MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
November 8, 2019
METCALF BUILDING
1520 EAST SIXTH AVE., HELENA, MT

PRESENT

Councilmembers Present:
Trevor Selch
Craig Workman
Bob Zimmer
Eric Campbell
Earl Salley

Via Phone:
Michael Wendland
Adam Sigler

Councilmembers Absent:
Mary Ahmann Hibbard
Stevie Neuman
Karen Sanchez

Others Present:
Hannah Riedl, DEQ
Sandy Matule, DEQ
Kurt Moser, DEQ attorney
Darryl Barton, DEQ
Peggy Trenk, TSRA
Christina Staten, DEQ
Maya Rao, DEQ
Christine Weaver, DEQ
Melinda Horne, DEQ
Kristy Fortman, DEQ
Lauren Sullivan, DEQ
Haley Sir, DEQ
Jon Kenning, DEQ
Myla Kelly, DEQ
Eric Regensburger, DEQ
Kurt Moser, DEQ attorney

Others on phone:
Vicki Marquis, attorney with Holland & Hart representing CHS Laurel Refinery
Scott Mason, Geochemist with Hydrometrics Kalispell, MT
+8 others who didn't identify themselves

CALL TO ORDER

Chair Selch called the meeting to order at 10:00 A.M. Chair Selch asked the councilmembers to introduce themselves and give a little background and history on what each represents, as new councilmember Eric Campbell was attending his first meeting. Chair Selch also asked Darryl Barton, who will be replacing Hannah Riedl, to introduce himself and give some background to the council. Chair Selch moved to the councilmembers and others on the phone.

APPROVAL OF AGENDA

Chair Selch brought forward the approval of the agenda. Councilmember Salley moved to approve the agenda. The agenda was approved.

APPROVAL OF MINUTES

Chair Selch brought forward approval of the September 6, 2019, meeting minutes. There were no changes. Michael Wendland moved to accept the minutes. Earl Salley seconded and the minutes were approved as recorded.

Action Item

Arsenic Standards for Parts of the Yellowstone River presented by Michael Suplee, Acting Section Supervisor, DEQ Water Quality Standards and Modeling Section

Dr. Suplee introduced himself and pointed out that there were other DEQ staff in the room who could answer questions from permitting and standards and modeling. Dr. Suplee asked if council members got a draft of the rules that were on the table. He apologized for not getting them out sooner, but would be going over the rule in detail after the Power Point presentation. Dr. Suplee went through a Power Point presentation that explains these standards, where they came from, how they would be implemented, etc. Dr. Suplee gave some background on the rule and then talked about the demonstration of non-anthropogenic arsenic levels, and how DEQ figures out what was non-anthropogenic or anthropogenic and why we are concerned about that derivation of standards and implementation of these standards. This is not a statewide action. This rulemaking applies very specifically to this reach of the Yellowstone River – basically starting from Yellowstone National Park and extending all the way down to the confluence with the Bighorn River. It is chopped up into a series of segments which Dr. Suplee will talk about in greater detail later for the purposes of this rule, but at this stage what the council needs to know is it applies to the main stem of Yellowstone from the park to the Bighorn River. The issue is the State of Montana has across the board for all water bodies a water quality standard for arsenic of ten micrograms per liter. We know the Yellowstone River has concentrations higher than that from sources in the Park. Dr. Suplee went through his Power Point Presentation which is posted on the DEQ website.

Dr. Suplee explained the draft rule regarding the Arsenic Standards for the Yellowstone River and opened it up for general questions.

Trevor Selch asked what would be an anthropogenic source of arsenic typically in Montana?

Dr. Suplee responded, “Long ago they used to put arsenic in some types of pesticides – you don’t see that anymore, but there is a little bit of residual out there. That would be going back to the 1950s which is a disbursed source. More commonly you might see it in the effluent coming out of an oil refinery treatment process.

Trevor Selch asked about tailings of mining operations?

Dr. Suplee responded – Yes, for example, up near the park there is one tailing pile from a mine that we must account for as anthropogenic.

Adam Sigler had two questions – the first is “do you have a sense for what the diel changes in arsenic concentration are, if any?

Dr. Suplee responded that he didn’t think DEQ ever looked at that because most of the time the data collected was paired flow and arsenic concentration data at the gauges and that typically occurred whenever our staff could get out and obtain samples. So, we are talking in the middle of the day. Mike is not aware of any work in the Yellowstone where someone has gone out and done diel sampling to see if there is something coming off the bottom at night or not. Mike is not aware of anything like that now. There might be something on that in the literature that he is not aware of, but that work has not been carried out here.

