

DRAFT MEETING MINUTES
SENATE BILL 325 RULEMAKING COMMITTEE
Tuesday, January 17th 2017
1:00pm to 3:00pm
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Committee Members Present:

Christine Brick (phone)

Art Hayes (phone)

Brenda Lindlief-Hall

Ella Smith (for Adam Haight)

Peggy Trenk

Montana Department of Environmental Quality Staff Members Present:

Myla Kelly

Jeff May

Adam McMahon

Melissa Schaar

Pete Schade

Timmie Smart

Amy Steinmetz

Mike Suplee

Eric Urban

Ms. Myla Kelly called the meeting to order at 1:05 pm. The meeting commenced with introductions followed by a re-cap of the December 12th meeting, where Ms. Melissa Schaar presented flowcharts explaining what DEQ is proposing to put in their guidance document and Part 1 of the Rulemaking process. Ms. Kelly said these may end up in guidance or circular, that it hasn't been decided. The other part of the meeting discussion focused on how DEQ chooses criteria after the non-anthropogenic demonstration. Dr. Mike Suplee spoke about the stability with the 25th to 75th percentile and choosing a number within that data set. Choosing a number within this range requires some considerations:

- What use could be affected by this change in distribution?
- What would be the implications if there were a change in the distribution?

Also discussed at the meeting was what the likelihood is of seeing a change in that type of distribution, that it's quite unlikely in a large river system as the Yellowstone River, but more likely in a smaller waterbody. Dr. Suplee's diagrams were included in the minutes.

Ms. Kelly asked for comments or changes to the minutes. Ms. Peggy Trenk wanted clarification of what needs to be approved by the BER, page 3 second paragraph in the minutes. Ms. Kelly clarified that if the performance based method is approved by EPA and the BER, DEQ doesn't have to go back to the BER each time. But, Ms. Kelly added that the number (the individual site specific criteria) that goes through

the process will have to be approved by the BER and EPA. EPA also has not used a performance based method with a non-anthropogenic condition. Ms. Steinmetz said she will clarify this in the minutes before they are posted.

Ms. Kelly asked for any other questions. There were none and the meeting moved to the next agenda item.

Progress on MCA 75-5-222 part 1 guidance document

Ms. Steinmetz hopes to have a completed draft by February that she can hand out to the workgroup but for now she covered pieces of the document that she's been working on.

- Incorporated comments from EPA.
- Updated definitions and the introduction
- Made sure all of the pieces in Ms. Schaar's flowchart are included.
- Will include Dr. Suplee's explanation and importance of the shift in distribution with the selection of the criterion.
- Protection of downstream water quality once the criterion is implemented. This is written in the guidance document of Part 2 and deals with material damages. It asks if an addition from a point source will cause problems further downstream.
- Need a thorough discussion of parallel but integrated process of UAA's (Use Attainability Analysis) which are in the background questions in the guidance.
- Beneficial uses and if they are protected. If not it may require a use change.

Ms. Steinmetz said the guidance document or Part A where it's more general will have to cover different scenarios. It will not be covered in as much detail as the site specific criterion method for non-anthropogenic condition, but the different situations like using a model or mass-balance loading will be included.

Ms. Steinmetz asked for questions. There were none. Ms. Kelly moved to the next agenda item.

Preliminary suggestions for criteria selection for sections of the Madison River – Confidence Interval Examples Using Potential Criteria and Sample Datasets

Questions from Ms. Schaar's slideshow presentation:

- Ms. Trenk asked what policy or scientific guidance drives the decision on what percentile should be used for the criteria. Dr. Suplee pointed to one of Ms. Schaar's slides that showed the measures of arsenic where most of the dots on the slide are natural with no human influence. He explained that if DEQ picks a criterion somewhere in the middle, in the long haul there would be more little dots scattered close to the center. Dr. Suplee explained that if you're trying to keep the water quality in the central tendency, you want a criterion that hovers around the central tendency which is well characterized between the 25th and 75th zone, with the midpoint being the 50th. Dr. Suplee said the policy is set by where you want things to end up in the long haul already knowing the natural condition is way above the standard.
- Mr. Pete Schade asked about the tributary contribution (slide 15: Madison River Total Arsenic Mass Balance Summary) and if it was based on monitoring data. Ms. Schaar said that most of it was, but some areas there were access problems so they estimated based off of drainage areas and similar streams.

