

1 WATER POLLUTION CONTROL ADVISORY COUNCIL

2
3 MEETING

4 THURSDAY, FEBRUARY 18, 2010

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8 TRANSCRIPT OF PROCEEDINGS

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10 BE IT REMEMBERED, that an in person meeting of the Water
11 Pollution Control Advisory Council was held at the Metcalf
12 Building, Director's Conference Room 111, 1520 East Sixth
13 Avenue, Helena, Montana, on the 4^h day of November, 2010,
14 beginning at 10:00 a.m. with some members joining via
15 conference call.

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1 **APPEARANCES**

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3 COUNCIL MEMBERS PRESENT:

4 TREVOR SELCH - VICE CHAIRMAN

5 DUDE TYLER - CHAIRMAN

6 EARL SALLEY

7 MIKE WENDLAND

8 KATHLEEN WILLIAMS

9 RICHARD HOEHN

10 MITCHELL LEAU

11 KAREN BUCKLIN SANCHEZ

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13 COUNCIL MEMBERS PRESENT BY PHONE:

14 COREY FISHER

15 STEVIE NEUMAN

16 ROGER MUGGLI

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18 DEQ REPRESENTATIVES PRESENT:

19 BOB BUKANTIS

20 ROD MCNEIL

21 JOYCE WITTENBERG

22 JENNY CHAMBERS

23 KARI SMITH

24 CHRISTINE WEAVER

25 FREDDI HAAB

1 JOHN NORTH

2 MARK BOSTROM

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4 INTERESTED PARTIES PRESENT:

5 DON ALLEN, WESTERN ENVIRONMENTAL TRADE ASSOCIATION

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1 DUDE TYLER: Let's call this November 4th meeting, of the
2 Water Pollution Control Advisory Council to order. We have some
3 agenda changes after which we will ask for approval of that
4 changed agenda. The one is under briefing items; Todd Teegarden
5 is ill and so we will take that presentation wastewater re-uses
6 agenda off. Bob, and what did you have for that change?

7 BOB BUKANTIS: The only other one was that the meeting
8 calendar is really just setting the first meeting for 2011
9 because the Board does not have a calendar yet. Once the board
10 has a calendar, which they will, by time we meet, early next
11 year, then we can set our calendar.

12 DUDE TYLER: Ok. Any other changes to the agenda? Could we
13 have a motion to approve the agenda?

14 MALE SPEAKER: So moved.

15 MALE SPEAKER: Second.

16 DUDE TYLER: Thanks Earl. All in favor?

17 (all "ayes")

18 DUDE TYLER: All opposed?

19 (Silence)

20 DUDE TYLER: Ok, let's see. Why don't we introduce
21 ourselves, we've got some new faces and we should sit in a way
22 we can see each other here. Let's start on the end here.

23 JOYCE WITTENBERG: Oh me?

24 DUDE TYLER: Yes.

25 JOYCE WITTENBERG: Joyce Wittenberg, Director's Office.

1 DUDE TYLER: Thank you Joyce.

2 BOB BUKANTIS: I'm Bob Bukantis, Water Quality Standards
3 manager and official secretary for the Council.

4 DUDE TYLER: And I am Dude Tyler, from the Realtors
5 Developers Industry.

6 TREVOR SELCH: Trevor Selch, I'm a fisheries biologist.

7 KATHLEEN WILLIAMS: Kathleen Williams, Public member from
8 Bozeman

9 KAREN SANCHEZ: Karen Sanchez, a Professional engineer

10 MITCHELL LEU: Mitchell Leu, organic waste disposal.

11 MICHAEL WENDLAND: Michael Wendland, Hill County.

12 EARL SALLEY: Earl Salley, inorganic wastes.

13 DICK HOEHNE: Dick Hoehne, town of Phillipsburg I'm a person
14 in public works.

15 DUDE TYLER: Great.

16 BOB BUKANTIS: Dude...

17 DUDE TYLER: Yes.

18 BOB BUKANTIS: Phone....Corey?

19 DUDE TYLER: Oh! Corey. Corey, can you hear us Corey?

20 COREY FISHER: Ya I can. This is Corey Fisher, conservation
21 community.

22 DUDE TYLER: Thanks Corey (by phone). We're sorry to forget
23 you. Out of sight, out of mind, right?

24 COREY FISHER: Exactly. That's why we should put a box on
25 the table with a face on it.

1 BOB BUKANTIS: Did we forget anyone else?

2 DUDE TYLER: Is there anyone else that's joined the meeting
3 since Corey?

4 (Silence)

