NUTRIENT WORK GROUP TECHNICAL SUBCOMMITTEE MEETING SUMMARY

JULY 16, 2021

9:30 a.m.
Zoom Meeting

ATTENDANCE: NUTRIENT WORK GROUP TECHNICAL SUBCOMMITTEE MEMBERS

Representative & Affiliation	Representing
Michael Suplee (co-chair)	DEQ, Water Quality Standards & Modeling
Rainie DeVaney (co-chair)	DEQ, Surface Water Discharge Permitting Section Supervisor
Coralynn Revis (sub. For Dave Clark) HDR	Point Source Discharger: Large Municipal Systems (>1 MGD)
Rika Lashley Morrison Maierle	Point Source Discharger: Small Municipal Systems with Lagoons
Alan Olson (sub. for Shane Lacasse) MT Petroleum Association	Point Source Discharger: Non-POTW
Louis Engels (sub. For Amanda McInnis) City of Billings	Municipalities
Matt Wolf Sibanye Stillwater	Mining
Rachel Cone (sub. for John Youngberg) Montana Farm Bureau	Farming-Oriented Agriculture
Kristin Gardner Gallatin River Task Force	Conservation Organization: Local
Guy Alsentzer (sub. for Sarah Zuzulock) Upper Missouri Waterkeeper	Conservation Organization: Regional
	Conservation Organization: Statewide
Guy Alsentzer Upper Missouri Waterkeeper	Environmental Advocacy Organization
	Water or Fishing-Based Recreation
Thor Burbach (sub. for Andy Efta) U.S. Forest Service	Federal Land Management Agencies
Tina Laidlaw U.S. Environmental Protection Agency	Federal Regulatory Agencies
Jeff Schmalenberg MT Dept. of Natural Resources and Conservation	State land Management Agencies
Coralynn Revis HDR	Wastewater Engineering firms

NOT IN ATTENDANCE: NUTRIENT WORK GROUP TECHNICAL SUBCOMMITTEE MEMBERS

Representative & Affiliation	Representing
Vacant	Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)
Jay Bodner Montana Stockgrowers Association	Livestock-Oriented Agriculture
Pete Schade Lewis and Clark Water Quality Protection District	Water Quality Districts / County Planning Departments
Samantha Tappenbeck Flathead Conservation District	Soil & Water Conservation Districts – West of the Continental Divide
Dan Rostad Yellowstone River Conservation District Council	Soil & Water Conservation Districts – East of the Continental Divide
Julia Altemus MT Wood Products Association	Timber Industry

ATTENDANCE: OTHER PARTICIPANTS

Aaron Losing, City of Kalispell
Amelia Flanery, DEQ, Surface Water Discharge Permitting
Amy Steinmetz, DEQ, Water Quality Division Administrator
Brian Heaston, City of Bozeman
Christina Staten, DEQ, Watershed Protection Section
Christine Weaver, DEQ, Surface Water Discharge Permitting
Christy Meredith, DEQ, Watershed Protection Section
Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor
Ed Coleman, City of Helena
Erik Makus, U.S. Environmental Protection Agency, Region 8
Erin Wall,
Galen Steffens, DEQ, Water Quality Planning Bureau Chief
George Mathieus, DEQ, Deputy Director
Hannah New, DEQ, Surface Water Discharge Permitting
Heather Henry, DEQ, Surface Water Discharge Permitting
Jane Madison, DEQ, Water Quality Standards and Modeling Section
Joanna McLaughlin, DEQ, Surface Water Discharge Permitting
John Esp, Montana State Senator
Jon Kenning, Water Protection Bureau Chief
Kayla Glossner, DEQ, Surface Water Discharge Permitting
Kristi Kline, Montana Rural Water Systems
Kristy Fortman, DEQ, Watershed Protection Section Supervisor
Loren Franklin, KC Harvey Environmental
Logan McInnis, City of Missoula
Melinda Horne, DEQ, Surface Water Discharge Permitting
Michael Kasch, HDR
Paul Skubinna, City of Great Falls

Peggy Trenk, Treasure State Resources Association
Rickey Schultz, HDR
Ryan Sudbury, City of Missoula
Tammy Johnson, Montana Mining Association
Ted Barber, Meeting facilitator
Vicki Watson

MEETING OBJECTIVES

- Understand where Department rules fit into state law
- Define the process for watersheds with multiple permittees
- Follow-up on outstanding topics

MEETING HIGHLIGHTS

- DEQ will conduct preliminary watershed inventories for watersheds with multiple point sources
- Medium-sized rivers accepted as a category
- AMP definition will be finalized by July 28 Nutrient Work Group meeting

A list of meeting action items and discussion topics flagged for future meetings can be found at the end of this summary.