- Regarding the 90% confidence interval, Ms. Trenk asked how this choice is defended. Dr. Suplee said it has implications of what the error means and who it's affecting. He gave the example of putting the confidence interval at 95% there is only a 5% chance of having a false positive, meaning the Department says there is a problem when there isn't. There is also the type II or beta error where the Department says the stream is fine but actually has a problem. Dr. Suplee said with small data sets the only way to get the other error lower is to lower the 95% to 90%. The data error is more important because DEQ would be worried if they had said the stream was fine when it has a problem. Dr. Suplee added that if you're from the regulated side you are more concerned with a false positive.
- Ms. Kelly asked if seasonality in the data affected the confidence limit. Ms. Schaar said you take the whole data set and take a 50th percentile and the spread of the data are going to matter. Ms. Schaar explained if you have better distribution over an entire year there is better characterization of data that's based on average yearly flow and average condition.
- Ms. Ella Smith asked how much downstream use played into these decisions. Ms. Steinmetz said downstream use doesn't affect the selection of the criterion, but more of the implementation. Mr. Schade asked about implementation of criterion and if she meant what seasons and what numbers apply for different uses. Ms. Steinmetz clarified that she meant how that number is put into a permit and how discharges are allowed to occur. Mr. Schade was thinking more about seasons where there isn't agricultural use and if there's an adjustment, like with E-coli criterion. Ms. Steinmetz said this situation is a year-round use and what's there naturally, both of which have to be protected. Mr. Schade likened it to putting this in the category of a drinking water use to which Ms. Steinmetz agreed.

Ms. Kelly moved to the next agenda item.

Timeline and deliverables necessary for rulemaking

Ms. Kelly reminded the group that they developed the rule language and guidance for the variance piece for Part 2 and it has been reviewed by both the work group and DEQ. While there is still time for comment, DEQ feels confident about their progress. Ms. Brenda Lindlief-Hall asked if they had been reviewed by EPA. Ms. Kelly said EPA has been kept in the discussion during development and have seen the drafts at this point. Formal comments will be received when the rulemaking package is finalized. Ms. Kelly also reminded the group that these draft documents are on the website under October 2016's meeting materials.

Ms. Kelly moved to the two parts of Part 1; the rule language and the Part 1 guidance or circular. DEQ is currently working on the rule language which will include definitions of non-anthropogenic and the different factors in guidance. Ms. Steinmetz explained that DEQ will have a rule specifically designed to implement the statute but there are other things that might need to be addressed before they go to the BER, like nondegradation and how it works with implementation of the eventual criteria. There will be some changes to the rule language and the nondegradation rules, and DEQ will also closely look at the permitting rules to make sure the criteria can be implemented the way DEQ intends.

Ms. Trenk asked how deeply DEQ has gone into the nondegradation and if they knew if it would go into the statute or the rule. Ms. Steinmetz doesn't think anything needs to be done to statute, just to the rule language with SB325.

Ms. Kelly moved to the guidance or circular component. DEQ envisions it having 3 different parts:

- a) Site specific criteria general method development, which includes the demonstration of non-anthropogenic but is not specific to arsenic. It's for any parameter that is high as a result of non-anthropogenic causes. It also includes data needs, selection of criteria and implementation. Ms. Steinmetz is leading this.
- b) This is similar to number 1, but will be arsenic specific. Ms. Schaar is the lead.
- c) The addendum, which is what Ms. Schaar presented today in the Madison River case study and calculating a criteria for 3 different hydrologic units.

Dr. Suplee asked if in part a) some of the other methods will be included, like the watershed specific modeling for a certain parameter or the reference approach. Ms. Steinmetz thinks they will be included as options but not in detail. She said they would be fleshed out in detail in the individual methods themselves in part b. Mr. Suplee thinks the data needs under part a) will be fairly generic because they won't have an exact number.

Ms. Kelly reviewed the Draft SB325 Timeline to Rule-Making.

- By the end of March DEQ would like to present the final draft of part 1 rule and guidance.
- Internal and EPA review would continue and the work group comments incorporated.
- Present it again at the April SB325 meeting.
- Brief WPCAC on Part 1 and 2 at their April meeting.
- Finalize the rule and guidance by May and present the final at the May SB325 meeting.
- Brief the BER of Part 1 and 2 in June.
- Present the final rule package at the June SB325 meeting.
- Request initiation of rulemaking at the August 4th BER meeting.

This draft timeline will be posted on the website.

Ms. Kelly moved to the next agenda item.

Schedule Spring 2017 Meetings

- Tuesday, February 21st at 1:00 PM
- Tuesday, March 21st at 1:00 PM
- Tuesday, April 18th at 1:00 PM
- Tuesday, May 16th at 1:00 PM

The meeting adjourned at 2:21 pm.