MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
July 12, 2019
METCALF BUILDING
1520 EAST SIXTH AVE., HELENA, MT

PRESENT

Councilmembers Present:
Trevor Selch

Via Phone:
Earl Salley
Michael Wendland
Craig Workman
Karen Bucklin Sanchez
Adam Sigler
Stevie Neuman
Bob Zimmer

Others Present:
Hannah Riedl, DEQ
Sandy Matule, DEQ
Christina Weaver, DEQ
Myla Kelly, DEQ (via phone)
Kurt Moser, DEQ attorney
Peggy Trank, Treasure State Resources

Via Phone:
Nate Weisenburger
Amanda McInnis, HDR
Derf Johnson
Todd Seib

Councilmembers Absent:
Mary Ahmann Hibbard

CALL TO ORDER
Chair Selch called the meeting to order at 10:00 A.M.

APPROVAL OF AGENDA
Chair Selch brought forward the approval of the agenda.
Councilmember Workman moved to accept the agenda. The agenda was approved with no second.

APPROVAL OF MINUTES
Chair Selch brought forward approval of the May 3, 2019 meeting minutes. Councilmember Workman moved to approve the minutes. The minutes were approved with no edits or second.

BRIEFING ITEMS

General Permit Updates: Sand and Gravel and Construction Dewatering by Christine Weaver, Permit Writer
Ms. Weaver explained that she is in attendance to provide a brief update on permit renewal status for two General Permits – Sand & Gravel and Construction Dewatering. DEQ regulations specifically require the public notice be mailed to WPCAC. The **Sand & Gravel General Permit MTG490000** comment period ends August 29, 2019. A public hearing will be held August 29, 2019 at 9:00 a.m. Once the General Permit is effective, individual projects within the category apply for authorization under the General Permit. No further notice is required for the specific projects. The draft effluent limits and monitoring requirements for this renewal are unchanged from the current active general permit.

Chairman Selch opened for questions.
Hannah Riedl asked, "With monitoring for oil and grease, there is a numeric criteria of 10 mg per liter – that is oil, gas and water, so it is probably separating – are there recommendations for getting a representative sample?

Ms. Weaver responded that they take a sample as it is being discharged because at that point it should be mixing. It is a grab sample – and hour later, 10 hours later it could be completely different. There is no real-time monitoring. There is a daily visual observation for oil sheen, odor, anything discernible. If that is seen, they must immediately take a grab sample and stop discharge until they track down what is happening and clean it up.

The current **Construction Dewatering Permit MTG070000** was effective 2015 and expires February 2020. DEQ's goal is to have the renewed permit issued as final by January 1, 2020, but effective March 2, 2020. There are no plans for significant changes. It will be noticed for public comment mid-August. This is the general permit and not attached to anyone. Individual authorizations must be renewed after the general permit is authorized. This general permit authorizes dewatering discharge from construction projects to surface waters within three categories: *Minimal Impact* (very large rivers or dry ephemeral/dry intermittent); *Discharge Turbidity Limited to Prevent Impact* (more vulnerable receiving waterbodies including perennial, wetlands, lakes); or *Real-Time Turbidity Discharge Demonstration*. The effluent limits are proposed to remain unchanged from the active GP – turbidity limits, and oil & grease visual with monitoring if there is a sheen.

Councilmember Workman thanked Ms. Weaver for the summary and asked, "for the real-time permitting you have to be at or below the current conditions of the receiving body?"

Ms. Weaver responded, "Yes, you would go upstream of where your discharge is hitting the receiving water body and measure the turbidity; i.e., say it is 200 – measure your turbidity [in the discharge]…"

Councilmember Workman responded that with this change we could be allowing dischargers at construction sites to greatly increase turbidity depending on the season.

Ms. Weaver responded that their effluent must be less than the ambient.

Councilmember Workman responded that his point is in the spring runoff in the Yellowstone River, for example, the turbidity increases tremendously from runoff, so, we are now allowing construction sites to have considerably more turbidity in their effluent.

Ms. Weaver responded that the thought was we are not using their discharge to dilute the natural condition of the river. So, if they aren't putting anything in that is any worse, there is no difference.

Councilmember Workman responded it is just an overall increase in load. It is more sediment to the receiving water.

Ms. Weaver responded that is a good point.

Chairman Selch asked if it is only turbidity that is being referenced or is it all the.

Ms. Weaver responded there is only turbidity, oil and grease. There is no other expected. If they have something else, the only caveat for that is if they are near or in Bozeman, where the groundwater is high, and there are contaminated sites everywhere where people are building now. When they dewater there, they must check to be sure they are in or out of the expected contamination plume and are working with the remediation staff to make sure they can do the dewatering. If they can, they must be under the required reporting value for perchloroethylene, for instance. Other than that, DEQ is not expecting anything but turbidity, oil and grease.

Ms. Riedl commented that it is tricky with the real-time turbidity discharge because you can't require anyone to treat effluent better than natural conditions. So, if they are discharging in the spring, the natural condition is higher turbidity.

Councilmember Workman commented that with other point source discharges we are considerably better than natural conditions – in the wastewater for example – water lower, nitrogen, phosphorous, TSS – need to think about that one – interesting concept.

Ms. Weaver responded there may a way to add sidebars on it – they still need to meet their Best Management Practices (BMP) – that is part of the permit. They are declaring what it is they consider BMP for that site, because every site is different. Perhaps that might be the sidebars we are looking for.

Councilmember Workman commented that he was thinking more about excavation type construction projects.

Ms. Weaver responded that she believes the BMP would cover it. Removing the numeric angst that they cannot get down to 10.

Chairman Selch commented that he had the same question as Councilmember Workman with loading. If this gives them an opportunity to really clean out if they had a bad area or some equipment that they needed to flush out.