Adam Sigler: I wouldn't expect it to be important in a river the size of the Yellowstone, but I know it can be quite important in smaller more highly contaminated streams, but I was just curious if that had been looked at.

Adam Sigler: My second question is I am wondering about the rationale for it because this is the first time that this work has been done on the Yellowstone in the state – is that correct?

Dr. Suplee: It is not the first time that someone has looked at the idea that there's a lot of load from the arsenic in the park. There is actually a paper from the late 90s which shows the kind of load and flow characteristics from the park all the way downstream and from that paper you can see the same things that we are seeing. The difference is that what we did was we went in and kind of got right into the details to make sure we could conclusively say this is the non-anthropogenic fraction.

Adam Sigler: I guess I am just wondering about the decision to do it on the Yellowstone rather than the Madison, and if there is forthcoming work likely to happen on the Madison?

Dr. Suplee: The Madison, to my knowledge, is done, but we have not come to that modeling work quite yet, but the field data collection component is probably done. That might be something Myla Kelly can answer better than me.

Myla Kelly: We used the Madison River because that is a data rich system as well as data that we have available on arsenic concentrations and flow, and so we used the Madison River to establish the process for demonstrating natural and for creating a standard once that demonstration was completed so we did do the work as a template for the work on the Yellowstone, but we didn't go forward with changing standards yet. It might come up as a priority but really there is no permitting driver on the Madison as far as kind of a driver for changing standards.

Adam Sigler: Thank you – that answers my questions.

Maya Rao: So, if there was a long-term change in the median arsenic concentration that was demonstrated, would that potentially trigger a rule change in the future?

Dr. Suplee: Yes, it would. Let's go back to that – that is kind of how we have set this up, so the idea is that monitoring, and assessment goes out as you describe, they see a change. We cannot come up with any human cause, let's say all the permits have been met perfectly and there is nothing – there have been no new sources – and there are no unauthorized discharges that anybody can find; then we would have to conclude its natural and probably do more data digging on that. Perhaps the arsenic loads out of the park itself—which is the major source— have shifted and then we would go back and revisit that standard. So, in that sense the standard is dynamic over the long haul and it will adjust in time to the changing flow characteristics and runoff patterns of the river.

Darryl Barton: So, this study examines arsenic in relation to surface water treatment. I know in the Clark Fork there is arsenic there from mining. EPA did a study where they sampled wells in the area to see if that arsenic was going into the wells in the Deer Lodge area and they weren't, but they were in Milltown. Have there been any similar studies in the Paradise Valley upper Yellowstone looking at wells with arsenic contamination from the Yellowstone?

Dr. Suplee referred the question to Eric Regensburger: We looked at existing data from wells mostly from the GWIC and the NWIS database. We looked at some averages and medians and there weren't too many outliers. There were a couple of high wells described in our report that describes that no specific well was really high. Some were close to the park and probably the geothermal activity near hot springs in the park. There was one east of Billings probably from pesticide or agricultural applications in the past. There was also one in a closed basin in the Yellowstone Basin. The closed basin doesn't actually get to the Yellowstone. Other than that, we didn't see any really high ground water arsenic concentrations, but this was just taking existing data. We didn't target areas that might have high arsenic from a mine or something like that so just a look at the existing data. There wasn't a lot that indicated the problem with the ground water affecting the Yellowstone.

Dr. Suplee asked if there were any other general question before looking at the draft rule. Mike apologized for not getting the rule out to everyone sooner, but there were hard copies available. Mike explained the rule draft in detail and explained this rule is going to be an umbrella rule where it will capture both cases (natural and nonanthropogenic). He pointed out the first thing DEQ will do is identify natural and nonanthropogenic—which can be easily distinguished as just described (in the Power Point), because nonanthropogenic is easy to define in this scenario because it is the Park. Once you get into "natural", you get into definitions in our state law about all reasonable land soil and water conservation practices that protect uses. We may be looking at other types of natural standards (in the future), like for iron, for example. In the future they are going to fall more into that category. So, what we want to do is make the rule an umbrella wide enough to capture all that as well going forward. So, that is why it (the rule) is both natural and nonanthropogenic, as we laid it out, with named waterbodies that apply (like the Yellowstone), or waterbodies within geographic regions that could capture any kind of process we may look at. We may have natural or nonanthropogenic concentrations for one or more parameter that exceed the applicable standards. For these waterbodies the standards are provided here as rule and supersede the otherwise applicable water quality standards found elsewhere in state law. Many of those would be in DEQ-7, but not exclusively. Next, named waterbodies or waterbodies in geographic regions have no assimilative capacity for the applicable nonanthropogenic standards. Therefore, the Department may not grant mixing zones under subchapter five. Mr. Suplee stated earlier that there is no mixing zone – the rule lays that out clearly. The next part is standard language in all these rules. "No person may". Then the very first one under 3(a) is the main stem of the Yellowstone River. We specifically point out that it is a water quality standard and it pertains to human health. It is applicable by season, and we talk about high flows May through July, which is what I was showing you in the presentation. Low flow August through April. The average arsenic concentration during a season may not exceed the standards, and this is the other provision that we need to always include in our standards. Downstream water quality and applicable uses shall continue to be maintained. Then we get into the details of how they are laid out and there are just the five reaches that we were looking at; basically, from the Park border to Mill Creek – there is the two standards; same thing for segment two, three, four and then five. Mike pointed out that DEQ has exempted the high flow segment five. Five is not applicable, and so Circular DEQ-7 standard continues to apply and that is explicit in the rule. It is a relatively straightforward rule. DEQ believe it captures everything we need to do. It should operate in all the ways that we describe for monitoring assessment and permitting, etc. The Secretary of State makes this decision, but this would probably be housed somewhere in subchapter six as a standalone rule. Then in the future as DEQ looks at more of these studies where the standards are naturally above the standards we have in the books, we can fit them into the same rule going forward.

