DEQ-12B, which pertains to nutrient standards and variances. DEQ-12B is focused on wastewater facilities and helping them meet the stringent standards that are in DEQ-12A. An audio file of Dr. Suplee explaining this process with the slideshow can be found here:

<https://www.youtube.com/watch?v=jQXyPFZKIFg>

Q: (referring to the lagoon analysis and DEQ's decision to not change the current method of implementing general variances for communities with lagoons) *The land application costs, is that just because certain communities don't have readily available land where they can land apply? Or are they set up and acquiring land and pumping the water to that land? What's the cost?*

A: It was just the mechanics of developing the process. The land cost was incorporated in this analysis, but the availability of land and suitability of soils was not included.

We have encouraged land application with the smaller communities when they become aware of the new standards that will be enforced. But DEQ realizes that a lot of these communities can't do it. It's fundamentally unaffordable.

Q: *Just to give the group some perspective, can you give some examples of the towns in both the > and < groups?*

A: In the >1MGD group are Billings, Bozeman, Helena, Whitefish, Kalispell as examples. Examples in the <1 MGD group are Stevensville, Chinook, Conrad.

Q: *Libby or Miles City?*

A: No, Miles City is out because they have a lot of dilution from the Yellowstone River. They are not part of the group that needs a variance.

Q: *The May 31st public hearing- is that a Board of Environmental Review hearing?*

A: That's a Department hearing only. These are only Department rules, so the board is not involved. We hold the hearing, respond to comments, and then it goes to our Department head for signature. At that point it's ready for publication in the MAR notice.

Q: *As far as WPCAC review, we're making a recommendation to DEQ as opposed to BER.*

A: That's correct. Because our public comment period is starting up soon, WPCAC comments are coming in advance of that and will be considered along with all the others.

Dr. Suplee opened the discussion for specific comments on the rule and the circular, which will be given serious consideration as DEQ moves forward. He explained how this is the first triennial review and it was a new, complicated process because it was never done before. DEQ developed the criteria, and the variance process, but the details on how everything would work on the ground were not totally clear.

Q: *I spoke with quite a few engineers to get their input and I have some of their questions that I'd like to ask for them. But first, you're referring to this as the first triennial review but there was also the change to the requirement for a variance. The timing couldn't have been worse, working around the legislative session and the timeline was so strict.*

1. *With the timeline to achieve the Highest Attainable Condition; if they are not able to meet this timeline and let the general variance expire, would there still be the individual variance option?*

A: That is a legal question that I (Dr. Suplee) am not capable of answering. The rules say that overall, if we miss a deadline or if a court decided that the criteria or statute was wrong and the variance would go away and we'd be back to the narrative standards. These are easy to interpret now because we have all the data of what the numbers look like around the state. Now, in the most recent version of the circular it says that if one category, like the <1MGD category was disapproved by EPA, it doesn't mean the other categories go away. The other two categories would still be in place and still function. The Department has no intention of having a regulatory cliff that would bankrupt towns.

Q: *The general comment that I get from engineers is that the timeline is very extreme and everybody wishes there was more time to get better data. What if we didn't do anything and we took the time to come up with these numbers.*

A: It's not advised to do that. At the last nutrient work group meeting, I asked if we could realistically expect to look at + or - 20% to 30% error bars instead of + or - 50%. They said that would be millions of dollars and that they don't know who would pay for it. I am not convinced that we would have come up something dramatically more accurate than what we have, especially for the >1MGD group. This level of cost analysis that Tetra Tech did originally was a broad brush. And even the more site-specific costs from engineers was pre-planning. To get more detailed information it would be at the end of design phase. We really did focus on the group that needed a variance. When we did the original nutrient standards, it was thought that everybody everywhere was going to need a variance, when actually not as many need one. We've focused on this 30% who need one. This is a much more refined analysis.

2. I also have 4 separate comments.

- Slide 16: Current and Proposed Treatment Requirements in DEQ-12B – *Under >1MGD category, the proposed 6 mg TN/L and 0.3 mg TP/L. The consensus from the workgroup seemed to be 7 and .5. I got several comments that if you're going to design for 6 you're*

actually designing for 3. When you're treating for both nitrogen and phosphorous, you're optimizing for both and that also provides more reason to go back to the 7 and .5.

A: I wouldn't say this was a consensus of the group, but this was pointed out by 1 engineer.

