

DRAFT MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
Friday, January 8, 2016
10:00 AM – 10:45 AM
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:

Trevor Selch

Barbara Chillcott

Michael Wendland

Keith Smith (by phone)

Mitchell Leu (by phone)

Earl Salley (by phone)

Karen Sanchez (by phone)

Stevie Neuman (by phone)

Zach Brown (by phone, alternate for Kathleen Williams)

Council Members Absent:

Mack Cole

Dude Tyler

Montana Department of Environmental Quality Staff Members Present:

Amy Steinmetz

Myla Kelly

Alex Smietanka

Members of the Public Present:

Brenda Lindleif-Hall (by phone)

Dave Galt

Ella Smith

CALL TO ORDER

Chairperson Trevor Selch called the meeting to order at 10:00 a.m.

APPROVAL OF AGENDA

Chairperson Selch moved to approve the agenda. There was no opposition; the motion carried.

APPROVAL OF MINUTES

Mr. Michael Wendland moved to approve the November 6, 2015 meeting minutes as written; Ms. Stevie Neuman seconded the motion. There was no opposition; the motion carried.

BREIFING ITEMS

The first briefing item was the Otter Creek Site-specific EC and SAR Standards. Ms. Steinmetz began by stating that DEQ is still having discussions internally on the best way to move forward. The team has come up with a process document that talks about the definition of natural or non-anthropogenic. She noted that there are different definitions in statute: natural and naturally occurring, and both include

human influences, and 75.5.222, refers to non-anthropogenic, which cannot include human influences. The document also goes through how the data is analyzed: what data they have; how it is spatially distributed; and, how it is temporally distributed. Finally, there are several options for how a number or numbers are determined from the distribution of non-anthropogenic data to come up with the actual criteria. Ms. Steinmetz hoped that within the next couple weeks, they would be able to take a document reflecting one or two of those changes out to the stakeholders.

Chairperson Selch asked if Amy would give another update when they get to that stage. Ms. Steinmetz agreed, and added that Eric Urban is working on coordinating with stakeholders and setting up some meetings to discuss where they are at and get continued input.

Ms. Barbara Chillcott then asked how Ms. Steinmetz saw the timeline moving forward after all the information has been given out to stakeholders. Ms. Steinmetz was hesitant to make guesses on the timeline at this point more specific than just sometime this year.

Ms. Chillcott asked Ms. Steinmetz to explain the impact of the EPA letter that came out in early December approving the previous standards that were in litigation for so long. Ms. Steinmetz answered by explaining that the letter Ms. Chillcott was referring to is a letter from the EPA to Board (Board of Environmental Review) Chair Joan Miles about EPA's approval of the 2003 EC/SAR standards for the Powder River, Tongue River, Rosebud Creek and all of the tributaries, including the tributary standards of 500 microSiemens/cm EC and 3 or 5 SAR. They have now been approved by the EPA, and Wyoming officially has to abide by those standards. She noted that those standards were being followed in Montana, but this broadened the implications for those standards. She went on to say that the last paragraph of the EPA letter mentioned the site-specific standards for Otter Creek that the DEQ is currently working on, and it just states that the EPA is working with the DEQ on that issue; Jason Gildea is from the EPA and is an Otter Creek team member.

The next briefing item was the Senate Bill 325 Rulemaking update. Ms. Steinmetz began by saying that SB325 and Otter Creek are moving forward together because they are so closely related to one another. She clarified that SB 325 is more specifically MCA 75.5.222. She stated that a date has been set for a meeting with a group of stakeholders, which is being referred to as the "SB325 workgroup". This group parallels members that have been on the nutrient workgroup, with some other additional members. They will be meeting on January 21, and plan to get as much feedback as possible from the workgroup, discussing different pieces of the legislation and how it might affect people in the workgroup, their industries, and ideas that they see moving forward. She noted that they have a very solid draft for the variance piece, and some initial language for the non-anthropogenic piece of that statute; they will be incorporating more as they make decisions.

Ms. Karen Sanchez asked what industries are included as stakeholders. Ms. Steinmetz offered to send an email to all the WPCAC members that lists the workgroup, but some included representatives from agriculture, oil and gas, mining, municipalities, and League of Cities and Towns.

Ms. Sanchez asked if she might be able to suggest professional engineers that might want to be involved, and Ms. Steinmetz answered yes.

ACTION ITEMS

The meeting then moved on to the first Action Item, which was the Triennial Review, presented again by Ms. Steinmetz. She stated that the Triennial Review will involve all of the members of Water Quality

Standards. She referred to a Water Quality Standards presentation by Eric Urban back in February 2014, for which the majority of WPCAC members were present. She provided a summary of the information he presented at that time.

