

Water Pollution Control Advisory Council Meeting Minutes

Room 35 Metcalf Building Helena

January 7, 2009

10:00 A.M.

Chairman Dude Tyler called the Water Pollution Control Advisory Council meeting to order on January 7, 2009, at 10:07 a.m.

Council Members Present: Dude Tyler (Chair), Kathleen Williams, Trevor Selch, Michael Wendland, Roger Muggli, and Karen Bucklin Sanchez.

Department of Environmental Quality (DEQ) Personnel Present: Bob Bukantis (Council Secretary) Water Quality Planning Bureau (WQP), Planning, Prevention and Assistance Division (PPAD); Mike Suplee, WQP, PPAD; Todd Teegarden, Technical and Financial Assistance Bureau (TFAB), PPAD; Terry Campbell, TFAB, PPAD; Bonnie Lovelace, Director's Office; Carrie Greeley, (Administrative Support) WQP, PPAD.

Council Members Not Present: Terry McLaughlin, Stevie Neuman, and Earl Salley.

Dude did a role call of council members.

A quorum was present.

Approval of Agenda

Dude asked if the meeting [agenda](#) is approved. No response so the agenda was approved.

First item on the agenda was to approve the meeting minutes from the November meeting. Dude asked if there were any corrections or changes to the meeting minutes from the [November 6, 2008](#) Council Meeting.

Karen Sanchez found a possible typo on page 14 that said that "Bonnie Lovelace said it was a good idea to move people to septic for waste water treatment plants in the future". Karen referred it to Bonnie for clarification. Bonnie said to change it to say "Bonnie Lovelace said it was a good idea to move people from septic to waste water treatment plants in the future". The minutes were approved with this change. Dude asked if there were any other changes or corrections or discussions. Michael moved to approve the minutes as corrected. Dude asked for a second motion. Roger seconded the motion.

Dude asked to do a poll since this was a conference call. The motion carried with all in favor.

Action Items

State Revolving Fund Categorical Exclusion from MEPA Review

Todd Teegarden chief of the Technical and Financial Assistance Bureau gave a presentation on the [State Revolving Fund Categorical Exclusion from MEPA Review](#). Todd manages the drinking water and waste water pollution control state revolving fund programs, which provide funding and technical assistance to public water and waste water facilities in Montana. Todd is asking to amend the public water supply and waste water system rules to be consistent with a 2007 amendment to the federal categorical exclusion (CATEX) rule. At DEQ the water pollution control state revolving fund currently has this authority. However the drinking water state revolving fund and public water supply program do not have this authority. Rule adoption is for two things: one to change the water pollution control CATEX rules to be consistent with Federal rules and secondly to adopt categorical exclusion criteria for the drinking water state revolving fund program and non SRF public drinking water and waste water projects which are reviewed by the Public Water Supply program. This rule affects owners of public water supplies and sewer systems. Examples would be: cities, towns, water and sewer districts, subdivisions, mobile home parks, businesses and schools. These amendments would allow for the ability to write consistent and efficient environmental reviews on behalf of DEQ and meet the updated federal CATEX requirements.

The question was asked at what level is there a public hearing conducted on this and when will that hearing be or has it already taken place. Todd replied that after the presentation to this group there will be a public hearing scheduled. Karen asked about what changes were done at the federal level to the NEPA CATEX requirement. Todd replied that they changed a few of the categories to be more consistent with current language. There wasn't a lot of changes but he can get a copy of those changes to her. Dude asked Bob to send the information in a group e-mail as there was interest from the committee in getting more information on this topic.

Kathleen asked Todd to describe the EAs that he has prepared for these types of projects, do they take long to do, and do you learn a lot in the process, and is there any significant public concerns? She would like to know how the EA work process has presently been working that would now be exempt if a CATEX was approved. Todd said when a project is submitted to DEQ, DEQ has one of three options to comply with MEPA. They look at environmental issues and to see if a categorical exclusion qualifies. If they meet certain criteria such as minor changes to a collection system or a minor unit process modification that fits under the categorical exclusion definitions, that could be the decision made by the Department. If it does not fit the CATEX requirements, they do an environmental assessment analysis, at which point the evaluation can then determine if an environmental assessment is adequate. If it is not or there are more advanced issues then they move to the EIS process. There are three levels of decisions allowed within both MEPA and NEPA. The EIS process is the most detailed and complicated. At DEQ, depending on the scope of the project, we will determine upfront where it is going to fit in those categories. If there is public interest in the project a categorical exclusion is not allowed. Categorical exclusions are only intended for minor upgrades, and minor rehab of systems or any increase in permit discharges. CATEX have certain criteria and requirements they have to meet.

