MEETING MINUTES
SENATE BILL 325 RULEMAKING WORKGROUP
Wednesday, July 26, 2017
2:00 pm
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Workgroup Members Present:
Adam Haight
Tammy Johnson
Peggy Trenk
Dave Galt
Brenda Lindlief-Hall (phone)
Derf Johnson (phone)

Montana Department of Environmental Quality Staff Members Present:
Kirsten Bowers
Myla Kelly
Melissa Schaar
Amy Steinmetz
Mike Suplee
Eric Urban
Tim Davis

Other:
Alan Olson
Tonya Fish (phone)
Svein Newman (phone)

Ms. Myla Kelly called the meeting to order. The meeting commenced with introductions.

The minutes from the previous meeting were approved and will be posted on the website. Ms. Kelly moved the meeting to the first agenda item.

MCA 75-5-222 part 1 (nonanthropogenic) rulemaking – draft rule

Ms. Amy Steinmetz summarized the draft rule for MCA 75-5-222(1). The draft rule defines "nonanthropogenic condition" and "nonanthropogenic standard (NAS)." These definitions would be added to ARM 17.30.602. She stated that
(1) of the draft rule is essentially the authorizing provision that would allow DEQ to develop nonanthropogenic methods.
(2) provides the required components for a nonanthropogenic method,
(3) lists the requirements for derived NASs to become effective water quality standards, and
(4) is an incorporation by reference of a circular that would house individual NAS methods as they are adopted by the Board of Environmental Review.

(5) is a statement requiring protection of downstream water quality standards when implementing NASs.

Mr. Svein Newman asked about protection of uses. Ms. Steinmetz noted that downstream uses are protected via (5). Downstream water quality standards include designated uses, and so when implementing NASs, the designated uses downstream must be protected. Mr. Newman asked about the uses of the water body for which NASs are being developed. Ms. Steinmetz acknowledged that that is not spelled out in the rule itself, and that DEQ would consider that moving forward, but she stated that it is addressed in circular and she would explain further as she summarized the circular.

Draft circular

After summarizing the draft rule, Ms. Steinmetz proceeded to summarize the draft circular (informally called DEQ-14). She stated that the general introduction is a summary of MCA 75-5-222 and a summary of the three steps necessary to determine a NAS: determination of the nonanthropogenic condition (DON), standard selection, and determination of the highest attainable use.

Section one is dedicated specifically to arsenic. It is titled *Demonstration of Nonanthropogenic Arsenic Condition and Standard Selection for an Isolated Primary Source.* This section defines an isolated primary source and discusses the method for the determination of nonanthropogenic condition. It also reiterates the three steps. Section one is broken down into subsections that follow the three steps.

Ms. Tammy Johnson asked if "isolated primary source" is really the best description of the Yellowstone Park Caldera. She suggested that it's not really "isolated." There was some discussion on the topic and Ms. Steinmetz stated that in absence of other suggestions "isolated primary source" would remain the description for now, however if anyone can think of other suggestions to please let DEQ know.

Section 1.1 of the document explains in detail the method for the demonstration of the nonanthropogenic arsenic condition. Ms. Steinmetz explained that DEQ started with the Madison DON and NAS and generalized them just enough that they describe how the processes can be used to develop NASs for other waterbodies with an isolated primary source of arsenic.

Section 1.1.1 describes how to define the hydrologic region. Before anyone begins collecting data, they need to define exactly what they are looking at, so they need to define the hydrologic region of interest. DEQ has determined that the hydrologic region of interest should be defined using USGS HUCs of the appropriate size to capture the region of interest, and extending an appropriate distance downstream so that future downstream impacts may be identified.

Section 1.1.2 outlines anthropogenic and nonanthropogenic data needs, including arsenic concentration and flow to accurately represent the hydrologic region. This section also explains how much data are necessary, which depends on the variability of the data and therefore is a two-step process.

Section 1.1.3 discusses the mass load analysis. Paired flow and arsenic concentration data will be used to determine a total mass load for the subject water body.

Mass balance, described in section 1.1.4, subtracts all anthropogenic loads from the total load to determine the nonanthropogenic load, which must be expressed as monthly and annual median contaminant loads in a report along with the data and process followed (Section 1.1.5).

Mr. Alan Olson asked if DEQ considers the net load of arsenic when determining the standard (if there is arsenic in the water intake, then is that subtracted from the load attributed to the discharger?) Ms. Melissa Schaar stated that she had not considered that but would be sure to include it moving forward.

Ms. Steinmetz moved on to section 1.2, *Nonanthropogenic Arsenic Standard Selection.* She noted an important point summarized in the introduction of this section. "The purpose of a nonanthropogenic water quality standard is to protect the existing uses of the water body and to protect the long-term nonanthropogenic distribution of concentrations. Choosing an appropriate standard within the distribution can help ensure that the important part of the distribution necessary to maintain existing uses and conditions is protected."

After the DON is complete, the standard selection process begins. DEQ is proposing a dilution and seasonality test to help identify the appropriate NAS. The reason is described in the introduction, and the details of the process are explained in sections 1.2.1 through 1.2.3. In summary, current or future discharges have the potential to shift the nonanthropogenic arsenic distribution of the water body, which must be avoided in order to protect existing uses. The dilution test estimates the potential for such a shift to occur, and ensures that the standard is protective and reasonable. The seasonality determination is based on an assessment of high flow and low flow time periods and is used to help determine if seasonal standards are more appropriate than a year-round standard.

Ms. Melissa Schaar walked through the flow chart detailing the NAS selection process and discussed the steps and decision points illustrated.

Ms. Steinmetz then moved on to section 1.2.4, which discusses the arsenic standard selection. The standard is based on the 50^{th} percentile of the nonanthropogenic arsenic concentration distribution back calculated from the nonanthropogenic arsenic load and flow.

Mr. Mike Suplee explained section 1.2.4.1, which describes how frequency and duration apply to the arsenic NASs.

As required for the DON, a documentation of findings is also required for the NAS.

Section 1.3 describes the determination of the highest attainable use. Specifically for arsenic, the drinking water use must be assessed. If the current designated uses are not appropriate, then the highest attainable use of the water body will be proposed to the Board of Environmental Review for rulemaking. Changes to designated uses must also be approved by EPA. NASs will be appropriate to protect the highest attainable use of the water body.

Section 1.4 describes the final submittal and review. Both the DON and the NAS must be submitted to DEQ for review and approval. If complete and statistically valid, the public comment period will begin. A NAS may not be implemented until the public participation process is complete.

It was suggested that the rule cite other public notice provisions and include a reference to existing authorities. There was also a question about examples of use and value demonstrations described in the highest attainable use section. Ms. Tonya Fish stated that she would send DEQ some examples of use and value demonstrations conducted by other states.

MCA 75-5-222 part 2 (variance) draft rule.
DEQ presented the most recent version of the part 2 rules which include changes made based on comments provided during the March Board of Environmental Review (BER) meeting. The most substantial change made was that now there is no requirement for individual variances to be adopted by the BER. They will be reviewed by DEQ, go through a public comment process, and then they must be approved by EPA in order to be implemented for Clean Water Act purposes. DEQ plans to request initiation of rulemaking for the current draft rules at the September 29 BER meeting. This means that DEQ will first take the rules to the Water Pollution Control Advisory Council on August 18. With this date in mind, DEQ requested that the workgroup please provide comments on any of the documents discussed today by Wednesday, August 16.

DEQ will plan to set up another workgroup meeting in September to discuss comments received on the documents and the status of rulemaking.