

MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
10:00 am, Friday, November 19, 2021
Zoom Meeting
&
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:

Amanda Knuteson
Ron Pifer
Lee Bruner
Eric Campbell
Shannon Holmes
Mike Koopal
Teri Polumsky
Dennis Teske

Council Members Absent:

Chad Bauer
Jeffrey Mark
Adam Pummill

Montana Department of Environmental Quality Staff Members Present:

Darryl Barton
Susan Bawden
Moirav Davin
Abbie Ebert
Amelia Flanery
Kayla Glossner
Heather Henry
Myla Kelly
Jon Kenning
Joanna McLaughlin
Kurt Moser
Hannah New
Eric Regensburger
Lauren Sullivan
Mike Suplee
Amy Steinmetz

Members of the Public Present:

Julia Altemus, MT Wood Products Association (MWPA)
Ed Coleman, City of Helena
Gordon Criswell
Matt Culpo
Derf Johnson

Tammy Johnson, Montana Mining Association (MMA)
Mitchell Leu
Casey Lewis
Aaron Losing, City of Kalispell
Kelly Lynch, Montana League of Cities and Towns
Erik Makus, U.S. Environmental Protection Agency (EPA) Region 8
Vickie Marquis, Holland and Hart
Scott Mason
Amanda McInnis
John Podolinsky
Coralynn Revis, HDR
Dan Rostad, Yellowstone River Conservation District Council
Karen Sanchez
Trevor Selch, Fish Wildlife and Parks (FWP)
Juarez Thomas
Peggy Trenk, Treasure State Resources Association (TSRA)
Susie Turner, City of Kalispell
Vickie Watson

CALL TO ORDER

Chair Knuteson called the meeting to order.

APPROVAL OF MINUTES

Councilmember Polumsky moved to accept the September 10th, 2021, meeting minutes. The motion was seconded and passed unanimously.

INFORMATIONAL ITEMS

[Stormwater Permitting Renewals for the State of Montana](#) – Haley Sir, Maya Rao, and Melinda Horne

Haley Sir (MPDES Permitting Section) provided information on the general permit for storm water discharges associated with small municipal separate storm sewer systems (MS4s). The following information was provided for Permit Number MTR040000: Expiration Date - 12/31/2021, Expected Renewal Date - 1/1/2022, Current Status - In public comment ending 11/29/2021, Hearing Scheduled – 11/29/2021 at 10 am, and Stakeholder Workgroup – Spring 2020 through present. MS4 is a system of conveyances designed for collecting and conveying storm water with designations pursuant to ARM 17.30.1107. The summary of changes include: a comprehensive general permit with clear, specific, and measurable requirements, the removal of “deadline for implementation”, inclusion of a menu of Best Management Practices (BMPs) when necessary, clarified training requirements, clarified monitoring requirements, and a Program Effectiveness Assessment.

Maya Rao (MPDES Permitting Section) provided information on a general permit for storm water discharges associated with construction activity (SWC). The following information was provided for Permit Number MTR100000: Expiration Date – 12/31/2022, Anticipated Renewal Date – June 2022 (Issuance) 1/1/2023 (Effective), Current Status – Internal Review, Stakeholder Meeting – 11/29/2021, and Anticipated Public Comment Period – 12/27/2021 through 1/31/2022. Construction activities disturbing at least one acre of land where a discharge to state surface water can occur requires coverage. The summary of proposed changes include: improve permit navigability, clarify larger common plan for development or sale, update public sign requirements, and include electronic submission option.

Melinda Horne (MPDES Permitting Section) provided information on multi-sector general permit for storm water discharges associated with industrial activity (MSGP). The following information was provided for Permit Number MTR000000; Expiration Date – 1/31/2023, Expected Effective Date – 2/1/2023, Current Status – Internal Review, Stakeholder Meeting – 12/15/2021, and Public Comment Period – 1/24/2022 through 2/24/2022. Industrial facilities with SIC codes covered by the MSGP that have potential to discharge require coverage. The summary of proposed changes include: public sign, updated benchmark monitoring thresholds, report only indicator monitoring where pH, TSS, and COD are required for quarterly monitoring for subsectors with no existing monitoring regulations and Polycyclic aromatic hydrocarbons (PAHs) are required for biannual monitoring for specific subsectors, SIC codes, and/or coal-tar seal coat.