MEETING INITIATION

Ted Barber, meeting facilitator, welcomed everyone to the meeting, reviewed the agenda, introduced DEQ contacts involved, and took roll call of the technical subcommittee (TSC) members. Ted then also went over the ground rules for the meeting.

STATE LAW VS ADMINISTRATIVE RULES VS POLICY

Mike Suplee, DEQ Water Quality Science Specialist, reviewed slides 7, 8, and 9 of **Attachment A** to answer the questions: what are rules, what is the rulemaking process, and how does it fit in? Mike explained that the State Constitution is the supreme law of the state (slide 8). Senate Bill 358 will be contained in state law / Montana Code Annotated (MCA). Subsequently, Administrative Rules of Montana (ARM) are written by departments, which is the process we are undertaking. Once rules are adopted, they have the force of law. Underneath this, there is more detail: written policy and work unit policy. The hierarchy is that each component must be consistent with the one above it (slide 8).

Mike then discussed slide 9 of **Attachment A**: cooperative federalism and federally delegated programs. The Montana Pollutant Discharge Elimination System (MPDES) program is an example of a federally delegated program, which is a mirror of the national program and is consistent with the federal Clean Water Act (CWA). Mike explained that DEQ's main counterpart under the CWA is EPA. Many rules that DEQ adopts must receive EPA review and only become applicable after EPA approval.

Discussion

Guy Alsentzer, Upper Missouri Waterkeeper, asked if DEQ has submitted Senate Bill 358 to EPA for approval. Mike replied that DEQ has not submitted the legislation to EPA, and said that as a general rule, EPA does not take action on state laws. Mike further stated that one of the requirements of SB358 is

eliminating numeric nutrient water quality standards, and DEQ will begin the administrative process for repealing DEQ Circular 12-A in the near future.

Guy also stated that the City of Helena is up for MPDES renewal, and we need clarity from EPA on whether we can move forward with this process. Tina Laidlaw with EPA Region 8 stated that EPA can act on state legislation if it determines it is a water quality standard.

WATERSHEDS WITH MULTIPLE SOURCES

Rainie Devaney, Supervisor of DEQ's surface water discharge permitting program, reviewed slides 10 – 14 of **Attachment A**. Rainie stated that DEQ has begun looking at what permits exist at the HUC 8 scale and how the Department will handle situations where there are multiple point sources. Slide 12 shows the same watershed as slide 11, but with a different scenario: multiple point sources. Slide 13 lays out DEQ's process for addressing this scenario and Rainie asked for thoughts on how this could work. Rainie further stated that DEQ is doing some upfront work to identify watersheds that require a monitoring plan, based on internal records, and conducting a preliminary watershed inventory for watersheds DEQ has identified as having multiple point sources. Rainie also stated that DEQ was originally thinking this would be tied to the permit application process, but renewal application deadlines won't be in sync for each permittee; additionally, the legislation is asking us to look at a watershed-scale.

Rainie stated that slide 14 (draft approach for determining a watershed) was presented at the previous Technical Subcommittee meeting and DEQ wants to acknowledge this draft language is still out there and is happy to receive comments and feedback on it.

Discussion

Rika Lashley, representative of small municipal systems with lagoons, stated there was confusion in the last meeting regarding a watershed used in an adaptive management plan versus a HUC 8-defined watershed and suggested using an alternate word to differentiate between them. Mike responded that it would not be unusual for there to be situations where you might cut off the responsibility before the end of the actual HUC 8 boundary, or cases where responsibility bleeds further down to the next HUC. Rainie stated that HUC 8 is just a starting point for watershed inventories and watershed boundaries will be defined case-by-case for each adaptive management plan.

Matt Wolfe, mining representative, stated he wasn't sure where to find HUC 12 boundaries. Kristy Fortman, Supervisor of DEQ's Watershed Protection Section which houses the TMDL, nonpoint source, and wetland programs, stated that the State Library website will contain this information and that she can also provide assistance, if needed. HUC data can be downloaded here.

