

DRAFT MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
Friday, July 7th, 2017
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:

Scott Anderson, P.E., alternate for Karen Sanchez

Stevie Neuman (phone)

Early Salley (phone)

Montana Department of Environmental Quality Staff Members Present:

Amy Steinmetz

No Members of the Public Present

Ms. Amy Steinmetz began the meeting at 10:05. A quorum was not present; therefore a change was made to the agenda. The only action item on the agenda, approval of minutes from the April 13 and 28 meetings, will be deferred until the August 18 meeting.

Ms. Steinmetz proceeded to provide the following status updates.

SB325 (MCA 75-5-222) Rulemaking Status Update

Part 1.

Part one of 2015 SB 325, which was codified as MCA 75-5-222, states that DEQ may not apply a standard to a water body when that standard is more stringent than the nonanthropogenic condition of the water body, and where applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body.

Ms. Steinmetz recapped her summary from the April 28 meeting—DEQ at that time was working on development of a method for determining the nonanthropogenic condition of arsenic in water bodies in Montana, and had proposed ideas on how to select a standard from the nonanthropogenic condition of a water body to EPA. She mentioned the need to draft rules, a circular, and a technical support document to accompany this rulemaking. DEQ has now drafted a rule, which provides authorization for the Board of Environmental Review (the Board) to adopt the method itself as a water quality standard, and numbers generated from the method would be termed nonanthropogenic standards and would not require individual rulemaking. EPA has proposed a similar approach to developing water quality standards in order to save time with rulemaking and EPA approval. They term the methods “performance based approaches”. The methods themselves need to be very specific to provide sufficient comfort to the Board and EPA for them to approve the methods. If there is not sufficient specificity and reproducibility in the methods, then they could still be used as templates, but each water quality standard generated from the method would need to go through the regular rulemaking procedure.

In addition to the draft rule, DEQ has also developed a draft circular, which would be adopted in the rule already mentioned, and which would house the various methods for standard development. The document currently contains methods for the development of a determination of nonanthropogenic arsenic and development of a standard from the nonanthropogenic condition. As more methods are developed, they will be added to the document.

And finally, DEQ has developed a technical guidance document which provides details on how the steps contained in rule and circular may be carried out.

All of these documents are being reviewed internally and DEQ hopes to get them to EPA soon for their review, as well as to DEQ's legal team for their review. The next SB325 workgroup meeting is scheduled for July 26, and DEQ plans to present solid drafts of these documents to the workgroup at that time.

Part 2.

Ms. Steinmetz summarized part two of SB325, which deals with water quality standards variances for parameters that exceed the applicable standards due to anthropogenic causes, such as from legacy mining. DEQ presented these rules to WPCAC in February and went to the Board in March, at which time the Board decided not to move forward with rulemaking. The Board's main concern was that an individual variance under MCA 75-5-222, part 2 is not appropriate for rulemaking because the variance would apply to a specific discharger through their Montana Pollutant Discharge Elimination System permit, and that's not defined as a rule under the Montana Administrative Procedures Act, or MAPA. MAPA states that a rule must be a standard or statement of general applicability. It was suggested that individual variances would be more suitable as a contested cases.

DEQ staff has worked with the DEQ legal team and EPA and has updated draft rule language that's currently going through the final stages of internal review and approval. DEQ will share this language with the workgroup at July's meeting, and will return to WPCAC in August with the updated rule and a request to move forward to the Board at their September 29 meeting.

The updates remove requirement to adopt individual variances as rules, but specify that they must go through a public process and be approved by EPA before being used in permits.

Nutrient Variance Rule Update

DEQ held a public hearing on May 31, 2017 regarding nutrient standards variances rulemaking. Several people commented at the hearing, and there were both opponents and proponents. Considerably more written comments were received and DEQ addressed 58 of them in total. Changes to the draft Circular DEQ-12B resulting from the comments were mostly minor in nature. However, a significant change to the final Circular DEQ-12B was the combining of the wastewater optimization study (formally Section 2.2) with the pollutant minimization program (formally Section 2.3). DEQ considers this change to be consistent with state statute and EPA's definition and description of pollutant minimization. The final Circular DEQ-12B became effective June 24, 2017 and is now being implemented for permit development. An updated guidance document was also released by DEQ and accompanies the circular.

Ms. Stevie Neuman asked what the main concerns were.

Ms. Steinmetz replied that to her knowledge, there was a pretty even split between those who felt that the new variance numbers for nitrogen and phosphorus were too high versus those who felt that they were too low. Mr. Scott Anderson, who attended several of the nutrient workgroup meetings, agreed with this and stated that a main concern of opponents to the rule updates was the significant cost burden that the changes would impose on small communities. He then asked if it would be possible to see the comments and responses. Ms. Steinmetz stated that she would be happy to send the Montana Administrative Register (MAR) Notice of Adoption of the nutrient variance rules to the council. The MAR notice includes the summarized comments and the Board's responses. She added that if Mr. Anderson were interested in seeing the individual comments, those could be provided as they are all public record. Mr. Anderson indicated that the MAR notice would be sufficient.

Briefing on SB337

This was the bill introduced in the 2017 legislature to eliminate the Board of Environmental Review. It was passed by the Senate and the House, and was transmitted to Governor Bullock on May 17. He vetoed the bill on May 25.

Ms. Steinmetz mentioned again that rules for SB325 Part 2 should be on the August 18 agenda, and ended the meeting at 10:25 a.m.