

DRAFT MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
Friday, November 6, 2015
10:00 AM – 12:20 PM
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:

Trevor Selch

Keith Smith

Michael Wendland

Mitchell Leu (by phone)

Earl Salley

Karen Sanchez (by phone)

Dude Tyler (by phone)

Council Members Absent

Mack Cole

Kathleen Williams

Barbara Chillcott

Stevie Neuman

Montana Department of Environmental Quality Staff Members Present

Alex Smietanka

Amy Steinmetz

John Arrigo

Kari Smith

Jon Kenning

CALL TO ORDER

Chairperson Trevor Selch called the meeting to order at 10:01 a.m.

APPROVAL OF AGENDA

Chairperson Selch suggested moving the Action Items on the agenda to the beginning of the meeting, and the Briefing Items to follow. Mr. Michael Wendland moved to approve the change, and Mr. Earl Salley seconded the motion. There was no opposition; the motion carried.

APPROVAL OF MINUTES

Mr. Mitchell Leu moved to approve the September 11, 2015 meeting minutes as written; Mr. Keith Smith seconded the motion. There was no opposition; the motion carried.

ACTION ITEMS

Water Quality Act Rules Repeal

Mr. John Arrigo began by introducing himself as the Administrator of the DEQ Enforcement Division. He was accompanied by Kari Smith, the Policy Analyst for the Planning, Prevention and Assistance Division.

Ms. Smith explained that they are hoping to address repetitive, outdated, or no longer applicable items with this repeal. First, she referred to ARM 17.4.201 and 17.30.1602, both similar water pollution rules that are already specified in the statute.

Mr. Keith Smith interjected briefly to ensure that they weren't proposing to get rid of something that was necessary for implementation purposes.

Ms. Smith responded that in this case, the administrative rules are duplicative of the statute. She went on, mentioning that the water quality standards ARM 17-36-45 is a prohibition of violation of radiological criteria, which is considered a pollution; therefore, it is already a violation under 75-5-605(1)(a), MCA, rendering ARM 17-36-45 unnecessary.

ARM 17.30.1386, dating back to 1989, discusses the requirements in having a delegated program—what kind of reporting would be required between the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA). Ms. Smith explained that this rule is outdated, and nowadays this subject is covered in the Performance Partnership Agreement.

Ms. Smith moved on to ARM 17.30.1401-1426, which are actually pre-treatment rules that specify how the Department would implement the pretreatment program. These rules were adopted in anticipation that DEQ would receive delegation of that program, but it was eventually realized that the Department would not be receiving funding along with the delegation. Therefore, the delegation was not accepted by DEQ. Because the EPA operates Montana's pretreatment program, these rules have never been implemented. However, in the future if the Department were to ever seek delegation for the pretreatment program, all of these rules would still be required to be repealed and updated to current standards.

Ms. Smith concluded by asking if anybody had any questions. Chairperson Selch then asked for an explanation of what the pretreatment program is. Ms. Smith answered that it is one of the five programs that falls under the Clean Water Act. Pretreatment is one of the requirements set on indirect discharges to our POTW; each one of the seven major cities has a pretreatment program that establishes limits and pretreatment requirements for industrial users that discharge 25,000 gallons or more to their wastewater treatment plant.

Mr. Smith mentioned that there were a couple industrial users in Hamilton, but they have so far chosen not to do that. Mr. Arrigo then asked Mr. Smith whether Hamilton has a pretreatment program permit from EPA, to which Mr. Smith responded that they had not yet applied for one. Mr. Smith expanded, stating Hamilton is a small city and only has 700,000-800,000 gallons/day. Mr. Arrigo asked whether the larger towns have to get a pretreatment permit, and Ms. Smith answered yes. The pretreatment rules actually help the wastewater treatment facilities, because it allows them to establish a permit program for those discharging. Mr. Smith went on, stating that the people with high BODs discharge a lot of phosphorus from their cleaning operations periodically, which is why the town of Hamilton is considering obtaining the permit.

Ms. Smith concluded by stating that the takeaway is that contained in every discharge permit is a requirement that if a permittee has a pretreatment program, they must provide copies of information to the State so that the DEQ is always made aware of any changes or any concerns that the EPA has. This allows the DEQ an opportunity to coordinate with EPA.

