

WATER POLLUTION CONTROL ADVISORY COUNCIL

10:00 A.M., May 19,2023

Room 111, DEQ Metcalf Building & Zoom Webinar

FINAL MEETING MINUTES

ATTENDEES

Meagan Gilmore
Lindsey Krywaruchka
Katie Makarowski
Amanda Knuteson
Shawn Rowland
Eric Sivers
Andy Ulven
Teri Polumsky
Ron Pifer
Shannon Holmes
Meagan Gilmore
Mike Koopal
Rachel Clark
Nathan Bartow
Tatiana Davila
Joanna McLaughlin
Kelsey Conophy
Ed Coleman
Leea Anderson
Peggy Trenk
Casey Lewis
Rickey Schultz
Emilie Henry

CALL TO ORDER

Amanda Knuteson called the meeting to order and roll call.

APPROVAL OF AGENDA

Amanda Knuteson moved to approve the meeting agenda for May 19th. Agenda approved. Seconded by Ron Pifer.

APPROVAL OF MINUTES

Amanda Knuteson moved to approve minutes for March 17th meeting. Minutes approved. Seconded by Teri Polumsky.

BRIEFING ITEMS

1. Triennial Review Status-Katie Makarowski
2. DEQ Legislative Update-Lindsey Krywaruchka
3. Legislative Issues - Open Forum Discussion-Amanda Knuteson/Lindsey Krywaruchka
4. Comprehensive Subdivision Regulation Changes-Shawn Rowland
5. Proposal of Rule Updates to ARM 17.30.10 – Groundwater Pollution Control System Permits-Eric Sivers
6. Nutrient Workgroup Update-Andy Ulven

Triennial Review Status: Katie Makarowski- Program Section Supervisor Water Quality Standards and Modeling Section

Katie Makarowski began the presentation by stating last Friday, on May 12, 2023, the council received a notice that DEQ opened their 2023 Water Quality Standards Triennial Review, she briefly reviewed the information in that letter with the council. She shared an overview of DEQ's Water Quality Standards triennial review process with the council both in January and in March, so she did not review that information again, but would answer any questions. Katie Makarowski went on to say, DEQ's Triennial Review is an opportunity for interested parties to submit comments to the department on current Water Quality Standards. Comments will then be considered by the department for potential changes or additions to state water quality standards. As described in the letter that the council received, the 2023 Triennial Review public comment period opened on May 12, 2023 and it will close on June 28, 2023. Comments, and any associated data or information may be submitted in writing electronically, a triennial review email address was set up, or it can be submitted by mail to DEQ's Water Quality Division. DEQ will hold a public hearing to hear comments on water quality standards, on June 28, at 11:00 am. in room 111 of the Metcalf building at 1520 East 6 Avenue in Helena. More information, including those instructions for submitting comments in writing or instructions for attending the public hearing, either in person or remotely, can be found on the DEQ's website under public participation. That's also outlined in the interested parties' letter that was sent out to members of WPCAC, as well as several interested parties' lists.

Comments/Questions

Amanda Knuteson asked, will all the corresponding administrative rules, regulations, and links to those be there for us to review, if we want to look, and will it clearly show changes?

Katie Makarowski answered, the website where all the information about the comment period and the public hearing does include links and specifies which ARM rule, sub-chapters contain water quality standards. The purpose of triennial review is to solicit comments on any current water quality standards. She goes on to say, currently, they're not proposing any changes that they're asking for comment on, but rather soliciting comments. For example, suggestions from the public for changes that they might like to see at some point in the future for the department's consideration. The links to the ARM Rule sub-chapters are contained on the website and are just the current standards as they appear in the official record currently.

Amanda Knuteson continued that she is aware that DEQ is working on redrafting some of them simultaneously, but she didn't know if the drafts were available, but if this is the portion where you just solicit on what's formally, in effect, right now, she understands.

Katie Makarowski agreed, as the department pursues any changes to water quality standards that will initiate formal rulemaking procedures. Any comment periods associated with those rule making efforts would also be available at that time for those specific rule changes being made.

Ron Pifer asked, what's the procedure when a credible member of the public, a corporation, or an entity has a change they want to propose? What's the procedure going forward? Does the DEQ just dismiss it? Or if it's credible enough, what are the next steps?

Katie Makarowski answered, any interested person can submit their comments, including data, views, arguments, any information that may justify the request that's being made. The Department will be compiling all the comments that are received during the comment period, and during the public hearing as part of that as well. DEQ will then be responding to all comments received, and certainly taking those comments into consideration as they develop work plans moving forward. Katie Makarowski goes on to say she can't really predetermine which, if any, will result in any changes that DEQ may pursue, but they will certainly be taking in all comments received and responding to all of those.