Louis Engels, substitute representative for municipalities, noted that he didn't see nonpoint sources mentioned in the slides and asked how we have a watershed approach without considering nonpoint sources. Rainie responded that nonpoint source considerations are included in the watershed inventory, which includes the opportunity to identify stakeholders and partners in the watershed (identifying anyone you can partner with to reduce nutrient loading). Kristy stated that in western Montana, we have quite a few watershed restoration plans that local entities compiled that talk about the various partners in the watershed, and those plans can be found on DEQ's website (https://deq.mt.gov/water/Programs/sw).

Louis then asked if it would be the responsibility of the discharger to quantify the nonpoint source loads in the watershed. Rainie responded that this may depend on what information is available, as DEQ may have nonpoint source contributions already calculated; if this has not occurred, the permittee can work with partners or do some work quantify sources on their own. Kristy further stated that most TMDL documents have load allocations outlined for nonpoint sources, and wasteload allocations provided for point sources; however, not every watershed has a TMDL document for nutrients.

Louis followed up asking if a TMDL was completed for the Yellowstone River and nonpoint source pollution is quantified, how does DEQ see nonpoint sources working with the permittees? Will it be the responsibility of the municipality to force nonpoint source work? Kristy responded that all nonpoint source restoration work is voluntary; however, there are many active groups throughout the state that are already addressing this, including other agencies like NRCS. There is a system in place through conservation districts and watershed groups to work with producers, homeowners with septic tanks, etc. DEQ has also started a statewide campaign to reduce nonpoint source pollution, with the goal of helping the public understand their contributions and what they can do to help. Rainie also stated that she hears the concern and hesitation and thinks DEQ can be helpful and serve a vital role in making those connections and fostering relationships.

Matt Wolfe stated he is concerned about the size of watersheds defined under the adaptive management program and that we could be biting off more than we can chew if the larger HUC 8 boundary is used. For example, the Upper Yellowstone HUC is very large, which includes the Boulder mine, and goes from the Yellowstone National Park boundary to Reed Point. Matt asked if the Boulder River TMDL was conducted at the HUC 12 level. Kristy responded that generally TMDL planning areas follow HUC 8 boundaries, but not always. The Boulder River TMDL is in the Boulder-Big Timber TMDL Planning Area, which is a subset of the Upper Yellowstone HUC 8 boundary. Kristy also stated that we are in the planning stages of developing TMDLs for the Yellowstone River; however, DEQ will only be looking at the mainstem of the river and will not be writing TMDLs for the tributaries at this time. Darrin Kron, Supervisor of DEQ's monitoring and assessment section, stated that the data collected during this effort can lead us to what tributaries we should be looking at for future work. Currently, the Clarks Fork of the Yellowstone is sticking out right now as a future project and there are interested stakeholders in this area.

OUTSTANDING TOPICS

Rainie went over several topics that are outstanding from prior meetings.

AMP Definition and AMP Flowchart

Discussion was had over submitted edits to the definition of adaptive management program (AMP) (slide 17 of **Attachment A**). Rika explained that monetary means direct cost to a community, such as operation and maintenance costs, monitoring associated with implementing the AMP, treatment costs, etc., and that environmental costs are indirect costs.

Rainie stated that DEQ will address the concepts Rika expressed and will wrap up the definition and have a final version for the next Nutrient Work Group meeting.

Louis stated displeasure at removing "nonpoint sources" from the definition. Rainie explained that the revised definition still considers nonpoint sources. Louis also asked if SB358 gives DEQ the authority to regulate nonpoint sources. Rainie responded that she does not believe SB358 provides new authority to

regulate nonpoint sources. Louis also asked if DEQ agreed it is needed for a watershed approach. Rainie responded that nonpoint source contributions are a critical piece in analyzing nutrient sources and should be quantified, but also acknowledged that work by nonpoint sources is voluntary.

Matt Wolfe and Alan Olson stated they agreed with not spelling out "nonpoint source" in the definition since the state does not have the authority to regulate nonpoint sources.

Rainie stated that DEQ has not received additional input on the AMP flowchart. She further stated that time isn't an essential component of the flowchart, but it would be helpful to receive feedback to know conceptually how the process will work (**Action**).

Roles and Responsibilities

Rainie stated that the adaptive management program will remain a permittee-driven process; however, DEQ is available to provide support and resources, including training, monitoring procedures and protocols, identifying data sources, and for relationship building.

Rika asked if it would make sense for DEQ to take a more active role in getting the process started for very small communities – along the same lines of what would be done for watersheds with multiple point sources. Rainie said we can start to talk about prioritizing watersheds.

Medium Rivers Category

DEQ asked for a confirmation from the technical subcommittee on including this category. Consensus was to include this as a category, along with wadeable streams and large rivers. Mike Suplee will create a draft definition of a medium river (**Action**).