5 DUDE TYLER: But we still have a forum right?

6 BOB BUKANTIS: Ya.

7 DUDE TYLER: We clearly have a quorum.

8 BOB BUKANTIS: We were expecting Stevie to call in also.

9 DUDE TYLER: Well, she may as we go along. Corey if you have
10 trouble hearing anything, would you pipe up and make sure
11 you bring that to our attention?

12 COREY FISHER: Ya, definitely, so far so good. I can hear
13 pretty good.

14 DUDE TYLER: Ok great. Changes or an amendment to the
15 minutes from February 18th? Is that right?

16 BOB BUKANTIS: I think so.

17 DUDE TYLER: Wow.

18 BOB BUKANTIS: It's been a light year.

19 DUDE TYLER: Hearing none is there a motion to approve the
20 minutes as presented?

21 MICHAEL WENDLAND: So move.

22 DUDE TYLER: Thank you Michael. Second?

23 TREVOR SELCH: Second.

24 DUDE TYLER: Trevor, thank you. All in favor?

25 (all eyes)

1 DUDE TYLER: Opposed?

2 (Silence)

3 DUDE TYLER: Motion carried. And under action items, its
4 time for a review and selection of chairperson for 2011. Now
5 having prepped myself by downloading Robert's rules of order
6 from the internet. I can say that there are some great latin
7 words and I might use some. We go around the table and the chair
8 asks for nominations. Which we're asking for right now. The
9 nomination need not be seconded and having taken some total
10 nominations. We then will, as chair, call for a vote on the
11 nominations in the order in which they were submitted. So at
12 this time, is there a nomination for the chairperson for 2011?

13 KATHLEEN WILLIAMS: I nominate Dude Tyler.

14 MALE VOICE: I'll second that.

15 DUDE TYLER: No seconds required.

16 MALE VOICE: Well I wanted to.

17 DUDE TYLER: Are there any other nominations, keeping in
18 mind a clearer idea that we do have a very capable vice-chair
19 sitting next to me?

20 TREVOR SELCH: Can't argue with the people.

21 DUDE TYLER: This is a con-job Bob.

22 BOB BUKANTIS: I didn't have anything to do with it.

23 DUDE TYLER: Did you set them up for this?

24 BOB BUKANTIS: No.

1 DUDE TYLER: Are there any other nominations? Any other
2 nominations? OK. So I guess we'll now vote on nominations. Can
3 we have a voice vote in favor of Dude Tyler resuming the chair?

4 (all ayes)

5 DUDE TYLER: I don't think we have to poll this group of
6 mutineers. Thank you.

7 MANY VOICES: Thank you.

8 DUDE TYLER: My pleasure to serve and I will phone in sick
9 several times because we do have Trevor as vice chair and he's
10 willing to serve and he is very capable, so... expect more
11 political presentations before next year. OK, thank you. And so
12 moving right along. We need to set the first meeting for 2011.

13 MALE VOICE: Except, we missed something here. Did we miss
14 something?

15 DUDE TYLER: Okay, ya. Via Bob.

16 BOB BUKANTIS: Basically as I mentioned earlier, we don't
17 have a Board calendar for next year. Which includes not having a
18 first meeting date. I've got some potential meeting dates from
19 John North, our Chief Legal Counsel, and reviewing those meeting
20 dates and our requirements under state law in terms of providing
21 adequate review time for this Council before an action item were
22 to go to the Board, it looks like probably the best time for us
23 to meet would be the first week in January. I think you have one
24 these calendars or maybe I'm the only one that's got one. I
25 would propose Thursday, the 6th of January, if that works for the

1 Council and we can talk about other dates, but looking at the
2 possible Board dates probably the latest we could meet would be
3 January 10th.