Kathleen had some concerns from her perspective that there's a whole lot of discretion as to what would be excluded from a potential environmental assessment. Not sure if that's a good idea or not. If the EA process is good and is done well it can be very efficient and an agency can learn a lot about a project from it if it is done right. She is aware that the Bush administration wants to streamline things, but she's just not comfortable with just adopting something because federal environmental laws were slackened. Kathleen wanted to know what the scope of this difference would be and if the EA process for the DEQ on some of the projects in the future would be exempt. Would it be onerous or would it benefit from the exemptions.

Todd responded that categorical exclusions in the federal law have been around for decades. It has been in around since 1972 when the Clean Water Act was authorized. The categories that meet the criteria for categorical exclusions were amended in 2007 and when compared to the 1972 version are very similar. There were some changes in the population numbers, but there were no substantial changes. The water pollution control SRF program has been around since 1992 and has had CATEX authority. Of the projects that we look at approximately 5-10% actually meet the criteria for a categorical exclusion. The water pollution control SRF program mainly works with cities, towns, and water and sewer districts. The program mainly does EAs because they don't meet the criteria for a CATEX. Public water supply gets projects such as doing an extension of the main in the city of Billings or an extension of the main at Willow Creek. DEQ would like authority to apply the CATEX criteria for drinking water projects, such as simple replacements where pipes are already in place and they would be replacing in kind. If you increase the size of pipes or increase the discharge they would not get a categorical exclusion. They would then have to do an environmental assessment. A categorical exclusion is a decision made by the Department and can be overturned at any time if additional information is provided that would validate that the Department made a wrong decision and/or if there is a significant public interest. That is a big piece of NEPA and MEPA and we always do an environmental review to the EA or EIS scale on those types of projects.

Kathleen wanted some examples of what would be a CATEX under the old rules versus the new ones and how those projects are different. The MEPA process is a good public process and as the public representative for this committee she hesitates to support something that would reduce the public's role in decision making. She asked if Todd could give examples that would not be exempt now but would be under the new law.

The example Todd gave was if the water pollution control SRF program received an application from the city of Shelby to replace three mains of pipe in the town. That program can look at it and would contact the engineers in the city to ask if they meet the categorical exclusion criteria. They would look under categories and it falls under 3a for rehabilitation of existing system within an existing right of way. It would meet that category and thus the DEQ can execute a categorical exclusion. But if same application is sent to the drinking water SRF or public water supply which does not have authority to do a CATEX they would have to do an EA. We currently have inconsistencies in the SRF programs in the department. If there is any question on a CATEX we err on the side of doing an EA or EIS.

Dude gave a reminder that the action that is required by WPCAC is to review and comment. Members can do so via a motion at the end of discussion. This is not for thumbs up or thumbs down approval.

Kathleen asked about the St. Mary's rehabilitation project and whether DEQ has authority over it. Todd asked for verification as to which project she was referring to. Kathleen said the St. Mary's water supply pipeline. That is a federal rehabilitation for mainly irrigation water and that it's a huge project. Todd said if it is submitted to the Department as a change to a public water supply then yes we would but if specifically mainly irrigation it might be DNRC. It depended on who has authority on original review of it and if it's DNRC on the dam side or the irrigation side on DEQ. Referred the inquiry to Bonnie Lovelace. Bonnie said she was unsure of who has the authority. There may be a permit at issue if it is a water supply, or a storm water permit under the MPDES program if it's currently under construction. Other than that she doesn't know who has jurisdiction. Todd said DEQ would have authority if it was tied to a water supply. If it's a major upgrade it would not qualify for CATEX. CATEX is only for minor expansions.

Kathleen asked if DEQ does scoping of projects prior to a CATEX decision and does DEQ ask for public input or do you only initiate public input when you start the environmental assessment. Todd stated that it depended on the scope of the project. There is no need for scoping of simple minor projects. If there is expansion of capacity or issues that may be of public interest they would certainly do scoping and the project would not qualify for a CATEX. If it is a facility project that is funded out of public money we require them to do a preliminary engineering report which includes a public meeting and public notice to be included in the preliminary engineering report.

Dude asked Bob if it was his intent to do a motion. Bob stated a motion of support or not from the council would be useful to DEQ. Kathleen said she is not confident of her understanding of the plan to take a position. Dude asked for comments and asked if there was a motion to offer.