Q: *I got this from 3 engineers.*

A: Tetra tech definitely thinks that 7 and 3 is a step down, but if you look at other approaches it's more like 4 to 8 and something significantly different to get down to 3. We acknowledged that 3 and .1 was marginally affordable. The next level up was affordable and with advanced optimization we could get a 7 down to 6.

- *Slide 18: Time to Achieve HAC – The Design/funding phase. Although it's 17 years overall is fair, but is there concern about the second design phase only being 2 years? When you look at municipal bonds on the public market that's reasonable. But with biannual legislative sessions and communities having to assemble a funding package over 2 years, that may not be reasonable on the <1 MGD communities.*

A: Step 6 is where it starts (slide 19) – you get a year to evaluate alternatives and a PER, then another 2 years for funding, and another year for design and bid. This is probably just a polishing step and not a massive upgrade.

And note that these say approximate times. These could vary for a year or so in either direction on any given step. It's a conceptual outline of what we think it will look like.

- *The CV (slide 21) – In general this seems reasonable, but one comment was on variability at low limits. Any research that shows if nutrient levels fall outside of the variability range will an algal bloom happen? The variability of treatment at low levels of nutrients may be higher and negatively impact the permit holder. You are treating the high levels of nutrients at a high variability and most likely impact the algae bloom. But is that true at the lower limits? And when you start getting down at the end of the 17 years towards the numeric nutrient standards, could you reevaluate that CV value and have it based on statistics?*

A: We have a fair amount of detailed analysis of when and where the nutrient standards can be met and if you go out of compliance, how long it takes before there's a problem. We have calculated that to be about 2 weeks. All this goes back to 2014. In these cases you still wouldn't be meeting the nutrient standards at the end of the mixing zone but maybe somewhere down stream you would. More refinement of the CV process is a reasonable idea.

Q: *Also, is a monthly limit appropriate instead of seasonal?*

A: We would really like to have a 2 week limit. That's how long it takes to induce an algae bloom. This is what the permitting section is accustomed to and any 2 week period is likely going to be in compliance. Seasonal is definitely not going to work. Most don't apply outside of the summer anyway.

- *Slide 22 – If the facility is treating better than the level, then your level of treatment defines the variance limit. This incentivizes not treating well until July 1st.*

A: Thanks for the comment.

More comments:

- *We have the utmost respect for the work that DEQ does. Whitefish will likely be submitting an individual variance in the near future. But some of the comments I've heard over and over, was that this wasn't a DEQ prompted change, but from a change in the CFR that couldn't have come at a worse time. One thing that might have made it easier is if we would have started the process a little bit earlier knowing that the CFR did*

change. It felt like the notification didn't come until the Whitefish PER was reviewed and commented on earlier this year. Maybe this process could have started a little bit earlier. Going forward maybe we need a 6-month pre-review to be aware of anything at the EPA level that could prompt a change. Also, I think a lot of the heartburn for the public works community was all the time and effort that was put into this process a few short years ago. It seems that was kind of thrown out and put into this new process for the first triennial review of the general variance. I agree that the final solution isn't perfect, but given the variables I think it's a good solution. I would like a little more consideration of the 7 and .5. I think the 7 to 6 kicks you into another level and these are comments you're going to hear a lot during the public comment process. All said, I would recommend approval by DEQ of this addition to circular 12-B and I appreciate all the time and effort that's gone into it by DEQ.

Response:

- Thank you for your comments, and it's a really good idea to kind of "put the screws" to EPA in advance of the next triennial review to find out if there is anything new out there that DEQ needs to be made aware of.
- *Response: Yes, and I'm happy that we're not proposing any changes in the lagoon variance at this point. That's a group that might have a fair amount of people not even aware that this triennial review was going on. In some of the smaller communities the people who are the lagoon operators are also cleaning city hall, plowing streets, etc. Treating wastewater is one of many hats they wear. Things like this are tough for them to track and stay on top of. The lack of change in the lagoon variance is definitely beneficial.*

Mr. Selch looked for a motion to proceed with changes to circular 12-B. Craig Workman made the motion recommending approval of the June 2017 addition of circular 12-B by DEQ. Mr. Salley seconded it. There was no additional discussion. The motion carried.

Ms. Steinmetz said that the next meeting has no action items on it, and the potential briefing item is Caroline Balliew and an overview of general permit for stormwater construction. The comment period ends at the end of May. Mr. Selch said they will make a decision about the next meeting and keep the workgroup informed.

The meeting adjourned 10:25 am.