Christine Weaver: Could you explain what next steps you are envisioning for this rulemaking process?

Dr. Suplee: We will be asking the WPCAC council members to let DEQ know if you think we should go forward with this rulemaking to the Board of Environmental Review or not. If you say yes, then DEQ will be moving forward to the board at their December 9th meeting asking them for initiation of rulemaking, and then there is the 45-day public comment period. After the notice is published the rule would go into effect sometime in April or May of 2020. Then any future (nonanthropogenic) rules would come back to this council, but that will be some years down the road.

Chair Trevor Selch: Any questions for Mike?

Council member Craig Workman made a motion to move the draft rule to the Board of Environmental Review to initiate rulemaking. Council member Bob Zimmer seconded the motion.

Chair Trevor Selch: Is there any discussion? The council thanked Mike Suplee and others who worked on the rule as it was obvious a lot of work had been done.

Chair Trevor Selch asked if there was any public comment.

Vick Marquis introduced herself again as an attorney with Holland and Hart in Billings, MT. She represents the CHS Laurel Refinery. "They have a Montana pollutant discharge elimination system permit to discharge wastewater into segment four of the Yellowstone River that Mr. Suplee or Dr. Suplee presented earlier. I guess my first question is where is the draft rule available for us to see it, because we haven't seen it yet, and the Power Point presentation that was just provided we haven't seen that either. We participated in a Senate Bill 325 or group meeting where there was a short version of the PowerPoint, but it sounded like what was presented today was different so I'm wondering when those will be provided to the public. This rule isn't very straightforward. You know the last version of the supplemental documents, the demonstration of natural, the non-anthropogenic standard documents – those were dated August 2018 and those versions indicated that the standard would be about 14 micrograms per liter year-round. Now these newer versions took more than a year for the department to draft and they are dramatically different. I think Dr. Suplee said that there is a distinct difference on how arsenic is going to be governed in permits so there is a significant difference and there is a significant difference in the proposed standards. For instance, if you consider segment 1, it moves from an annual standard of 32 parts per billion which was proposed in 2018 to now a season low of 11 parts per billion in this current version, but these documents were only provided to us on October 21st which was less than three weeks ago and those were provided through the Senate Bill 325 workgroup. We still haven't seen the draft rule and then just 10 days ago on October 29th, DEQ held an informational meeting again for the Senate Bill 325 workgroup which was really good, and we got some great information through that. There were some technical difficulties and so we appreciated that DEQ followed up with a question and answer session that was just last Friday on November 1st , but still that was just one week ago and we haven't seen the draft proposed rule; so, we don't feel that there's been adequate time for the regulated public to review the documents and contemplate and really understand what it means in terms of a permit limit and this is really important because the implication could be fairly severe. We heard DEQ explain in this draft proposed rule there won't be any consideration of dilution or a mixing zone, or even really any consideration on whether a discharger is treating water that they bring into their system from the river that already has a high arsenic. So, for example, if a facility brings water in from the river that has that high non-anthropogenic level, then does that discharger