Roger has concerns as well. He said it was hard to grasp how it's actually going to work. Since it sounds like it's on the books and of no real concern but said he feels like Kathleen and is not comfortable enough with his knowledge to enter a motion. Roger said he can see on the surface that it seems easier and of not much consequence but changes where it affects large projects such as St. Mary's makes it hard to get your thoughts around. Dude said there are two potential abstentions and asked for any one else who might need abstention. Trevor said he felt the same as Roger and Kathleen. Wants to streamline things but if it takes out public process he's hesitant. Dude said he was hearing no motion from the floor. Karen said she's familiar with the process and context of public water and upgrades. Her work process is similar to this. She is willing to propose a motion in support of rule changes. Dude asked if there is a second to the motion and there was no response. The motion died on the floor due to lack of a second and a lack of support for a motion. There was no strong disapproval or disapproval about the motion.

Kathleen suggested closure on this and is interested in comments from the public hearing. Todd reminded the committee that there will be a public comment period done on the request for rule change and there will be more clear information presented at the public hearing. He asked if there is a possibility that he can provide more details on the proposal in a future WPCAC

meeting, after the public hearing has been held. Bob said he will e-mail more information on this.

2009 Meeting Dates

Dude reviewed the WPCAC 2009 meeting dates. Dude said July 2nd is an out date for him and someone will need to fill in as chair. Bob thought that Terry McLaughlin said he could step forward as chair. Michael said he was not available for the April 30th meeting but may be able to join by phone. Dude said with travel costs he wants to move forward with phone conferences when possible. Motion was made to approve the meeting dates. Michael motioned and Roger seconded. All were in favor, and no one was opposed.

Briefing Items

Wastewater Reuse

Terry Campbell presented an update of information on Wastewater Reuse. They have gained the DEQ Director's support on a reuse plan. They have since created an internal reuse plan work group that is made up of sections that need to have input on the plan. Reuse plan committee is currently reviewing the document. The first meeting of the committee was November 08 and they are hoping to make quick progress. There is a need to get guidance information out on the street rapidly as applications are starting to come in on reuse alternatives that they haven't seen in the past. They need to pursue getting draft guidance out within next few months. They will need to work on developing an internal rule structure. Once that is completed they would then meet with other agencies including DNRC to get feedback and input back. In the 2011 legislative session need they will need legislative authority to implement the reuse rules. This is the tentative schedule at this point

Dude would like Terry to come back in person at a later date and give an update when he has a project in hand going through the approval process. Terry agreed to do that.

Terry said that there was a conference in the summer of 2008 put on by the Joint American Water Works and Water Environment Federation and one of the main topics was reuse and it drew in national caliber speakers that gave presentations on reuse to consulting and municipal industries. There is a national interest in this and they are moving forward. Dude asked if there were any questions for Terry. Kathleen asked if they were trying to get this into the 2011 legislative session. If it is so important to get information out can't they possibly get it attached to other bill? Terry confirmed that it will be the 2011 legislative session, and the reason behind that is because DEQ is not ready yet and needs to get things set up internally first before pursuing. Terry has been working with Claudia Massman with DEQ's legal unit on this issue. DEQ legal felt that this session is too soon, and wants to hold off till we can get things in place. Kathleen wanted to know what was so limiting that we can't push it for 2009 session. Terry explained that right now DEQ has no clear authority to allow a lot of the reuse alternatives. The DEQ legal department feels we are stretching authority on land application systems. Our authority to approve is based on a pilot study basis. It can not be formally approved until piloted for a period of time. That's a loop hole that we are using to review and approve reuse facilities. Legal feels we need much clearer statutory authority first to implement ground water

augmentation, surface water augmentation, or landscape irrigations for those types of projects. It doesn't exist yet within the clean water act.

Karen said that Terry mentioned ground water augmentation and that she knows that the last legislature had formed a committee to make recommendations about water to this legislature. The committee met in Bozeman and ground water augmentation was one of the big issues they discussed. The question was asked if the findings and reports from that committee to this legislature will influence what DEQ will be able to present to the 2011 legislative session. Terry said he is sure that it will. He is familiar with that work group, but hasn't looked thoroughly at what they have developed to this point. It will definitely play into that type of reuse alternative. The biggest issue is that the incentive for ground water re-injection reuse mainly is to augment a limited water supply. It is an issue that agencies will need to coordinate. DNRC will need to take a significant role due to water rights. DNRC and DEQ will need to coordinate on this issue and it will need to be coordinated with other state agencies before session.