Ron Pifer asked are the comments put online on the website, meaning the questions or comments or data provided, and then DEQ responses. That's probably put out there for the public, correct?

Katie Makarowski responded she will circle back to Ron's question once she has a clear picture of exactly how DEQ will be putting that information back out. Responses to comments are part of a submittal package that DEQ submits to EPA at the conclusion of Triennial Review, and so that information certainly will be compiled and made available. Exactly where and how, that's going to go out she is not sure yet, but she will be sure to make that information available.

Amanda Knuteson added one request she would make is, having the public comments posted, especially since they're being solicited in writing, and people are submitting them digitally. If those could be made available during the public comment process, so that others can review. It might give a more robust participation if people can review other people's comments in advance of that deadline. It sounds like the process Katie Makarowski is describing would entail, DEQ gets the comments, reviews the comments, responds to the comments, and posts all of that after the conclusion of the public comment period. Amanda Knuteson goes on to say her personal preference would be to see those comments in advance if possible.

Katie Makarowski responded she will carry that suggestion forward to her agency communication and management staff.

Lindsey Krywaruchka responded, DEQ uses a process so that everything they do is very clear and transparent. How they go about collecting and distributing public comments, she doesn't know if they **can flip** that and turn it on without making that a manual process to make those comments available for everyone to see in real time. Lindsey Krywaruchka continues to say she wants to set that expectation, while the idea is good, that might be a lot of labor-intensive work for their team. She's not saying it can't be done, but they've worked hard to streamline that process, and she doesn't want to undo that work.

Amanda Knuteson responded, that makes sense. She continued to say, if DEQ is having a public hearing on June 28, if it that's available at least 48 hours in advance of the public hearing, so that people can meaningfully comment at the public hearing. So at least 2 days in advance of that public hearing, she thinks, would be the most conservative approach to facilitating public participation in this. DEQ is receiving everything digitally, but not posting people's comments in real time all the way up to the

hearing date, she can understand, but a packet, so that people can know and participate meaningfully at the hearing would be great.

Katie Makarowski agreed the applicable materials to be commented on and discussed at the hearing is the standards themselves. So, the ARM rules and all that information, the specific language, is what DEQ would be formally soliciting comment on. She appreciated where Amanda came from with wanting to have people see comments along the way. So, they will have to explore how that's achievable or if it is.

DEQ Legislative Update-Lindsey Krywaruchka-Division Administrator Water Quality Division

Lindsey Krywaruchka began her presentation stating DEQ has 2 things that were brought to the council on this meeting agenda for rule packages and things that are moving forward. She continues to say what DEQ didn't get out of the legislative session, she believes, is more important than what they did. There was a bill to make plumbers water operators. A bill to make UV treatment the only treatment for public drinking water, a bill to make self-certification of subdivisions. A bill that would have changed the hard work done to get to their site-specific standard at Lake Koocanusa and many others that they think would have been bad for public health and the environment, and none of those bills happened. They did a lot of prevention and defensive work during this legislative session. She goes on to say she was tracking and actively working about 30 bills, tracking about 115 that were aimed just at the water quality division, that doesn't even count all the water quantity bills.

One of the other bills that didn't move forward that they brought before WPCAC, was the Public Water Fee Increase bill. Lindsey Krywaruchka went on to say it really wasn't a good situation to go into the legislative session, saying she needed a fee increase, but it looks in the budget like she had 2 million dollars in cash that hasn't been spent. That wasn't the case, but that was the way the budget was structured, and she wasn't prepared to stand before a legislative committee and explain the difference. They have 4 fee accounts that they draw from to support their State Special Revenue in the water quality division, and thanks to the great team on board, they're really looking at structuring those key accounts in a better way. That's easier to understand. To say for example that this fee supports these things, clear and simple. State revolving funds support these things and just make it clear. They might bring that bill back next session. She continued, the other thing they got out of the legislative session was 3FTE. Water Quality was one of the only divisions in the state to come out on top with positive numbers. They didn't really ask for an increase in our budget, aside from inflation, which they came in at 100%, and they took 25% off the top and gave them about 75% inflation. DEQ also came out with a much-needed raise for staff across state government. In general terms, just because they get the authority to do something doesn't mean they have the cash to do something, especially in DEQ. DEQ doesn't have a big general fund, they're fee-driven, especially in the water quality division. That's what she and her budget manager are working on. To have everything ready to roll up and give our much well-deserved employees a raise this July, and then the following July.