have to clean up all of that plus what they would add to the stream. That doesn't seem to fit with the Water Quality Act which governs and regulates the pollution which is defined in statute as the alteration of the water. It would impose a burden on the discharger to clean up what's there and what they add without giving them any type of credit for what they're bringing in. Another potential impact of restricting the permitting options is that it actually has the opposite effect of what's intended by the two statutes that DEQ mentioned earlier, 75-5-306 which is commonly called the no period and natural statute. It focuses on the natural condition of the waterbody and statute 75-5-222 also looks at the condition of the receiving waterbody, but segment 4, for example, a discharger in segment 4 will be forced to comply with the most stringent standard that's the 10 parts per billion standard during the exact time when the condition of the Yellowstone River is such that it is carrying the most arsenic that it carries at any other time of the year and you can see this if you look at the demonstration of the arsenic level documents – that's the bigger of the two documents. At the end there's an Appendix B-6 and in that table, you can see that in June the Yellowstone River in segment 4 is carrying almost 15,000 kilograms of arsenic during the month of June, yet that's when the most stringent standard is being placed on dischargers. Further, if that discharger is contributing a very, very low flow with a small amount of arsenic, the proposed draft rule, as we understand it, again we haven't seen it, it doesn't allow any acknowledgement that the discharge will have no noticeable impact on either the concentration or the arsenic load in the river, or, you know, it also doesn't acknowledge that the discharge will have no adverse impact on the beneficial uses in the river. For example, if you look in table 4-4 also in that demonstration of non-anthropogenic document, you'll see that the discharge from CHS' Laurel refinement refinery adds about 4 to 5 kilograms of arsenic per month to the river. Now that's less than 0.3 percent of the total non-anthropogenic load in the river even at its lowest level. So, if you go back to that table C-3 and look at February is when it's carrying its lowest level at just under 2,000 kilograms per month and what CHS is discharged would add to that would be less than 0.3 percent of what's occurring naturally, and the discharge only adds about three CFS of effluent and that less than 0.3 percent of the rivers low flow. So, the discharge that has no noticeable impact or measurable impact. It doesn't impact the most sensitive beneficial use of the river which is drinking water but a discharge like that will be subject to extreme capital cost of more than $10M and operating costs of at least $1M dollars per year. Now the DEQ has said that if the new standards are adopted that they'll provide less stringent permit limits, but that's not true because CHS' permit right now, which is under appeal, but in that permit the effluent limit was 11.3 parts per billion. Now as we understand the proposed standards, again we haven't seen the rule, we don't know we haven't had a change to work through it with the permitting folks but it would appear to impose an effluent limit of 10 parts per billion during the high flow season, and although that might appear to be less stringent than you know the 14 which is what they're giving during the low-flow period from a water treatment capital cost perspective that it doesn't matter because the system is going to have to treat down to that 10 parts per billion level so the 14 parts per billion standard provides no relief from the increased capital costs and although the difference between the 10 and what's currently in CHS's permit, it might seem small, but in terms of water treatment is huge from a cost perspective greatly and for its each additional part per billion that you remove, your costs go up dramatically. In fact, requiring CHS just to go all the way down to 10 requires an additional treatment step, so it's an additional capital expenditure for a whole new treatment step in their process that's going to be very, very expensive for use apparently during three months of the season. So, from an operational standpoint that's very difficult. Can you turn the system on and turn it off and expect it to work correctly you know and the goal here is to reduce the amount of arsenic in the river and I'm not sure that this standard in this rulemaking is going to do that? We need more time to consider the cost-effectiveness of this proposal. There are a couple statutes that require this. The first is 75-5-301 subparagraph 2 requires the board to consider the economics of waste

treatment and prevention when formulating and adopting standards. There's another statute 75-5-304, subparagraph 2, requires that when you're adopting effluent standards, which this appears to do, you must ensure that they're cost-effective and that they're economically, environmentally and technologically feasible. I'm not sure that this will get there because it's going to cost at least for the refinery a huge capital outlay, huge annual operating expenses and if you were to take a sample just downstream from their discharge you won't see a difference in the concentration of the Yellowstone River and you won't see a difference in the arsenic load to the Yellowstone River.

Chair Trevor Selch told Ms. Marquis that the council appreciated her comments and she made some good points, but they needed to give others the opportunity to comment. He also wanted to give Mike Suplee an opportunity to respond to her questions. Chair Selch explained that if it goes forward to the BER, there is a public comment process where there is an opportunity to review at that time as well. He asked to cut her off right there for a little bit and give Mike Suplee a chance to reply.

Vicki Marquis spoke again asking to conclude her comments just briefly, but their recommendation is that the Council ask that it not proceed to the BER at this time for a couple of reasons. "As soon as the draft rule is proposed, it's very difficult to change the language in that draft rule and we don't really understand how it's going to work at this point and this is something that's been pending for at least 5 years and so we're not clear on what the rush is right now but what we're asking for is a few more months of time to consider this and work with DEQ with us. So, we ask the WPCAC to recommend that it not go to the BER in December."