DEQ 12A Repeal – Myla Kelly and Eric Regensburger

Myla Kelly (Water Quality Standards Section Supervisor) provided information on the repeal of circular DEQ-12A (and DEQ-12B) from rule as required by Senate Bill 358. DEQ will repeal DEQ-12A from rule in conjunction with adopting the Adaptive Management Program that is also required in SB358. It was noted that this is a briefing item, and that initiation of rulemaking will occur at a later date. To comply with SB358 the draft rule changes currently proposed are: Remove the language to adopt DEQ-12A and re-insert some language that was removed in 2014 as part of DEQ-12A adoption. This includes direct references to DEQ-12A and other sections that don't mention DEQ-12A/12B but were adopted to implement DEQ-12A/12B. Rule sections that will be affected were outlined and examples of the changes were described. An addition to rule that follows new statute language adopted in SB358 that provides for new narrative nonsignificance criteria specifically for total nitrogen and total phosphorus was described.

The floor was opened for questions.

Councilmember Pifer asked, will the State still have numerical standards as a guideline for total nitrogen and total phosphorus? Ms. Kelly responded that DEQ will maintain narrative standards for nutrients and Rainie and Mike will be discussing what that looks like as a framework in the next agenda item.

Chair Knuteson asked, is there a process in place where DEQ is coordinating right now with EPA Region 8 or how is DEQ taking into account the necessity of getting a final EPA approval as required under the Clean Water Act (CWA)? Ms. Kelly responded that with any proposed changes or additions to water quality standards DEQ is always working with EPA because a critical piece of the CWA and our primacy in that, is when there is a change in a water quality standard that needs to be approved by EPA. So yes, DEQ is working with EPA on this.

ACTION ITEMS

[Framework Rulemaking to Initiate the Development Process for the Adaptive Management Program and Implementation of Narrative Nutrient Standards – Mike Suplee and Rainie DeVaney](#)

Rainie DeVaney (MPDES Section Supervisor) began initiation of rulemaking for this rule by describing the framework rule which directs DEQ to work with the Nutrient Work Group and establishes requirements and processes for implementing the transition back to narrative nutrient standards. The rule language was described including the changes for what an Adaptive Management Program is the definition of Adaptive Management Plan. Dr. Mike Suplee (Water Quality Standards & Modeling Section) provided a timeline for the rulemaking. In December, DEQ will put the rule into official rulemaking format and file

it. It will publish on December 23, 2021, with the Secretary of State. That will begin the public comment period which will be 45 days. Around February 7th or 8th there will be a public hearing. By February 24, 2022, DEQ will have responded to comments, the rule will be signed by the department head, and filed again with the Secretary of State. That will meet the statutory requirement to file by March 1, 2022. The rule will have final publication in mid-March of 2022.

The floor was opened for questions.

Councilmember Koopal asked, "How many more meetings do you anticipate having with the Nutrient Work Group?" Ms. DeVaney responded that there is no set number of meetings but that the focus is making sure that there is enough time to come up with the processes and requirements outlined in the framework. There is another Nutrient Work Group meeting schedule in 2-weeks where it is anticipated they will discuss the schedule.

Questions and Comments from the general public:

Kelly Lynch: I just want to speak in support of the proposal. I am the Deputy Director and Legal Counsel for the Montana League of Cities and Towns. Our members do more than any other group to clean Montana's surface waters. We are point source dischargers for all Montana's municipalities and all the people who live within Montana's municipalities which is the vast majority of Montanans. Over the past decade our taxpayers have spent hundreds of millions of dollars to remove nutrients from their discharge loads, but we really have reached the breaking point of diminishing returns trying to simply meet numbers without a more iterative process to look at how our receiving waters are responding to that. Further improvements to our systems and in many cases are cost prohibitive and we aren't going to see the major improvements or any improvements to water quality without being able to get to this point including fish habitat. So that brought us to this SB358 and calling for a different approach which is this adaptive management approach. Like a mentioned, a more iterative process that really reviews and analyzes and prioritizes actions within the watershed based on everything that's happening in that watershed. It allows and works off that flexibility to allow the different stakeholders in a watershed to react and respond and to modify actions based on what they are seeing in waters and how they are responding. And really work together to come up with an approach to take the best actions that will give us the most bang for our buck. So, we support the framework rule as proposed by DEQ and we will remain at the table to work through the details on all of this. I'd just like to thank everybody for all their hard work on this. We think its time to figure out a more holistic approach and prioritize our limited resources in Montana to get the most we can out of this process. Thank you and I'm available for any questions.