Lindsey Krywaruchka continued to say the 3 bills she would like to address, would be HB364. The bill indicated self-certification of subdivisions, independent reviewers review, and reimburse if DEQ is late on fee applications. It does give an independent reviewer option, but with a trigger. If the DEQ stays on time, and that includes working with contracted counties for subdivision review for that sanitation and subdivisions act, then they don't use those independent reviewers, but if DEQ starts to feel the push, then they do. SB275 was a bill regarding well isolation zones and mixing zones, and for very complex reasons, that have to do with private property rights, we got that bill vetoed by the Governor last weekend. Then lastly, with SB285, that bill was called SB165 in the 2021 session. It was

vetoed because it said if you're 500 feet from surface water, we don't need to do any non-deg analysis just build. We got that changed. We can reassess our non-deg analysis rules and look at how we do this analysis, not weaken it, but put some good thought and best practice into it using the data. That bill was amended and passed as amended.

Comments/Questions: There were none.

Legislative Issues - Open Forum Discussion-Amanda Knuteson/Lindsey Krywaruchka- Division Administrator Water Quality Division

Amanda Knuteson began by saying If anyone would like to know more on the Senate and House bills, they are encouraged to go on the Legislature's website and see all of those the iterations. She will also send out a summary of her notes.

Ron Pifer wanted to hear Terry Polumsky's input from a real estate standpoint.

Teri Polumsky began by saying The Montana Association of Realtors was working hard on certain issues, but regarding water policy, she thinks the biggest hurdle is trying to balance the regulatory side with the cost factor. The cost of housing in Montana, and that's a discussion across the board in any group you go to, they talk about the cost of housing. However, we can't address the cost of housing, if we also do not look at the regulatory costs, and what that's doing to housing. She believes they did well this session in terms of protecting water quality and not really putting a lot of onerous costly things on homeowners in Montana. Teri Polumsky continued this group has talked periodically about Ravalli County, about the Health Board decision regarding septic and compliance. A lot of that was put into place because Ravalli County does not have a good record system for a lot of homes. What they're experiencing in some instances are inconsistencies in septic costs. So there needs to be some consistency, she is nervous about other counties because it creates a lot of unknowing for buyers and sellers.

Amanda Knuteson commented that this is probably something that will come up at a subsequent meeting. As more and more data becomes available and useful in informing the review process, she thinks they're considering data as it comes in. In terms of the direction in high growth areas, they're gathering a lot more background data, and that data is being used to inform their reviews.

Comments/Questions: There were none.

Comprehensive Subdivision Regulation Changes-Shawn Rowland-Program Section Supervisor Water Quality Engineering Bureau, Rachel Clark-Bureau Chief Water Quality Engineering Bureau

Shawn Rowland began his presentation by saying they have been going through some comprehensive rule changes. They split them into 2 different comprehensive rule updates. One called Phase 1 group and then Phase 2. The first phase has already gone through all the processes and was adopted on April 15,2023. The second phase is their timeline. (Slide 2 of Presentation)

- Comprehensive Rule Changes
 - Phase 1 Comprehensive Rule Update-April 15,2023
 - Phase 2 Comprehensive Rule Update/ Rulemaking Timeline

- Questions

Shawn Rowland continued, the second phase, the Sanitation in Subdivision Act or 76-4, gives DEQ the authority to write rules for subdivisions. There are some other rules that that also play along with this, the Public Water Supply Act, and then the Water Quality Act. However, the first phase was only working on the subdivision rules. They will be working on some non-deg rules later in phase 2. (Slide 3)

- Statutory Authority
 - Sanitation in Subdivision Act 76-4__SubdivisionRules ARM17-36
 - Public Water Supply Act 75-6___Public Water and Sewer Rules ARM 17-38
 - Water Quality Act 75-5____Non-degradation Rules ARM17-30 State Minimum Standards ARM 17-36

Shawn Rowland continued, under the Subdivision and Sanitation Act, there are sub chapters. Chapter one and sub-chapter 3 are the applications. Including what you must do when you apply, and then what are the requirements under that sub chapter 3. (Slide 4)

- ARM 17-36.101 et seq. Subdivisions/ On-site Subsurface wastewater treatment
 - Subchapter 1: Subdivision Application and review
 - Subchapter 3: Subdivision Requirements
 - Subchapter 6: Subdivision Waivers and Exclusions
 - Subchapter 8: Subdivision Fees
 - Subchapter 9: Onsite Wastewater Treatment Systems
 - Subchapter 11: Administrative Enforcement Procedures

Shawn Rowland presenting, they made some modifications to some of the circulars. These are the circulars or the standards that they use for water systems and drain fields. DEQ- 4 is the standard for subsurface wastewater treatment system. (Slide 5)