4 DUDE TYLER: Any conflicts? Does that work for the council?

5 KAREN BUCKLIN SANCHEZ: I may be the only person. I do have
6 a conflict on Thursday the 6th.

7 BOB BUKANTIS: We could try one of the other days like the
8 5th or the 7th?

9 DUDE TYLER: Corey, does that work with you?

10 COREY FISHER: Either of those days actually works for me.
11 So pretty much flexible there.

12 DUDE TYLER: So what was the second alternative?

13 BOB BUKANTIS: I was proposing either Wednesday the 5th or
14 Friday the 7th.

15 DUDE TYLER: Karen?

16 GROUP VOICES: Wednesday is better.

17 KATHLEEN WILLIAMS: I won't know my January schedule for...a
18 while.

19 DUDE TYLER: You'll know pretty quickly. It's busy. Ok, so
20 let's see, Wednesday, should we, do we need a motion, I guess on
21 setting the meeting for Wednesday, January 5th?

22 KAREN BUCKLIN SANCHEZ: So moved.

23 DUDE TYLER: Thanks Karen, 2nd?

24 EARL SALLEY: 2nd.

25 DUDE TYLER: Ok, thank you Earl. All in favor?

1 (ayes)

2 All opposed?

3 (silence)

4 We're meeting January 5th, 2011. I think its worthy of mention
5 that we now have a sitting legislator in our mix.

6 Congratulations to you Kathleen. It's nice to know there's
7 somebody starting legislature with such a deep knowledge of
8 water issues and water policies in the state of Montana. We're
9 lucky to have you. Thank you.

10 KATHLEEN WILLIAMS: Sure and if anyone has issues with my
11 change in status, or change to serve on the committee let me
12 know. I will try and get a reliable alternative for you.

13 MICHAEL WENDLAND: What position did you get elected to?

14 KATHLEEN WILLIAMS: House representative.

15 MICHAEL WENDLAND: Which?

16 KATHLEEN WILLIAMS: House District 65.

17 MICHAEL WENDLEND: 65. Congratulations.

18 DUDE TYLER: As a matter of fact, I think there's some
19 legislation in here that has your name on it, isn't there? We'll
20 get to that. Ok so January 5, 2011. Alright, thank you Bob.
21 Jenny has a presentation on fees. Jenny...

22 JENNY CHAMBERS: Yup, thanks.

23 DUDE TYLER: Corey, I don't know if you're going to see this
24 on your computer or if you're just listening, but let us know if
25 you're missing something.

1 COREY FISHER: Ya, I have the adobe up and I'm watching it
2 right now.

3 JENNY CHAMBERS: Ok. Thanks. Let me present to you guys. I
4 have a two fold a briefing item and then an action item I need
5 to request from you all. I'm Jenny Chambers, Bureau Chief of the
6 Water Protection Bureau. I recognize several of you. Several new
7 members so nice to have you aboard. Sometimes when Bob is out or
8 just on vacation sometimes I'm his alternate on (inaudible), so
9 sometimes you may see me in that capacity or, I'm actually up
10 here quite a bit.

11 DUDE TYLER: Excuse me Jenny somebody just joined the
12 meeting.

13 BOB BUKANTIS: That's Roger.

14 DUDE TYLER: Roger, welcome.

15 ROGER MUGGLI: Sorry, I had a problem getting on. I don't
16 know what was going on, but anyway it took me a few tries to get
17 through. Sorry to be a pain, but anyway. The other problem is do
18 you hear this back ground noise? Is this too much interference?