Next, Mr. Arrigo introduced the history of proposed repeal of water quality penalty rules, which was included on the memo he provided. These rules were adopted in 1998 by the Board of Environmental Review (BER) in order to establish a process to calculate penalties under the Water Quality Act. Legislation was passed in 2005 that established standard penalty factors that must be considered in penalty calculations for all the laws that DEQ enforces. In May, the Board passed penalty calculation rules to implement those statutory penalty factors. There is now only one process for calculating penalties. Most of the previous water quality penalty calculation rules were repealed, although some of the definitions and procedural sections were not. He explained that the definitions in the old rules had different classes of violations, which give a feel for major, moderate or minor gravity of the violations. These have been considered during the development of the implementation of the new rules. Because this has been going on for about nine years and there are already systems and guidance in place, they no longer need the old rules. Not only that, but they don't necessarily cover all of the violations for which DEQ seeks penalties. Mr. Arrigo referred to his handout, which included the complete set of penalty calculation rules. He went on to clarify that the repeal is for the Definition Section 2001, and the Enforcement Actions for Administrative Penalties 2003; 2005 and 2006 have already been repealed.

Mr. Arrigo went on to described the way the old penalties worked: by looking at the definitions, you will see the classes of violations he had mentioned earlier. He then referred to Section 2003 Enforcement Actions, explaining that part of it duplicates the law, but a lot of it is procedural stuff that is no longer relevant. He then provided an example of how these were being used. He concluded by requesting that the council provide a recommendation to the Department to go for repeal of these rules. He then opened it for questions; there were none.

Mr. Smith moved to forward the recommendations to the BER. Chairperson Selch seconded the motion; the motion carried.

There was no public comment on this subject.

The next action item was choosing a date for the first meeting of 2016. Ms. Amy Steinmetz proposed the date of January 8, 2016. She explained that they had some draft proposed dates for the board meeting, the first of which would be February 5, 2016. The first MAR publication date right after the first meeting is February 8, and WPCAC requires a 30-day period to review and comment after the first meeting. Therefore, to accommodate the deadline, a WPCAC meeting prior to January 9 is mandatory.

The council members agreed that January 8, 2016 worked for them. Ms. Steinmetz then offered to confirm her tentative room reservation for that date, and assured them that there would be a conference call and/or GoToMeeting made available.

Chairperson Selch noted that during this meeting, there would also be a vote for a new chairperson for 2016. Mr. Wendland made this a formal motion, to which Mr. Leu seconded. At that time, the council will also discuss the calendar for the rest of the year.

BREIFING ITEMS

Chairperson Selch moved on to the briefing item: the Otter Creek Site-Specific Standards for EC/SAR.

At the October 16th BER meeting, Eric Urban briefed the board regarding the Otter Creek EC/SAR, speaking about standards and TMDLs in less than technical terms to introduce the subject to several of

this year's new board members. He gave some background information, and discussed why it is necessary to review the standards. Some of the comments he shared were about what would happen if the natural condition of a stream was higher than the standards from the rule adoption back in 2003. At that time, the board had said that if the natural condition was higher, than that condition would be used in permits and assessments. The problem with that, however, is that there is no method to implement it. Mr. Urban then talked about the model, what it tells us and what it did. He also discussed that the data that DEQ has for Otter Creek represents natural conditions, which can be used for Otter Creek, and that data can be used to go forward and develop standards that represent the natural conditions. He emphasized that they are not trying to use the model to develop standards, but the model was just used to show the real data.

Mr. Urban then talked about the existing data, and he used a histogram of a distribution of the data for Otter Creek. He explained that the standard lies somewhere in that distribution (this should be available online and accessible from the Board of Environmental Review website. We want Otter Creek to look the same in 30 years as it does now. He then discussed available approaches to natural, and Statute MCA 75.5.306, which states that permits cannot require discharges to be treated to a purer condition than the natural condition of the receiving water. However, there is no guidance as to how to implement that statute. Senate Bill 325 (MCA 75.5.222) also states that in permits and assessments, the DEQ can't implement standards that are lower than natural. Site-specific standards provide the most certainty, which is what the goal is of working on Otter Creek.