- DEQ Circulars (Prior to April 15, 2023)
 - DEQ-1 Standards for waterworks
 - DEQ-2Design Standards for Wastewater Facilities
 - DEQ-3Standards for Small Water Systems
 - DEQ-4Montana Standards for subsurface wastewater treatment systems
 - DEQ-8Montana Standards for Subdivision Storm Drainage
 - DEQ-11 Montana Standards for Development of Springs for Individual and Shared Non-public Systems
 - DEQ-17 Montana Standards for Cisterns (Water Storage Tanks) for individual Non-public systems

Shawn Rowland presenting, for the most part, the changes to their rules that they made in this first phase, were more of a reorganization of the rules to make them more logical. Then they created a new circular to allow a better review. They pulled some of the items out of rule and put them into the circular. In phase 2 they are working on new rules that reflect what the 2023 Legislature came through with. The other sub chapters and circulars are being worked on by the subdivision advisory task force. This task force was set up by the governor to go through these rule changes. (Slide 6)

- DEQ Proposed Pathway
 - Phase 1

- Subchapter 1
- Portions of Subchapter 3
- REVISED DEQ-3 and NEW DEQ-20
- Phase 2
 - New Rules to Reflect Laws Passed by 2023 Legislature
 - Continuing work in Subdivision Advisory task Force (SATF)
 - Subchapter 9
 - DEQ-4, Portions of Subchapter 3
 - DEQ-8
 - Non-degradation (new subcommittee to be formed)

Shawn Rowland stated that they rearranged some of the rules to match their purpose. There were rules in Subchapter 3 that should be based more on the subdivision requirements, however they were more of what needed to be submitted in the application and for review. A lot of the rules just got moved from Subchapter 3 right up into Subchapter 1. Shawn Rowland goes on to say they also took some of the Subchapter 3 rules and moved them into circular. Those rules were more of the standards of a water system, or in this case it was all water system related. It gave them a better ability to have deviations from those standards, and because it gives more flexibility to review those when they do come in. Shawn Rowland continued to say they updated the rules and circulars to minimize the number of deviations or waivers that are always or never approved. For example, the rule used to say that all existing wells must have 25 feet of grout. That was not required previously by the Water Well Drillers board, and so they were requiring something that was not required at the time. They moved that into the circular and clarified that wells must be constructed per the standards of the time. They adopted rules to implement SB44, which was part of the 2021 legislative session. These rules included, Stormwater Review is no longer required for lots that are 5 acres in size or larger if they have less than 5% impervious surface. SB44, also implemented well isolation zone and proposed mixing zone easement requirements. (Slide 7)

- Quick Overview of Phase 1 Changes
 - Rearranged Rules to match their purpose.
 - 17.36 Subchapter 1 Subdivision Application and Review
 - 17.36 Subchapter 3 Subdivision Requirements
 - Moved design standards from rules to circular.
 - Individual and Shared Water Systems were moved from 17.36 Subchapter 3 to the new Circular DEQ 20
 - Updated rule/circulars to minimize number of deviations/ waivers that are always or never approved.
 - Grouting requirements were changed to match the standards required at the time of well construction.
 - Adopted rule to implement SB-44 (2021 Legislative Session)
 - Stormwater Review is not required for Lots 5 acres in size or larger with less than 5% impervious surface.
 - Implemented proposed well isolation zone and proposed mixing zone easement requirements.

Shawn Rowland presenting, the 48-inch separation to limiting layer for elevated sand mounds was clarified. There were some unintended consequences in some rules, that said, when you put a sand mound in, you must remove the topsoil, so that the sand mound can work, the effluent can get through that topsoil layer. However, the previous rule said that you had to have 48 inches at the bottom. It was

creating a 52-inch separation. They clarified that in the rule to make sure that it reflected just a 48-inch separation. The procedures for the review of previously approved facilities were revised. When a project has already been reviewed by the department, that approval continues throughout the lifespan of that parcel. If a new parcel is created and those previously approved facilities are still usable, it will not require additional review. The rules were reworked to better define when and how our approval rewrite is processed, and when a revised lot layout is processed. They reworked how the counties can do some of this work at a local level, so that not everything needs to come into the department. DEQ standards were revised for small water systems. The multiple user water system was pulled out of DEQ 3. DEQ 3 now provides design criteria for public non community water systems. The multi-user water systems were moved to a new circular called DEQ 20. (Slide 8)

- Quick Review of Phase 1 Changes (continued)
 - Clarified the 48" separation to limiting layer for elevated sand mounds.
 - 17.36.320 (4)(b) for elevated sand mounds constructed in accordance with Department Circular DEQ 4, the depth of the key may be included as part of the separation distance between the infiltrative surface and a limiting layer.
 - Revised the procedures for the review of previously approved facilities.
 - Expanded the current rule to previously approved facilities for applications that are not rewrites (subsequent divisions, BLA, etc.)
 - Re-worked the rule to better define when and how a COSA rewrite is processed and when and how a revised lot layout is processed.
 - Revised DEQ 3 Standards for Small Water Systems
 - Provides design criteria for public non-community water systems as multi-user water systems have been moved to DEQ-20.