Chair Trevor Selch thanked Ms. Marquis and asked Mike Suplee if he wanted to respond to any of her comment.

Dr. Suplee responded that he would like to comment on a couple of things. The reason DEQ had the one-year hiatus between an earlier version of this and what you are seeing today – a lot of that is due to staff departures. The person who was working on the model left the department, and DEQ had to get together and figure out how all the work was done – get our heads wrapped around all the processes – make sure we understood it properly so that we could explain it to you rather than just come forward with something that we didn't really understand. We also had conversations with EPA in the interim about what they believe would be a reasonable approach to setting a standard given the types of variations and concentrations that you see in the river over time. So those things are reflected in the regulation that we are discussing today. About this question of a person who is drawing water in and perhaps not adding or taking away any arsenic to the river, I will let permitting handle this if they want to discuss it further, but that really is a question of reasonable potential. Will you cause or contribute to a water quality problem. The river can be a bit naturally higher or lower than that arsenic concentration standards, because it is going to vary a little bit around those numbers, of course, we don't control that. Our general understanding when we discuss this with permitting is that kind of system can be addressed as a pass-through system I would call it - by an RP analysis. Is that a fair characterization?

Jon Kenning, Water Protection Bureau Chief, asked Dr. Suplee to repeat the question.

Dr. Suplee: I was just pointing out that Vicki Marquis mentioned the idea about folks that would put water in essentially a pass-through system, and we have had conversations about that.

Jon Kenning responded that this is a little outside of this rule because we see that a lot of aspects – cooling towers and that sort of stuff. So, we have permitting procedures just to address that in general when there is arsenic or total suspended solids or whatnot. It is a little different than what the rule is, but we do have procedures in place for that.
Dr. Suplee: Vicki Marquis mentioned that the highest arsenic load occurs during runoff. DEQ agrees. We have the numbers to show it, but arsenic load is not the equivalent of concentration. Concentration and load are different things and for drinking water systems or aquatic life…they don't experience load, they experience concentration. That is an important point. Dr. Suplee indicated Ms. Marquis point about the economics of waste treatment and prevention is an important part of standards consideration. DEQ doesn't ignore that – at the same time under 222, we have been tasked with establishing a standard at the nonanthropogenic condition, and we believe we have done that in a transparent way. Beyond that I do apologize that the draft rule didn't get out earlier, but the technical documents have been out for a little bit of time now - several weeks. We have made every effort to discuss those things in detail. We have had some pretty lengthy conversations already with some of their folks working on that. Your decision about whether we go forward or not is your decision, but I think we have been transparent about what we have done so far.

Hannah Riedl advised the council that DEQ will be able to get this draft rule and Dr. Suplee's presentation on the WPCAC web page later today.

Myla Kelly added that the process and the amount of time on this process was vetted and worked through with the Senate Bill 325 workgroup for a substantial amount of time. Myla mentioned earlier that DEQ went through and developed this process with the Madison in mind, which was about a year in time in work, and as DEQ rolled that out to EPA and also to the industry groups regarding an annual standard, we received feedback that because we are directed to have a standard that mimics non-anthropogenic concentrations, we moved back from an annual standard to one that more mimicked what the actual concentrations were in the waterbody, which was the rationale for going from an annual standard to a low-flow and a high-flow seasonal standard which was really responding to feedback from EPA and from our other constituents in our Senate Bill 325 workgroup.

Christine Weaver added that the limits that are in place right now in CHS' permit that are under appeal, are reviewed every 5 years based on current data, current rules, and Ms. Weaver is not so sure today if they were reviewed today, whether they would be implemented or allowed to be implemented through EPA. What DEQ did at that time was somewhat in lieu of having a Senate Bill 325 type of resolution.

Myla Kelly responded: I think the questions have always been out there wondering what the non-anthropogenic concentrations were, and so I think through this process we have been able to now demonstrate what that was, as Mike said, in a transparent way.

Craig Workman asked for clarification regarding CHS having a permit to discharge to reach number 4 in this proposed rule which has a proposed high-flow of 10 micrograms per liter and low-flow of 14. Current statewide standards is 10, so this rule in essence doesn't increase that, does it?