Water Quality Standards consist of three pieces: beneficial uses of the waterbodies; numeric and narrative criteria designed to protect those uses; and, a non-degradation policy meant to protect high-quality waters. These standards apply to everyone, including permitted dischargers as well as other industries that affect the water and are not required to have a permit.

Beneficial uses are designated in rules for all of Montana's state waters, including surface water and ground water. The surface water beneficial uses are designated in the ARM17.30.6, and they include aquatic life, recreation, drinking water, agriculture, and industry. Ground water beneficial uses are outlined in ARM 17.30.10 and they include ground water irrigation and livestock watering in addition to drinking water.

Numeric and narrative criteria are designed to protect those uses. Narrative criteria are included in ARM 17.30.6 and 17.30.10. Examples of narrative criteria are pH, temperature and color. In a narrative criterion, there may be a number included, but it is somewhat vague. Numeric criteria are very specific. Some numeric criteria are included in ARM 17.30.6 and 17.30.10. DEQ circulars 7 and 12, which are not rules in themselves, are referenced throughout rules, and are therefore also part of the Triennial Review. There are over 250 numeric criteria, most of which are in DEQ Circular 12.

Non-degradation is probably the hardest piece of water quality standards to understand and explain. It is only used in the permitting process, and only for new or increased sources. If somebody applies for a new permit or an increased parameter, they would have to undergo a non-degradation review. The non-degradation rules ARM 17.30.7 have three different tiers, which protect existing uses of all State waters, protect against change to a certain degree in high-quality waters, and protect against any change in outstanding resource waters.

Mixing zones are also addressed in ARM 17.30.5, and are only implemented in permits. Ms. Steinmetz explained how mixing zones work, stating that under certain circumstances, a discharge may be allowed to exceed a criterion, as long as there is sufficient dilution, even at critical low flow, to dilute that exceedance to an acute criterion a certain distance from the outfall, and then a chronic criterion beyond that. Therefore, by the time you get out of the mixing zone, the criteria have to be met. Mixing zones are not available for carcinogens, and there are specific rules that state when mixing zones can be used and how they are to be used.

The Triennial Review is required by MCA 75.5.301. This is a section in statute that deals with classification and standards for State waters. The Board shall review, from time to time, in intervals of not more than three years, and to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality. The reason they include uses, criteria, non-degradation, and mixing zones is because they are all mandated in MCA 75.5.301. The last Triennial Review ended in October, 2012.

Moving forward, after input is collected and presented to the Board, the DEQ will request that the Board publish in the Montana Administrative Register a notice that requests comments from the public on anything in Water Quality Standards. It will give a deadline for comments, a date, time and place for a public hearing. When this happens, it will be the opening of standards for Triennial Review. In an

attempt to reach more people, this same request would be published in newspapers across the state, and mailings would be sent out to interested parties.

Depending on how many comments are received, the process could be quick or long. All comments will receive a response. Water quality standards would be revised where appropriate in response to the comments, and then the DEQ will go through the rulemaking process. WPCAC would then be approached and asked for comments and a recommendation to move forward and go to the Board to request initiation of the rulemaking, and then go through the public process again. There would be the notice of public hearing and request for comments.

The DEQ already knows several things that will be addressed through this process. For example, in the surface water reclassification, some designations, start points, or endpoints for stream reach use the words “water supply intake”, but that is no longer appropriate language in a lot of cases. Those words would be replaced with an appropriate latitude and longitude. The Montana Agricultural Ground Water Protection Act requires that in Montana, if a new pesticide is detected in groundwater, and the DEQ does not have a water quality standard for that pesticide, one must be adopted. Five pesticides are ready to go into DEQ 7. Also, there are some minor errors in DEQ 7 and some footnotes that need to be adjusted.

This concluded the Triennial Review portion of the meeting, and the meeting was opened for question.

Ms. Chillcott first asked whether the DEQ relied upon the public to identify where to revise standards. Ms. Steinmetz answered that they do rely a lot on the public because a lot of the industries that use the standards will know what doesn't work. In the next month or so, prior to closing the public comment period, the Water Quality Standards section of the DEQ will do a broad outreach and talk to the rest of the agency, Fish Wildlife & Parks (FWP), and the Department of Agriculture.

Mr. Zach Brown then asked Ms. Steinmetz to briefly touch on the extent of EPA involvement in the Triennial Review process. Ms. Steinmetz answered that she and Ms. Myla Kelly were meeting with EPA the morning of January 11. They do work very closely with the EPA on all of their Standards work. The EPA keeps a list of things that they see that should be addressed in a Triennial Review. The EPA will also give the Standards section something more formal at some point in this process. Ms. Steinmetz expects to receive a letter from the EPA within the next month or so, recommending certain things be addressed in the standards.