Shawn Rowland presenting, they used to have all the standards for non-public water systems, for individuals and shared systems. That was all reflected in the rule, and it didn't allow for flexibility in making sure that the water systems were safe. By putting it in the circular it allows that flexibility. There were 2 circulars, springs, and cisterns. They had their own circulars; they were just added to DEQ 20. Finally, DEQ 4, which is the Montana Standards for Subsurface Wastewater Treatment Systems, is going to be reviewed in the next phase. They removed the requirements that system, designs, plans, and specifications be submitted at the time of subdivision for individual or shared systems. For example, if you have a 5-acre lot, the consultant would have been required to show where the house and septic tank were going to go, and then how everything was going to fit, and then get to the drain field. That included the pump specifications without knowing if the house had a basement, or how far it was from the drain field. The requirements are still there that say you must do all the site work, to guarantee that there's a drain field location. It's just that the plans and specifications for that system will happen at the time of permitting versus saying, okay, well, this works, but it won't ever be constructed that way. (Slide 9)

- Quick Overview of Phase 1 Changes (continued)
 - Adoption of DEQ-20, Montana Standards for Non-Public Water Systems
 - Circular DEQ-20 covers minimum design standards for non-public water systems currently in ARM 17-36 and Circular DEQ-3 (multiple-user springs) DEQ-11 (individual/ shared springs), DEQ-17 (individual/shared cisterns).
 - Treatment design for non-public systems
 - Springs (individual and shared only, no multiple-user springs)
 - Cisterns (individual and shared only), multiple-user located in DEQ-1

- Low flow wells w/storage-allowed without waiver with supporting information
 - Minor changes to DEQ-4 Montana Standards for Subsurface Wastewater Treatment Systems
 - Systems Designs, Plans and Specifications are no longer required for industrial or shared systems.

Shawn Rowland presenting, Phase 2 of our proposed changes, they must do some rule writing to reflect on the laws that were passed in the most recent legislature. Continuing work on sub chapter 9, which is the local government regulations on wastewater treatment. DEQ-4, which is the drain field regulations. DEQ-8 is our storm water regulations. Then non-degradation is how we review wastewater treatment systems and how they impact surface water, and groundwater, and that will be coming up very soon. (Slide 10)

- Phase 2-Proposed Changes
 - Phase 2
 - New Rules to Reflect Laws passed by 2023 Legislature.
 - Continuing work in Subdivision Advisory task Force (SATF)subcommittees
 - Subchapter 9
 - DEQ-4, Portions of Subchapter 3
 - DEQ-8
 - Non-degradation (new subcommittee to be formed)

Shawn Rowland presenting, slide 11 is a timeline for changes. All the legislative phase work, they are hoping to adopt by the end of the year or the beginning of December. DEQ-8, storm water circular, they hope to get that done in the first part of 2023. Moving on to the Local Health Rules or the 900 series, that's on track to be in April. Then the non-degradation circular has a deadline that's required under the new SB285. They must have the non-degradation circular updated to reflect the information in SB285 by July 1st. Finally, DEQ-4 the drain field circular, they'll be trying to get that done by August and September of 2024. (Slide 11)

- Phase 2 Proposed Changes (Timeline Graph)

Comments/Questions

Mike Koopal asked, under the phase 2 non degradation subcommittee formation, do you see a point in the future where DEQ will address the cumulative effect of onsite wastewater treatment systems on the landscape based on density, age, classes, or physical limitations? Has there been discussion at DEQ about that?

Rachel Clark answered, the non-degradation already considers cumulative impacts for groundwater. When an application is submitted to DEQ, you must identify the surrounding drain fields. If they line up with your proposed drain fields, then you must do a cumulative impact analysis on that.

Mike Koopal asked, what's the geographic scope of that analysis?

Rachel Clark answered, there isn't a set distance in the non-degradation manual. Generally, it looks at adjacent parcels, and for a big subdivision, there could be 10 lots, 10 drain fields stacked up in a row.