Dr. Suplee responded, "No, it decreases it in the following manner – it is very interesting and coincidental that the river during certain seasons and locations is right at the human health standard and that is just a function of the dilution. Where it is being developed and applied to this new standard, the important key component which I touched on was the fact that one of the caveats in the DEQ-7,

which says no sample shall exceed (or at least that is basically how it is interpreted), would mean that no water quality sample could ever go be more than 10 , but under this new rule, for example, in segment 4 during high flow, there would have to be an average monthly limit of 10, but you could have individual samples in that data set as high as possibly 20. So long as the monthly limit is brought back down to 10. *(someone asked a question or made a comment – can't hear it)* Mike responded – Exactly, and that is the standard part of the TSD. DEQ wants to revisit the whole "no sample shall" thing in general for DEQ-7, but that is a larger project and has application for hundreds of standards, and we need to know a lot more about changes to that. This is not the time for that, but being that these are nonanthropogenic, we are developing and crafting these standards around the TSD. They are being applied, just to be clear, in a very close formulation to the human health standard approach that they recommend for human health in the TSD, that has been well-vetted.

Chair Trevor Selch asked if there were any more comments or questions.

Council member Adam Sigler commented – "I guess my reflection on the comments from Vicki, I think it was, is that the most stringent standards when the load in the river is the highest gives me pause for a moment to think about that, but following up I think I was surprised to know that the current permit allows discharge above the drinking water standard. I wouldn't have expected that and, so it is a lot to think about. So, my question is to the comment made that at this point it is hard to change the language and so that is an obstacle to moving forward to the BER at this time. Could you help me appreciate what the process of going to rulemaking looks like with public comment, and the possible opportunity for stakeholders to weigh in on the language.

Mike Suplee responded that basically, if WPCAC gives DEQ the green light to go to the BER and ask them to initiate rulemaking, they have choices as well. They could say no; they could say go back and revisit it; or they could say proceed. If they say proceed, then very shortly after that meeting there would be a 45-day public comment period. The Department will respond to all comments that are made on the rule, and it is not unusual at all that in such circumstances, we may modify the rule as a result of those comments if it seems to warrant doing so. After that we go back to the BER to present the revised draft rule to them and they can either adopt the rule, or tell us to modify it, or they may say don't adopt the rule. So, this is just the beginning of a large formal process – where every comment that comes in on this rule will be reviewed, considered, and addressed and 45-days of comment period will be allowed. All the materials we have looked at so far, plus the technical documents will be out there, and the draft rule, and the statement of reasonable necessity that goes along with the rule.

Council member Bob Zimmer asked Dr. Suplee if there is an outlet for the BER to have a longer comment period? Can they ask for a 90-day comment period?

Mike Suplee: We will need to have Kurt Moser respond to that question.

Kurt Moser responded under state law you typically can go as little as 28 days, but you have 45-days to meet the federal requirements because EPA must approve this after the BER approves it. So, right now the minimum is 45 days, but it is generally within the purview of the board and/or DEQ recommending to them if they wanted to do a longer period.

This is Vicki Marquis again – can I respond briefly on three quick points. The first one on the time limit. I believe there is a limitation that when rulemaking is initiated, it is completed within six months. So, if

the BER initiates rulemaking, the train is rolling down the tracks. Secondly, to Councilmember Adam Sigler's question or comment about the permit allowing a discharge at 11.3 higher than the standard of 10, that presumes that the standard is 10, but that ignores the statute in Montana that says the discharge does not have to be treated to a condition purer than natural. So, to look at this presuming that the standard of 10 is wrong. The standard is the natural condition and I want to point out Dr. Suplee simply pointed out the difference between concentration and load, yet DEQ has said that even at concentrations as high as 60 micrograms per liter, there is no impact to any beneficial use and there is an opportunity here where instead of the 10 and the 14 seasonal limits, we could come up with a limit that is imposed year-round and actually reduces the total amount of arsenic in the river. That limit would be constant. It would be more cost-effective, and it would put less arsenic in the river then when it proposes the 10 and the 14 and so what we are asking for is some time to explore that option and other options with the Department before this gets headed down the track for rulemaking.

Dr. Suplee responded that Ms. Marquis was correct that the time-limit is 6 months. If it is not completed in 6 months, the rule dies. The year-round possibility, I would say that ultimately all water quality standards must be approved by Region 8 for Clean Water Act purposes, and they were pretty clear in our early conversations with them that the standards should reflect varying concentrations of the river overtime to reflect the non-anthropogenic condition, not just an average annual. They were definitely clear that was not the approach that they were comfortable with.

Myla Kelly asked, "that would not be an approval standard?"

Dr. Suplee responded that was correct.

Chair Trevor Selch asked if there were any further comments.

Scott Mason asked to explore one last thing with Mike Suplee. The 2018 version that EPA took issue with was an annual or a year-round standard, but it was based on the low flow median of 14, and I think what Vicki is maybe getting at would be an annual median. Maybe it would be 13 for segment 4, for instance, and if you apply that same logic, I think it was 18 that was presented with the distributions that also would meet the intent of not shifting the distribution.