Ms. Steinmetz summarized all of the DEQ's actions so far. They've formed a team, which consists of a variety of DEQ employees, as well as an EPA employee, and while they work on this, they are trying to incorporate what they've heard from the public. The main objective is to not just pick a number, but also to protect the distribution.

Ms. Karen Sanchez commented that she thought this was a good approach for Otter Creek.

Ms. Steinmetz added that there are ongoing discussions happening at a higher level than herself, with Northern Plains Resource Council and maybe some other groups, but the DEQ is trying to make that outreach and talk to other stakeholders.

There were no questions, and that portion of the meeting was concluded.

Ms. Steinmetz next addressed Senate Bill 325. She noted that this rule has run pretty concurrent with Otter Creek, which can be somewhat confusing. Nevertheless, the end result of both of them will be the same. With SB325, they are drafting rules to tell how to determine "natural". Mr. Mike Suplee, who did the nutrient rules, is working on the variance piece, while Ms. Steinmetz works on the natural piece, but they will work together and with others in Standards for guidance. The rules are in draft form right now, and statutes require that the DEQ allows for comments from SB325's sponsor before DEQ has substantive rules; Mr. George Mathies, DEQ's Deputy Director, has set up a meeting with SB325's sponsor, Senator Keene for this purpose. The next step after this is to form a stakeholder group. The DEQ has already internally identified appropriate candidates, and will start reaching out to the members soon. Ms. Steinmetz noted that the members of this workgroup group would parallel those of the nutrients workgroup.

Ms. Steinmetz invited those present to call or email her with any questions, and that portion of the meeting was concluded.

Chairperson Selch then invited members of the public present to comment.

Adam Haight with Northern Plains Resource Council asked a question about whether the rules of SB325 were stated within the Otter Creek Standards. Ms. Steinmetz responded, stating that the Otter Creek standards have been a forerunning process for the DEQ, and it is helping the DEQ understand how “natural” is being determined. The modeling framework and how the DEQ is protecting a distribution, rather than just a single value, will be taken from the Otter Creek experience to help develop the SB325 rules.

Chairperson Selch next addressed the agenda items for the next meeting. Ms. Steinmetz responded that she didn’t know of any at this point, and she did not have any information about timing for Otter Creek or SB325.

Mr. Keith Smith asked whether the BER had voted on anything last time. Ms. Steinmetz said no, it was just a briefing item. There were some questions from the Board after the July meeting that revealed the DEQ needed to take a step back, provide a lot more information, and educate the Board more. Ms. Steinmetz then suggested a few briefing options for the next WPCAC meeting, including:

- Michael Pipp, who heads the IT section for the Water Quality Planning Bureau (WQPB), could talk about what his section does;
- Quality Assurance/Quality Control;
- Jon Kenning, the Bureau Chief for the Water Protection Bureau (WPB) can discuss permitting issues;
- Dean Yashan can discuss TMDL status; and,
- Darrin Kron and Jim Stimson can return to discuss the oil and gas development in Eastern Montana.

Ms. Sanchez expressed an interest in hearing about TMDL status updates.

Ms. Steinmetz then turned to Mr. Jon Kenning, and asked if he had anything upcoming that he’d like to share with the group. Mr. Kenning answered that his group has been involved in the MS4 storm water stakeholder group for municipalities over the past year, and has been gradually been putting together a permit for how to run it in the system. He anticipated that it will be wrapped up in the next couple months.

Mr. Smith asked if there were any significant changes that the advisory council needed to be made aware of due to the recent “integration”. Mr. Kenning noted that there have been some shifts, and the Water Protection Bureau is now part of the Planning Prevention & Assistance Division. More adjustments may be made in the future. Ms. Steinmetz added that communication was a big driver of the reorganization.

ADJOURN

Chairperson Selch sought a motion to adjourn the meeting. There was no other business; the meeting was adjourned at 10:46 a.m.

REFERENCED LINKS FOR MEETING MATERIALS

November 6, 2015 Agenda—

http://deg.mt.gov/wqinfo/WPCAC/agendasMinutes/2015/November 6/AGENDA_11-6-15.pdf

Agenda Links:

Minutes from September 11, 2015

<http://deg.mt.gov/wqinfo/WPCAC/agendasMinutes/2015/November 6/9-11-2015APPROVEDMinutes.pdf>