Proposal of Rule Updates to ARM 17.30.10 – Groundwater Pollution Control System Permits-Eric Sivers-Program Section Supervisor Water Quality Protection Bureau

Eric Sivers began his presentation with a preview for rulemaking. They are proposing and currently working on Subchapter 10 and administrative Rule 17-30. This is the sub chapter that deals with Montana Groundwater pollution control system permits, which are essentially groundwater discharge permits. Once the final rule package language is together and has been through department review and approval, Eric Sivers will return to WPCAC to present the final draft package that they'll be putting forward. He goes on to say there are 2 major components to the rule package that he is working on. The first one is to clarify the intent of the exclusions that are in this rule. It's in sub part 10-22. The big one is that the exclusions refer to wastewater treatment systems that produce less than 5,000 gallons per day. At the time this was drafted there was really no consideration to the idea that the developments might use multiple excluded wastewater systems to meet their overall wastewater need. This is something that's become an increasing issue for DEQ. The main thrust of the revision is to clarify the intent of the 10-22 exclusion, it applies to the cumulative wastewater requirements met by these public sewage systems. Eric Sivers continues to say at the same time he is interested in revising the applicability of the 10-22 exclusions by introducing thresholds that are based on treatment category. The current basis of 5,000 gallons is based entirely on flow, but there's no consideration for the number of pollutants that are discharged to state groundwater. He is proposing a tiered threshold that provides a higher threshold to a public wastewater system that provides higher levels of treatment. An advanced treatment system, for example, would have a higher threshold, excluding it from permit requirements than a level 2 system, than would a conventional treatment system. In draft, that looks like a conventional treatment system that is essentially a large septic system, it would be subject to permit requirements that 2,500 gallons per day. That essentially coincides with the definition of a public wastewater system.

Eric Sivers presenting, a level 2 system would remain at the same threshold at 5,000 gallons per day. Then advanced treatment, which they are defining as a system that's capable of meeting the non-degradation criterion for groundwater of 7.5 at the point of discharge. Septic net, for example, is an example of a system that can achieve that. The threshold for a system like that, for permitting requirements, would be 12,000 gallons per day. The uniform line through all of these is that that's roughly a pound per day of nitrogen. They are proposing to base the threshold on the number of pollutants that go into state ground water, rather than the total overall flow there. Montana has changed since the 1990's, when the permitting rules were written, there are more options, and they feel this is a timely update. The remainder is some administrative cleanup such as outdated references to the Board of Environmental Review, clarifying some procedures they follow that are borrowed from the surface water permitting program, such as some administrative procedures. There is an amount of administrative clean up as well, that addresses some of the other sub parts.

Comments/Questions

Ron Pifer asked, are the changes being promulgated from new legislation? Or is this something DEQ is taking upon themselves to implement and upgrade?

Eric Sivers answered, this is not in response to legislation.

Ron Pifer asked, are the changes going to bring about legal challenges going forward from developers and so forth?

Eric Sivers answered, he did not want to speculate, but from his reading of the authority given to DEQ under 75-5401, they are on solid ground, but anything can be challenged.

Amanda Knuteson asked, the level 2 process to approve the item, the technology Eric Sivers mentioned. When scaling up and looking at commercial applications, it will be going up to 12,000 gallons a day, that's an enormous leap. Are you going to have an approval process that better reflects the risks that you're mitigating with that approach?

Eric Sivers answered, this is something that will need some coordination with the Engineering Bureau and legal bureau. They do have several systems that are recognized as capable of producing affluent of that quality. They are hydrogeologists in his program, so they rely on engineers to provide that accreditation.

Amanda Knuteson added, that's an important part of the process. It's not an onerous process going through and getting approved for a level 2, and then using data collected during a 6-to-12-month pilot study with residential strength flow. You cannot extrapolate that into the realm of 12,000 gallons a day. There's almost no area that you couldn't put this, if you're saying that something is turning out drinking water. She doesn't see how its location can be restricted.

Eric Sivers answered, the exclusion of permitting requirements does not mean that they're not subject to DEQ review and approval. It means they're not subject to a permit under the Water Protection program, they would still be subject to the DEQ review and approval by the public water supply engineers and that group would also be conducting non-deg under their requirements.

Rachel Clark added, this is not to say that the system produces drinking water quality wastewater. It might be for nitrogen. It certainly doesn't for pathogens, bacteria, and viruses. She would not propose to, in any way, change the required setbacks from well isolation zones to mixing zones, things like that. This is just for nitrogen. Not for anything else that could potentially be found in sewage.

Ron Pifer asked Eric Sivers if he could give WPCAC an update later?

Eric Sivers answered, he is giving a preview of what this rule package will look like. When there is a formal rule making, he will be back with the with the final language. There would also be a hearing, and the rules would go out to public comment, just like all other rule-making procedures. They will be hearing both from this council and from members of the public. He is also presenting the same information to the subdivision advisory task force at the end of the month.

Rachel Clark added, all administrative rule changes are required to go through the public comment and public hearing process.