Bonnie said that water policy interim committee addressed this issue but they don't use the word augmentation anymore but it is that subject matter. House bill 831 last session allowed for injection well provisions in the water quality act and specific to meeting certain standards for injection wells. There is a bill this session for expanding those requirements for meeting standards in a broader spectrum of injection possibilities. There is one bill out of committee this year that has a provision to expand the water quality act language in section 77-54-10 of the water quality act. It would take it from being just injection wells to a broader category of ground water augmentation to allow for drain fields etc. and for that purpose you have to meet a higher standard. Nothing in language that says it's for reuse but it has to do with the discharge side but it could link to reuse, but is not built for reuse specifically. Could be possibly be used for that if it gets passed.

Kathleen said augmentation would necessarily draw DEQ in to insure that water quantity changes would protect water quality. There is the opportunity and necessity for DEQ to be involved in those proposals. Bonnie stated that we are involved in the proposals. She is personally involved with that particular bill. DEQ is part of making sure they are involved and have given several presentations to that interim committee on the need to protect the water quality if you put surface water back into the ground due to possibility of pollutants that could contaminate drinking water. Surface water to groundwater can affect the water quality. Dude asked for any more questions. He stated that he was excited by the development and encouraged by it. There were no more questions voiced. That was just an update and no action was required.

DEQ Legislative Update

Bob Bukantis gave a [DEQ legislative update](#). The one significant bill that DEQ has in the legislative session is Senate Bill 95 being carried by Senator John Brueggeman. It's the one this council heard about in general terms at the November 6 meeting, as part of Mike Suplee's numeric nutrients standards presentation. The bill is entitled: "An act authorizing the Department of Environmental Quality to use temporary nutrient criteria to establish permit limits for point source discharges to surface water; and amending Section 75-5-103, MCA". A link was added to the WPCAC agenda web page that connects to the legislative laws site for more details on this bill. This bill would allow DEQ authority to be able to give a variance to communities etc., to

take into account the cost of treatment and the available technology for wastewater treatment as a companion piece to allow us some options on how to meet numeric nutrient standards and how to implement them. This is the only piece of legislation we have going in under the Montana Water Quality Act. We're tracking other pieces of legislation that may go through and working with the governor's office in terms of comments in support or not depending on the legislation. Examples include SJ7 which is in opposition to the federal HR2421 clean water restoration act. The other one is Senate Bill 4 which would upgrade the year old water policy committee to a standing committee. We have Mike Suplee, Bonnie, Todd and Bob available for questions. Dude asked for any questions and none were forthcoming. Dude asked for any updates be sent to the committee if needed and Bob said he would do an update in February meeting. Bob said that Senate Bill 95 things will start happen quickly because they are expecting a hearing Friday or sometime shortly after. It's in the Senate Natural Resource committee right now. Dude asked that Bob keep up the committee up to date by e-mail.

General Public Comments

Dude asked for General Public Comments. No comments were provided.

Agenda Items for Next Meeting

Dude called for agenda items for the next meeting. Kathleen asked Todd to attend the next meeting after the hearing to provide an update to the state revolving fund categorical exclusions. Todd said he will check with Jim Madden in DEQ's legal department to see how far ahead we have to advertise to have a hearing. Once the hearing is done he can give an update if not by next meeting then the following meeting. Dude asked Bob if he has any other things for agenda. Bob said updates on legislative actions, TMDLs, and other programs. Roger had wanted to do a presentation on coal bed methane and would like to be added to the next agenda. Dude said there is enough on the agenda to have the meeting in Helena. He asked if the committee could do a field trip to the legislature. Bonnie said that if there is an interesting hearing or action they can tune in.

Karen asked about the two committee vacancies as both members are important for providing information, input, and view points to this committee. Bob said that Jon had provided a recommendation when he resigned and Karen had recommended someone and they were passed on to the governor's office. Dude says WPCAC needs a public works person. He might have one and will talk to a city person and see if he's interested. Bob said he'd be happy to answer questions and people that are interested can also talk to the governor's appointments representative, Patti Keebler (406-444-3862) or refer to the website.

Karen agreed about missing council members and wants to have a full council. Bob said he could communicate with the governor's office to express the concern of the Council.

Bob did want to mention that the Council does need to be careful about having things on agenda prior to discussion.

Dude asked for any other discussions or items. There was none.

The meeting adjourned at 11:05 am.