Chairperson Selch asked whether the EPA shares information, such as if another state has determined that these standards are not protective enough, or if new research comes out. Ms. Steinmetz answered that the EPA could; representatives from the states in this region and the EPA meet every year, and everybody is pretty up-to-date on issues of other states. If information was not shared at those meetings, the EPA might get involved, but Ms. Steinmetz was uncertain.

Ms. Kelly followed up to Mr. Brown's question, asking whether he was wondering if the EPA had to approve any changes that were proposed for the Triennial Review. Mr. Brown said that he would be interested in that and the relationship between the rulemaking practice and the State of Montana. Ms. Steinmetz stated that EPA has to review and approve all of the water quality standards. If they disapprove of something, there is a certain length of time provided for it to be fixed; if this is not done within the amount of time allotted, the EPA can step in and do it instead.

Mr. Keith Smith moved to take this to the Board and request that they open the standards for Triennial Review; Mr. Mitchell Leu seconded the motion. There was no opposition; the motion carried.

The next action item was the 2016 Chair and Vice-Chair elections. Chairperson Selch invited people to make nominations for these positions. He noted that Ms. Karen Sanchez emailed him and suggested that they nominate a Vice-Chair who would take over as Chair the following year. This would be beneficial to members so they would not occupy the Chair position without ever being able to get out of it.

Ms. Chillcott asked how long the WPCAC appointments are. Ms. Steinmetz answered that she thought they were four years. Ms. Steinmetz thought she had seen 2017. Chairperson Selch stated that if a chair or vice chair left WPCAC before his or her term ended, WPCAC would just have to fill the position with another member.

Chairperson asked for any volunteers or nominations for Vice-Chair. Ms. Chillcott volunteered for this position, saying that she has relocated to Helena. Mr. Michael Wendland moved to add Chairperson Selch as Chair and Ms. Chillcott as Vice-Chair for 2016. Mr. Earl Salley seconded that motion. There was no opposition; the motion carried.

The next action item was the 2016 WPCAC calendar. Ms. Steinmetz took into consideration dates of each BER meeting, as well as the cutoff dates 30 days prior to publication, which allots enough time to comment before any rule notices are published. She presented a list of possible dates to hold WPCAC meetings. Ms. Chillcott and Mr. Salley both said that March 18, 2016 would not work for them, and that was the only date that conflicted with everybody's schedule at this point. Everyone agreed that Fridays still work. The members of WPCAC told Ms. Steinmetz could pick the dates that work best for her, with the exception of March 18.

There was no public comment, so Chairperson Selch moved on to discussion of the agenda items for the next meeting.

Ms. Steinmetz announced that she would provide continued briefings of Otter Creek and SB325. She stated that by the next meeting, they won't have even closed the comment period for the Triennial Review so there would be no agenda item on that. Mr. Smith mentioned that at the last WPCAC meeting, Ms. Sanchez had requested an update on TMDLs. Ms. Steinmetz answered that Mr. Dean Yashan was unavailable to attend this meeting to provide those updates, but would be at the next meeting.

Mr. Leu asked Ms. Steinmetz whether it would be helpful to elaborate on DEQ's list of things to address mentioned in the triennial review discussion. Ms. Steinmetz asked if Mr. Leu meant to go into more detail with some of the items that they know will be addressed during this process, and Mr. Leu agreed. Ms. Steinmetz stated that by the time they get done with the process, it could be a pretty large rule package, so it would be a good idea to have a discussion beforehand.

Mr. Salley then asked whether WPCAC was required to have meetings in Helena. Ms. Steinmetz said it is, unless they have special permission from the Governor. Mr. Salley proposed a field trip to tour the Wastewater Treatment Plant in Great Falls in the summer.

Mr. Salley then mentioned the reorganization of DEQ, and asked whether they should get another update on the process. Ms. Steinmetz answered that the process is still not complete, and she will have more information on it down the road. At this point, it is still up in the air. She acknowledged that while the permit writers are still in their bureau, the bureau has moved to the Planning Division; however, there is still more change to come. She suggested having Mr. Tom Livers or Mr. George Mathieus (Director and Deputy Director of DEQ, respectively) come and explain the reorg, as well as the motivation behind it. Mr. Salley thought that would be helpful. Ms. Steinmetz agreed that if concrete decisions have been made by March 11, DEQ would brief WPCAC on those changes at that time. However, she believes it is not likely that those decisions will have been made by then.

ADJOURN

Ms. Chillcott moved to adjourn, and Mr. Wendland seconded that motion. There was no other business; the meeting was adjourned at 10:45 a.m.

REFERENCED LINKS FOR MEETING MATERIALS

January 8, 2016 Agenda:

www.deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2016/AGENDA_1-8-16.pdf

Agenda Links:

Minutes from November 6, 2015

www.deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2015/November 6/11-6-2015APPROVEDMinutes_ams.pdf

2016 WPCAC Calendar:

www.deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2016/2016MeetingSchedule.pdf