Nutrient Workgroup Update-Andy Ulven-Bureau Chief Water Quality Planning

Andy Ulven presenting, the nutrient work group was created in response to SB358 in the 2021 legislative session. When that was signed into State law, that directed the DEQ to repeal the numeric nutrient standards and develop administrative rules of Montana 17.30.1388, and that directed them to interpret the existing narrative standard 17.3.-637-1() for nutrients. It also called for them to develop an adaptive

management program and an adaptive management pathway for permitted dischargers in the state. This group last met in March of 2023, and they took a brief pause with the legislative session ongoing. The meeting Wednesday, May 17, was meant to propel them into the new phase. They intend to initiate rulemaking in the fall and mid-November to wrap up the nutrient Work group. They recognize that there is modification and substantial work needed on the current draft rules circular and guidance documents which were last placed onto the website in December. They have been receiving comments, meeting with dischargers and environmental advocacy groups, for the last 5 plus months since those draft rules. They have received constructive feedback. In the nutrient work group meetings, a lot of the focus is on adaptive management, but adaptive management is intended to be one of the tools in the toolbox, allowing for flexibility, it is not meant to replace a variance or traditional compliance schedule. They are working with permitted dischargers to figure out what's best for their situation. (Slide 2)

- Key Points
 - DEQ intends to initiate rulemaking in the fall.
 - DEQ recognizes modifications are needed for more clarity in the Rule, Circular, Guidance documents.
 - DEQ has met with dischargers and environmental advocacy groups throughout the state to talk through the process and receive constructive feedback.
 - AMP is just one tool in the toolbox, allowing for flexibility.
 - Variance
 - Traditional Compliance Schedule
 - Meeting the limit

Andy Ulven presenting, the main task is to refine and finalize the Draft Rule Circular DEQ-15, and the associated guidance documents, including the reasonable potential analysis guidance document. SB358 directed them to repeal DEQ-12A. They're working to finalize the studies and all the data that's going to go into the updated circular. They also recognize there's several points of clarification, in response to some of the feedback from the regulated community, the environmental advocacy and conservation groups, and all the stakeholders with the nutrient work group. Clarifying there are multiple options, including variances, for achieving compliance, not just the AMP and compliance schedules. There are several things they are working to develop as well in terms of implementation. A training strategy for permittees who opt to go down that adaptive management pathway. There's going to be monitoring required and specific standard operating procedures. They're working to develop a multi-discharge variance for lagoons and a fee structure for the adaptive management program. Those items are being worked on over the next 6 months. (Slide 3)

Andy Ulven presenting, they intend to continue meeting monthly through September, possibly into October, and November. (Slide 5)

- Tentative Schedule
 - Wednesday June 14, 2023, 9:00 a.m.-11:00 a.m.
 - Thursday July 20, 2023, 9:00 a.m.- 11:00 a.m.
 - Wednesday August 16, 2023, 9: 00a.m-11:00a.m.
 - Thursday September 14, 2023, 9:00a.m.-11:00a.m.
- (Slide 6) Future Topics
 - How to select approvable nonpoint source projects/BMPs
 - Eligibility requirements and how to determine when to submit the AMP
 - DEQ resources and costs

- Incentives
- Interim permit limits
- Training strategy
- Fee structure
- Updates on the remaining tasks and document revisions

Comments /Questions

Ron Pifer asked, regarding the regional EPA and their letter they sent after that bill was passed. Where do things stand there? Are things moving ahead with implementing the bill?

Andy Ulven answered, they have been in constant communication with EPA throughout the process. They spoke with EPA before and after receiving a letter from EPA disapproving of certain portions of the rule package in the draft. They haven't submitted a rule package for EPA's review, but EPA did comment on parts of it in the draft. The nutrient work group is working with EPA, and has a meeting on May 19th, 2023, in the afternoon.

Mike Koopal asked, how is the plan accommodating multiple source dischargers in a particular watershed to implement an AMP. Who has the responsibility? Are there ways DEQ envisions everyone working together?

Andy Ulven answered, there are certainly instances where multiple dischargers are in the same water body. Part of that's going to be up to the individual circumstance and the dischargers, or the permittees if they want to work with other dischargers within their watershed. Andy Ulven goes on to say, that is something to certainly encourage, but he also recognizes that adaptive management might not be the preferred pathway for the other discharger. That situation would be handled differently, there could be an adaptive management plan for one discharger within the watershed and another discharge could be under a different compliance option like a variance or a compliance schedule. They're all at the same table working toward the same management plan, but that might not be the case in every situation.