Tammy Johnson: I am the Executive Director of the Montana Mining Association. We were actively engaged in Senate Bill 358 for all of the reasons Ms. Lynch expressed in her comments to you. We've been engaged deeply with the Nutrient Work Group. We appreciate all the work that DEQ and the Nutrient Work Group members have done. We remain committed to staying at the table and rolling up our sleeves to put more context around the framework, rules, circular, and guidance documents you will see later. So, we too, would just like to express support of this framework and appreciate everybody's time. In closing I will say, Happy Thanksgiving everyone.

Dan Rostad: Representing Conservation District East of the Continental Divide. I have a different perspective than municipalities, understandably. The Conservation District is deeply involved in this. We are looking at this and engaged and glad to be a part of it. Mostly I've been impressed by staffing here,

in particular Rainie and Mike and others who have despite some frustrations have been proactive rather than reactive to make this process move forward a lot more simply and easily. And who make it easier for us who don't deal with stuff like this real often or at all, to understand it, so we appreciate that.

Peggy Trenk: With the Treasure State Resources Association. We have members who are point source dischargers and we have members who are considered to be in the non-point sector. We appreciate all those who have been involved in this process. I too, like others, would like to thank the DEQ. They have worked really hard in the last few months to get us here and continue to focus on that. We are Nutrient Work Group members as well. Just a couple things to emphasize: through all of this, Senate Bill 358 and this rulemaking process, is absolutely committed to protecting the water quality and are not working in any way to lessen water quality protections just coming at this in a way that is more flexible, gets more bang for the buck, and can actually make improvements on the ground. And so, we do stand in support of this draft rule and hope it is moved forward. Thank you.

Councilmember Koopal asked what the process is at this point for WPCAC members if they have thoughts or concerns related to this rulemaking and asked what is the best way to submit those to Mike and Rainie? Dr. Suplee responded that generally those are discussed here if you'd like because the action that is before the council at this point, from our perspective, is that we've asked you to move this forward to the next step. If there are details that we can resolve now, that would be ideal.

Councilmember Koopal noted that he has sat in on some of the Nutrient Work Group meetings and a concern with the conservation organizations is that we're taking a front-end proactive rule looking at concentrations as they enter our waterbodies, and we are replacing it with this back-end response variable technique. And of course, there are limitations with that. I guess on a broad scale, when I look at some of the details like the number of monitoring samples that will be conducted per year, which is two for most of the variables, that really doesn't provide the department timely information or status of, if there is a response within a water body. And so, that is a concern. From a 10,000 ft elevation, with this rulemaking, does DEQ itself have an adaptive management process in place that you can look at after a few years and say well wait a minute this isn't working, and maybe tweak it. Can you describe what that process looks like?

Ms. DeVaney responded with regards to the response variable comment that one detail that has gotten a little bit lost in our conversations with the Nutrient Work Group is that that requirement to continue to monitor concentrations of total nitrogen and total phosphorus for our point sources at the end of pipe is something that will be carried forward. So, we are not replacing response variables with more traditional end of pipe total nitrogen and total phosphorus monitoring. Really, it is an additive, in conjunction with. We are hoping that by having those nutrient concentrations at end of pipe, a more holistic tributary and other monitoring locations within the watershed, that will include total nitrogen and total phosphorus concentrations, plus response variables, in our minds we are hoping we get a more robust look. We are coming to you today with this framework because we are identifying some areas where this process could be improved a bit. We are coming to you with this action item with these framework rules with the commitment from DEQ that we will continue to work with our stakeholders and the Nutrient Work Group to talk through some of these concerns.

Dr. Suplee: With regards to the comment that this is a more reactive approach than perhaps DEQ had in the past, I am not convinced that is totally true because as Rainie mentioned there will be ongoing monitoring of effluent concentrations and included on top of that is an actual look at each water body where the nutrients are being discharged and looking at the specifics of how that reacts and if there are

problems manifesting or not. So that is something added, where we don't have that information right now. Regarding the comment about a slim dataset looking at this, I agree that that may be kind of true, we run that problem all the time. Our Monitoring and Assessment Section goes out and makes assessments on waterbodies sometimes with one or two visits. It's the same sort of thing, we get one or two shots at getting information. We then look at all the data and make a decision. In this case, we'll actually be getting, overtime, if it goes forward roughly how we have formulated it so far, we'll get a long term look at what is occurring in the waterbody of time, over years which is something we don't have now. It has a lot in common with what was set up in the late 1990's with the Clark Fork River as part of the volunteer nutrient reduction program. Dr. Vickie Watson has been out monitoring algae growth on that river for a really long time. She and I published papers where you can clearly see the effects from only a few sampling points per summer and the changes when Missoula went through its big upgrade in 2004. So having that data on the ground, in the river, I think is going to be valuable.