Groundwater

Rainie stated that groundwater language was added to the AMP details document that supports the flowchart, and this updated language is available on Teams.

Teams Platform Feedback

DEQ requested feedback on how Teams is or isn't working for the group in being able to provide feedback, as not a lot of traffic has been observed on the site. A question was asked about folder organization, and it was stated that the folders are confusing.

PUBLIC COMMENT

Public comment was taken at the end of the meeting. There were no comments or questions.

CLOSING

Ted reminded the group the next technical subcommittee meeting is August 3 at 1:30 p.m., and the next Nutrient Work Group meeting is July 28 at 9:00 a.m. Galen Steffens, DEQ Bureau Chief of the Water Quality Planning Bureau, thanked the group for their participation. She encouraged people to follow up with her if anybody has any problems accessing the Teams page. Ted thanked the group and closed the meeting.

SUMMARY OF MEETING ACTIONS

The tables below include items from all previous meetings. New and updated items are in bold font.

Incomplete Action Items			
#	**Action**	**Who**	**Status**
1	Provide feedback from the TSC about the time component in the flow chart	TSC	In progress
2	Update the flowchart and supporting materials based on TSC feedback	Rainie DeVaney, Mike Suplee	In progress
3	Receive feedback from TSC on time component of each flowchart step.	TSC	In-progress
4	Receive written comments from League	Amanda McInnis	Status Unknown
5	Define what P prioritization means	DEQ and TSC	Pending
6	Define roles and responsibilities of DEQ and permittees for AMP process	DEQ	In-progress
7	Identify and define what is needed to determine how far upstream and downstream monitoring should occur for a point source	TSC	In-progress
8	**Medium rivers definition**	**Mike Suplee**	**In-Progress**

Complete Action Items			
#	**Action**	**Who**	**Status**
1	Distribute the flowchart and supporting materials to the TSC in a format to provide comments/track changes	Rainie DeVaney, Mike Suplee	Complete
2	Consider other measures that may trigger action (Box 7 of flowchart)	TSC	Complete
3	Clarify in the supporting documents that the narrative standards are those referenced in the Administrative Rules of the Montana of the State of Montana.	Rainie DeVaney, Mike Suplee	Complete
4	Define the overall work for the AMP by the June 23 Nutrient Work Group meeting	TSC	Complete
5	Provide information to the TSC on how to get on the agenda for a future meeting	Rainie DeVaney, Mike Suplee	Complete
6	Schedule two TSC meetings between each Nutrient Work Group	Rainie Devaney, Mike Suplee	Complete
7	Set up Teams TSC collaboration site. Send invite email. Post comments received from TSC members and draft DEQ documents	Moira Davin, Christina Staten	Complete
8	Update AMP definition based on TSC feedback. Share out to TSC.	Rainie DeVaney, Mike Suplee	**Complete**
9	Decide whether medium sized rivers should be broken out	TSC	**Complete**
10	Add the draft approach for determining watersheds to Teams for feedback from TSC	Mike Suplee	Complete
11	**Reorganize technical subcommittee Teams folders so they are more intuitive**	**DEQ**	**Complete**

Questions/Topics Flagged for Future Discussions	Meeting Date
Tina asked when will the Monitoring Plan be submitted (is that part of the permitting application)? When will the public get to review what is being proposed for monitoring? Will DEQ have monitoring guidance?	6/10/21

Questions/Topics Flagged for Future Discussions	Meeting Date
How exactly the public process is incorporated into the different steps in the AMP need to be worked out and flagged that for future discussion.	6/10/21
Consider developing a case study to guide the MT process.	6/10/21
Tina noted, there is talk about doing some downstream analysis but it could also be that elevated concentrations of nutrients could contribute to an issue that just hasn't yet been manifested, so EPA will be curious how the state plans to address that piece.	6/10/21
Discussion on the nexus between TMDLs and AMPs.	6/10/21
Tina asked where does the NPDES permit application process fit in to this whole process?	6/10/21
Define roles and responsibilities of DEQ and permittees in AMP process	6/21/21
How will DEQ apply existing TMDLs- what is the interplay of AMPs and completed/approved AMPs	6/21/21
Define P prioritization and what is intended as site-specific factors.	6/21/21

ATTACHMENT A: JULY 16, 2021 NUTRIENT WORK GROUP TECHNICAL SUBCOMMITTEE MEETING PRESENTATION SLIDES