Ron Pifer asked, is there a subcommittee within DEQ regarding septic systems and in particular septic system maintenance protocols that's dormant? Could it be reactivated, or if not, could it be formed? Mike Koopal and himself would like to participate in such an effort. He sent Director Dorrington proposed protocols and provided him with the County Health Board. A county had a septic protocol to just pump them out and the EPA had a similar protocol. There's a biological component, and that's very important if you're going to maintain a personal individual septic system by seeding it with beneficial bacteria. It seems like they should be looking into an advisory memorandum or a circular that after the professional input of DEQ and members of the public come to a consensus, WPCAC members could post and provide. It doesn't have to recommend any product, and they could go through a review process where companies would have to provide input. He goes on to say that he thinks not doing anything is, is not going to help protect groundwater pollution. Given the crisis now in the regional wastewater treatment plants where they are not taking pumpage. In Ravalli County they can only pump 40% into the Missoula Regional Wastewater Treatment Plant. In Park County, they don't have a place to pump now.

Andy Ulven agreed. They're open to hearing suggestions. Internally at DEQ they are discussing these topics and recognizing there might be some areas to help advance the conversation. DEQ is looking at the right venue and format of that engagement might be. A couple of the bills that were being tracked in this session call for adoption of model rules for septic maintenance. DEQ was engaged in that, and the

bill was ultimately tabled. Maybe something will happen in the future, but he is certainly open to hearing Ron Pifer's thoughts and suggestions on the topic.

Ron Pifer added, he contacted the President of the Senate and found out the phone number of the individual that moved that bill forward. This individual said it was languishing in the Judicial Committee, and he just didn't think there was any chance. Ron Pifer offered to be an expert witness.

Teri Polumsky asked if there was maintenance information that could be pushed out to the public? She would certainly work hard to make sure that that was being pushed out through the real estate community, because they are a good point of contact for those homeowners. This would be an easy way for them to have that sense of ownership.

Eric Sivers answered, one of the other programs he supervises in the Water Protection Bureau is the Source Water Protection Program. In the early 2000's they came up with an outreach package called The DEQ Underground Comics. They get requests from counties for hundreds of copies every year, and there are copies of those that he can make available to WPCAC members. It's drawn like a comic book, but it provides very accessible information to homeowners about how their septic system works, and how to properly maintain it.

Ron Pifer asked if Eric Sivers could send this information to Amanda Knuteson so she could send it out to the Council? Does it include any biological component?

Eric Sivers answered yes, they do discuss the fact that there are biological systems. Currently they've been distributing it in hard copy. He would certainly make that available to Amanda Knuteson.

Ron Pifer added, by a biological component, he is suggesting adding microbial products to the septic embedded it with, a biofilm to break down the wastewater.

Mike Koopal stated The Flathead Basin Commission has produced the GIS Risk model for Flathead County and partly for Lake County. Flooded Basin Commission website has an online mapping tool that is completed, so users can navigate around and see information that came because of that project. It's a good tool to spatially represent septic information for the landscape.

Amanda Knuteson asked Eric Sivers if there is a formal process or a specific timeline someone wanted to provide input for edits or additions or amendments to the material he was referring to. Would you be receptive to input on that? Or is that something that's locked in. How do you determine what content goes into that material?

Eric Sivers answered, referring to the two kinds of underground comics mentioned. That's set as it is. That was something that an artist was contracted to produce, so that content is essentially final.

Amanda Knuteson added she has heard the idea of potentially having a more organized approach to developing and disseminating proper septic maintenance protocols. A year ago, someone referred to an onsite work group that was newly formed at that time. However, she thought maybe with the legislature and all the staff shortages, that was in an early stage and wasn't moved forward.

Andy Ulven answered, when he shared information on that, he mis-stated Work Group. It's not an official work group, just more of an internal coordination group. DEQ has been thinking about these things, and how exactly they can move that externally. Whatever form that engagement takes; they haven't decided yet. It's a matter of when and how exactly they move forward. Andy Ulven stated he is a good contact for those questions or comments.

Public Comment:

Tatiana Davila introduced herself to WPCAC members as the new Water Protection Bureau Chief.

Future Agenda Items

- Amanda Knuteson added to the future agenda Shannon Holmes to give an update from the municipal treatment perspective. Also provide an update on what's going on in Park County, and contacts with some septic callers in Gallatin County as well.
- Amanda Knuteson added Conrad Eckert providing more information on his involvement with trying to come up with a privately funded De-watering Plant for Ravalli County to the July agenda.
- Amanda Knuteson added a tentative agenda item update on Gallatin County, discussion about data gathering. How they're working with the water quality water conservation district to compile data. Putting it all together so that it can be accessed and utilized meaningfully in their review processes. They also do contract review for DEQ how they're approaching, utilizing that new information that's constantly being supplemented in the review process.
- Amanda Knuteson added a follow up on Ron Pifer and Andy Ulven conversation about the onsite committee formation to the July agenda.
- Amanda Knuteson added Fred Collins to join and add to the conversation about septic acceptance to July meeting. Possibly a panel forum with individuals from multiple counties and DEQ to offer different perspectives.

The meeting was adjourned by Amanda Knuteson at 11:43 A.M