Councilmember Koopal: Thanks Mike, just a follow up, I guess my concern would be that with the slim dataset there would be lag time before an implementation plan would be developed. At which point there may be degradation to a waterbody. So can you describe a little more about the timing between getting the data you are going to get and the decision-making process for an implementation plan.

Dr. Suplee: The speed at which permits typically get renewed and updated is probably a much longer timeframe in general than the timeline from which data will roll in and can be evaluated. The data that we will be getting is going to come in, be processed by laboratories, and then come back to DEQ. Presuming that it can be processed in a timely manner, you can make decisions or get a sense of what is going on in a waterbody within 4 months or so after the end of summer (which is when the data will be collected). Then that process would be renewed again the next summer. That process is about as fast as we operate certainly for our Monitoring and Assessment Section which has the most analogous program. They are collecting data in the summer and making decisions about it early to next winter. So I see that as certainly not a limitation to this process, or not in my mind.

Councilmember Koopal: Thank you Mike. One last question, in terms of the MPDES permit holders who will be responsible for the monitoring under this plan. How do you parse out the responsibility amongst the permit holders when there is a determination that some impairment is occurring?

Ms. DeVaney: That is one conversation that we have been circling back to quite a bit in the Nutrient Work Group. DEQ came to the table with a proposal and part of that proposal really was the intent behind that was to truly separate or divorce the permit renewal cycles (they are all on a five-year cycle and those are all becoming effective and expiring at different times) from the watershed scale monitoring. So, we are taking a snapshot of a watershed and really trying to implement that watershed scale monitoring for each permittee in that watershed at the same time. Our proposal, which you are not seeing that in this rule for action today, but our proposal was really to have those permittees within each watershed work together to figure out who would take responsibility for which portions. Simply because some watersheds have ten regulated entities while others have two. And all of those are going to have potentially varying resources, interests and goals under the Adaptive Management Program. I'll conclude with saying, that is definitely something we are continuing to chat with about in the Nutrient Work Group and with our regulated communities.

Councilmember Koopal: Thank you Mike and Rainie, I know you have put a lot of work into this as have other DEQ staff. It is a short time frame to get this work done so I'm sure you have had to re-tool your whole work schedule over the last six months to make this happen. So good job. I think there are still

some fine tuning to occur and some concerns out there so I hope DEQ can adequately address all of those. So, thank you.

Vickie Watson: Professor Emeritus at the University of Montana. As Mike pointed out, we worked for many years on doing the science to develop the numeric standards which we felt were really helpful in preventing degradation. Montana's going to continue to have population growth, we're expecting worse and worse droughts which means there will be an increased demand for our surface waters, leaving less water in the stream to dilute the loads that we put into it. So, preventing degradation is only going to get harder and harder. I believe somebody earlier raised the question of, will we continue to use the numeric standards sort of as a guidance to implement the narrative standards? And what I am hoping is the intent is that we will not allow backsliding. At least we will not allow increased loadings into streams with all the population growth and so on. I assume that is part of the Adaptive Management approach, that we will hold the line on increased loadings, using the modeling that we will be using to determine how much loading is going to be going in. Long strange question, but maybe a little more clarity on how we are going to hold the line when switching from numeric to narrative standards?

Ms. DeVaney responded to Dr. Watson's questions. One thing that DEQ has been very open about as far as the regulated entities, we do anticipate for permits that have final effective effluent limits for total nitrogen and total phosphorus, those will be maintained and carried forward. So that is one way to address that "hold the line". That has been part of this program from the beginning.

Councilmember Holmes made a motion to approve the framework rulemaking to initiate the development of the Adaptive Management Program and implementation of narrative nutrient standards. The motion was seconded. Council members voted and the motion was carried forward.

General Public Comment:

None

Chair Knuteson made a motion to adjourn. The motion was seconded and passed by unanimous consent. The meeting adjourned at 11:10 AM.