Ms. Weaver said she would meet with her supervisor, Rainie Devaney about the issue.

Councilmember Sigler asked what was the mean total suspended solid limit of the sand & gravel discharge?

Ms. Weaver responded the average monthly is 25 mg. per liter, and the daily max is 45, which is a little better than the secondary standard for POTW.

Councilmember Sigler commented that the conversation about the loads is an interesting one. For large rivers it probably doesn't matter, but if you were effectively doubling the sediment load in a small stream that could be important.

Chairman Selch asked that Ms. Weaver meet with Rainie Devaney to see if there is something in place they are missing.

Variance Varieties: A History Through Today by Myla Kelly, Water Quality Planning, Acting Bureau Chief

Ms. Kelly explained the variances and the options available. Ms. Kelly explained the term variance is a safe and clean water act tool that is appropriate to apply when the water quality standard of a water body is accurate. DEQ wants to maintain that water quality standard in the water body. For many different reasons, flexibility is needed for permittees to achieve that standard. So, there is a time-limited tool that allows a permittee to catch up and for technology to catch up to the water quality standard requirement we have in the water body. Basically, what a variance does is allows a discharger to continue their current performance, which, if they are applying for a water quality standard variance, usually means exceeding the water quality standard for a limited amount of time. That limited amount of time requires justification and it needs to be reasonable, and the reason for not being able to achieve the water quality standard also must follow a set of factors and requirements.

The first water quality standards that DEQ had put into place came in conjunction with our numeric nutrient standards which are housed in DEQ Circular 12A, and in conjunction with numeric nutrient standards, DEQ put forth a variance option under DEQ Circular 12B, which allows for time for the permittees in Montana to achieve the numeric nutrient criteria. DEQ's numeric variance nutrient rules in 12B are under active litigation. Ms. Kelly said she couldn't discuss further – that she and Kurt Moser, DEQ attorney, would take questions later.

Following Circular 12B in the last couple of years DEQ went through a variance process under Senate Bill 325 rule. Those were rules that WPCAC approved to proceed to the Board of Environmental Review and those were eventually adopted into Montana law. Those variance rules provided the framework for permittees to apply for a variance when upstream conditions couldn't reasonably be expected to be remediated in the permit term. The very limited framework was designed for situations where there was historic legacy pollution upstream that wasn't going to be remediated in the very near term. With the very narrow framework, we developed rules around that; they went through WPCAC, and those were adopted by the BER last year. So, those are in place and remain in place.

Finally, in the last legislative session, DEQ put forth Senate Bill 48 which was also a variance bill. It doesn't replace DEQ 12-B or the rules that DEQ put out under Senate Bill 325. They both remain. The intent of Senate Bill 48 was to broaden state authority to conform more closely with EPA's authority of variances and open the possibility to consider all the factors EPA considers justifiable factors for variance. The bounds for variances under DEQ Circular 12B and SB 325 are very narrow framework. SB 48 was designed to broaden that. The factors that are allowable for making a variance potentially allowable under the Clean Water Act. There are six of them. One of them is when naturally occurring pollutant concentrations prevent the attainment of the use. There are other factors that include natural, intermittent, or low flow conditions, human-caused conditions, prevent attainment of the use, physical conditions, or substantial and wide-spread economic harm. The intent of SB48 was to open our state authority to allow for variances for permittees to apply for variances under any of those factors. That is not to say they would be approvable, but it would be feasible. There have been no requests for variances under SB48, but if there is one, department rulemaking will need to happen. Any of those variance rules would come before WPCAC and be vetted. Each variance always needs to be approved by EPA. Variances are considered a water quality standard and any water quality standard has the ultimate authority approvable by EPA. Variance rules require department rulemaking and then final EPA approval.

Councilmember Workman asked about the status of SB48.

Ms. Kelly responded that SB48 has been approved and is in law – not sure if it has been signed.

Mr. Moser added that it isn't effective yet – maybe not until October 2019.

Ms. Kelly added that the rules under Circular 12B allow for general variances and individual variances. Whitefish was the first individual variance that DEQ and the EPA approved.

Ms. Riedl asked Ms. Kelly to give an example of physical conditions that prevent attainment of these variances.

Ms. Kelly responded that she has not seen a variance come through nationally that has been approved under that factor, but examples they list of that would be lack of a proper substrate, cover load, depth pools, riffles, and the like that are unrelated to water quality would preclude the attainment of aquatic life. A dam is listed as a separate factor: Dam diversion or other hydrologic modification.

Derf Johnson thought Whitefish and received a variance that was approved by EPA – is this previously or what the timeline was on it.

Ms. Kelly responded that it was in 2018 –

Councilmember Workman responded May of 2018. Ms. Kelly responded that variance was based on a widespread economic factor.

Peggy Trenk asked regarding SB48 if DEQ was not going to do general rulemaking – it will be individual rulemaking if someone makes a request under one of those categories specific to that variance request.

Ms. Kelly responded that she is envisioning that is the most likely scenario, but there could be something more general or DEQ creates a more general framework; i.e.; ammonia and lagoon systems. A substantially regulated community with similar attributes and challenges.

Public Comment
There were none.

Agenda Items for Upcoming Meetings
a. Arsenic Standards
b. Harmful Algae Update / Canyon Ferry & Flathead
c. Funding Options – municipal infrastructure/Dept of Commerce; DEQ SRF Program
d. Bitterroot Watershed – 319 timeline
e. Sunriver meeting minutes – Mark Ockey presentation showed maps – status of groups

Councilmember Workman asked about meeting dates – Ms. Riedl responded they are held every 2 months on the first Friday. Meeting dates can always be moved if there are conflicts with council member schedules.

Adjourn
Motion to adjourn by Councilmember Workman.