Dr. Suplee responded that he thought he might be correct and that it will be a little high sometimes during the year and sometimes low at other times of the year. If you set a standard like that, I would be cautious to state whether EPA would be comfortable with that based on earlier conversations. I am not saying it is an absolute no, but we definitely got that impression.

Chair Trevor Selch asked for any last comments.

Peggy Trenk from Treasure State Resources Association. We have been involved in the stakeholder group since its beginning. First, wanted to applaud all the DEQ staff. This has been a lot of work and a lot of meetings and a lot of time; so, we appreciate their interest in moving forward. We probably whine more than anybody about how long this has taken, and I am sure the legislators heat is there as well; so, I guess I don't know if there is a good question against whether or not there is a pressure that DEQ feels to move right now. If there are not time-sensitive issues, I guess we would like to see perhaps consideration of delay and promise not to whine about that and not worry about what the members are going to think. Thanked the Department for the work they have done.

Alan Olson with Montana Petroleum Association wanted to echo Peggy's comments. This is not a life and death situation. I think the comments of Ms. Marquis brought up in her testimony over the telephone should be considered and a little bit of a delay definitely isn't going to hurt. Thank you.

Dr. Suplee responded that the Department would agree that this is not a life and death situation.

Chair Trevor Selch asked if there were any additional comments.

Council member Bob Zimmer: A couple of council members wondering if it was worth delaying this to the next WPCAC meeting and when would that be?

Hannah Riedl responded January 10, 2020 – two months from this meeting.

Council member Bob Zimmer asked if the council wanted to consider delaying and table for the next meeting.

Council member Craig Workman rescinded his motion to move forward to the BER.

Chair Trevor Selch asked for a motion. Motion was made to table moving draft rule to BER. Motion carried.

Council member Bob Zimmer voted Nay.

BRIEFING ITEMS:

Renewal of the Petroleum Cleanup General Permit – Haley Sir, Permit Writer, Surface Water Section

Ms. Sir explained the permit and that it was first issued in 1992 on a 5-year cycle. It was last renewed in 2013. The discharges covered under this permit are those originating from corrective actions involving cleanup of gasoline, diesel fuel, kerosene, jet fuel, or heating oil and other petroleum products. This includes cleanup sites related to transportation of these materials and the waste water produced resulting from excavation or remediation activity, including surface or groundwater from pumping or monitoring of aquifers or contaminated spills. All petroleum cleanup sites in the State of Montana currently work directly with our Petroleum Cleanup Section including the Underground Storage Tank Section if appropriate. The large majority of these sites do not discharge to state waters. If they do, they must seek permit coverage through the MPDES Section. There are only three authorizations under this permit. Currently, one railroad, recovering diesel fuel from groundwater, and two remediation projects from previously established underground storage tanks. These are both old gas stations that are no longer in use. All three authorizations use air strippers, oil/water separators, and granular-activated carbon to treat wastewater before discharging. Then just a couple of notes on this renewal. Those seeking coverage, must submit a Notice of Intent form or an NOI as we call it. All new sources must provide analysis for potential contaminants before we authorize. Contaminants include volatiles, acids, and base/neutral compounds that may be present. If any of these contaminants are found above human health standards, they are not allowed coverage under the general permit, they must seek individual authorization. The EPA also ruled out use of lead in gasoline in 1995 so if the site is active during or before 1995, a lead analysis must be done. The use of water additive treatment is prohibited without written consent from DEQ. If water additives are requested, safety data sheets must be

included for review. All effluent limits are set to nondegradation criteria to ensure protection of both aquatic and human health standards, which includes POCs, Benzene, BTEX, MTBE, oil and grease and pH. Pretty serious ones, hence the limits are fairly stringent in this permit. It is currently under internal review and it is set for public comment on December 2, 2019, which will be a 30-day public comment period. There will be a public hearing on December 19 in the Metcalf Building. All public comments will be taken into consideration before the final permit is authorized sometime early next year. Ms. Sir asked if there were any comments or questions.

Chair Selch asked how many sites are currently under the permit. Ms. Sir responded three. Chair Selch asked where they were located. Ms. Sir responded one is in Havre which is a Flying J gas station, the second is the BNSF Railroad, and the third a hotel group in Whitefish which is basically built on top of an old remediation gas station site.

Statewide TMDL Advisory Group and brainstorming opportunities to coordinate – Hannah Riedl
Ms. Riedl reported that recently the Governor's Office audited councils which included the Water Pollution Control Advisory Council. It was pointed out to us that the council has vacancies that need to be filled. Thanks to Eric Campbell, our newest council member, WPCAC now only has one vacancy. This led to discussions with management about how vacancies on other councils are handled. Ms. Riedl wondered about sharing council members with other DEQ advisory councils. These conversations made her aware that the Statewide TMDL advisory group had a previous discussion about closer coordination with WPCAC, and to Ms. Riedl's knowledge that conversation was never brought around to WPCAC. Ms. Riedl briefed the council WPCAC on what the State TMDL advisory group has discussed regarding closer coordination. The Water Pollution Control Advisory Council (WPCAC) is authorized by Montana Code Annotated (MCA) to advise DEQ on matters related to water pollution and adoption of rules under the Water Quality Act. The members are often nominated by their interest group and are formally appointed by the governor. The STAG is also authorized under state law and are tasked with advising DEQ on topics such as TMDL development priorities, monitoring and assessment methods and data management, and TMDL implementation monitoring. These members are nominated by their interest groups also, but are formally appointed by the director of DEQ. Ms. Riedl talked in detail regarding the membership of both advisory groups - many of the council positions overlap. The STAG group recommended coordinating STAG and WPCAC meetings within the same day or two so that people who have interest in both could cut down on travel. STAG also recommended an annual concurrent meeting. STAG only meets twice a year and are planning a meeting for the end of January, which hasn't been set yet. Ms. Riedl thought some good topics for a concurrent meeting might be a briefing about WPCAC and what the department is doing do develop watershed restoration plans across the state. Ms. Riedl asked for council comments regarding cross-pollinating with STAG.

Bob Zimmer asked how WPCAC would conduct business – would we vote as a council in a concurrent meeting?

Kristy Fortman responded that the STAG is less formal. There is no voting – advisory only.

Christina Staten responded that she and Ms. Riedl had discussed this briefly and how this might work. WPCAC must discuss business, but the STAG may discuss topics that don't apply to WPCAC. If we were doing a Skype meeting, it would be difficult to split off.

Kristy Fortman thought they should plan a meeting when both groups had something in common to talk about. The STAG January meeting will be a Skype meeting. The call-in number could be given to the WPCAC members and if they chose to call in and just listen they could do that.

Councilmember Bob Zimmer would be interested in possibly doing a concurrent meeting, but wants to talk a little bit more about the tabling of the DEQ rulemaking process and maybe that means we move our January meeting to later January – not two meetings. Councilmember Zimmer would like coordination on board topics that we share.

Chair Selch thought it was worth pursuing, although everyone is very busy. WPCAC might need to add an additional meeting to meet with STAG.

Councilmember Sigler likes the idea – the concept of alignment and the sharing of call-in information. Council members can decide whether they have the time to call-in and listen. A joint meeting could be difficult, but maybe adjacent to one another with a little overlap.

Councilmember Sigler agreed with revisiting the tabling of the rule that Mike Suplee presented.

Councilmember Zimmer responded that he voted not to delay moving the rule forward. In reviewing these professionally, it seems when these things get tabled what do we accomplish in the interim? So, can we ask DEQ if they have made progress on addressing Ms. Marquis' issues. Is that something we can get feedback on to know ahead of time, and what is that progress? We are tabling this process until January 10. What is the criteria to move on again with the next meeting? I would like to understand that a little bit better – either from the member standpoint or DEQ standpoint. He volunteered from his standpoint, he would like to see what interaction has occurred between CHS and DEQ and is progress being made. The concerns around the economic impact of rulemaking, I think that is where Adam is going as well. I would like to understand the complexity of that cost evaluation and how that is going to affect the thresholds for loading and for treatment. If that is something that we could get in advance of a January meeting, that would be appreciated.

Ms. Riedl responded that what she heard from Ms. Marquis is why are the most stringent standards are being applied when the load is the highest.

Jon Kenning responded that if there are questions, DEQ answer those, but there is a little bit of a nuance that CHS is appealing DEQ; so, there may be some attorney-client privilege issues that DEQ can't talk about, but as far as questions around the standard or implementation of the standard, which seems to be the big thing and how it is going to be applied – especially if we are going to apply this to the Madison and other places, DEQ can come prepared for that.

Councilmember Craig Workman commented that packets to be discussed at WPCAC meetings should be out to members and on the website at least a week in advance, and all public comment made before a motion is made.

There was further discussion regarding the process. Darryl Barton will email Ms. Marquis for her specific concerns and forward them on to Mike Suplee.

Agenda Items for Upcoming Meetings

Next meeting is January 10, 2020. Officer elections.

Hannah – STAG

Bob – Adaptation of standards based on climate.

Chair Selch asked for a motion to adjourn the meeting. Councilmember Salley made a motion to adjourn. Councilmember Zimmer seconded the motion. Motion carried. Meeting adjourned.