19 DUDE TYLER: Why do you have the mill running?

20 ROGER MUGGLI: Well, yeah and the big grinder is running
21 right outside the office.

22 DUDE TYLER: We can't hear it, Roger.

23 ROGER MUGGLI: You're ok?

24 DUDE TYLER: Yup.

1 ROGER MUGGLI: Ok, alright. Good deal. I'll be out running
2 the seed plant too. Sorry about being late.

3 DUDE TYLER: Thanks for joining us. Jenny is about to
4 present on fee rule changes so pipe up when you need to.

5 ROGER MUGGLI: OK alright. I will. Thanks for having me.

6 DUDE TYLER: Thanks Jenny.

7 JENNY CHAMBERS: Yup.

8 (Several voices discussing technical equipment problems and
9 discussion about how to fix it)

10 JENNY CHAMBERS: Ok, so just a couple briefing items. I just
11 want to talk a little bit about what the current requirements
12 are for authorizations of discharged pesticides. Water
13 Protection Bureau basically gives authorizations or permits for
14 discharges of pollutants to state waters. A pesticide is a
15 pollutant and does require some sort of state water quality
16 discharge to pesticides. There are some federal requirements now
17 under way under the Clean Water Act. I'll talk a little about
18 new requirements maybe for a general permit under the MPDES
19 program. The Montana Pollutant Discharge Elimination System
20 Program. Talk about what our time frame is for that development
21 with some stakeholder review and that kind of provides the
22 framework of why I'm asking for a change in our fee rules. To
23 add a new category for pesticide general permits and other
24 clarification and cleanup type items. The fee rule packages went
25 in 2009 that are approved by the board so normally I wouldn't

1 want to go back to the board to re-open those key rules or even
2 touch them with a 10 foot pole. Unless there was some
3 legitimate reason on any to take that to the Board and this one
4 is a concern to pesticide stakeholder groups and so it's one
5 that I wanted to address. So we'll go through those a little
6 bit. Currently under the Montana Code's Annotated 75.5.308 the
7 Montana Water Quality Act does require short-term water
8 authorization for to water quality. Not water qualified
9 standards. That if you apply any kind of pesticides that you
10 need to have a short-term authorization and that you're going to
11 exceed your water quality standard. No toxic amounts and
12 pesticides. Of course are designed to be at toxic to kill
13 whatever they're being applied for. Also, there's another
14 category. Emergency remediation activity you can just get a 308
15 under the short term water authorization. We don't have many of
16 those. We get about 20-30 authorizations under 308 for the
17 application of the pesticides used to control the nuisance
18 aquatic organisms... are to eliminate un-desirable or non-native
19 of 5 species. The majority of those that we get are counties and
20 municipalities. Some municipalities are like... drinking water
21 reservoirs will apply pesticides to control their algae so they
22 don't have the intake in their drinking water supply. That's
23 just one example that would require a 308. Application process
24 is fairly straightforward. They submit an application form.
25 There's some supplemental information that we use to try and do

1 an environmental assessment. On the process, there's an
2 application fee. There's currently a \$400 from 2009 rules and
3 that they cannot exceed 1 year from the date. So this program's
4 already been in place in Montana so there have been a lot of
5 concerns about the Federal requirements that are being under
6 way. As in some Montana water quality act provisions in place.
7 So basic standard conditions, you have to conduct the activity
8 in a course of why you have applied. So when they tell us
9 they're going to apply and they're going to apply pesticides in
10 a certain fashion then they have to maintain that they're going
11 do that. They have to comply with the product label and
12 provisions and the Montana Pesticide Act which is regulated by
13 the Department of Agriculture and basically basis says that they
14 have to comply with the sticker label. Pesticide, insecticide
15 (unaudible) act. All these terms that were never in my English
16 language within the Water Protection Bureau when dealing with
17 water quality is getting to be a fun thing to work in.

18 DUDE TYLER: Jenny, let me interrupt you again. Jenny... we
19 just had another person join. Hello?

20 STEVIE NEUMAN: Hi Dude, this is Stevie.

21 DUDE STEVIE: Hi Stevie glad to have you.

22 STEVIE NEUMAN: Well thank you. Sorry I'm having to do this
23 via phone. I'd much rather be there.

1 DUDE TYLER: Well, we'll miss you but we can hear you if you
2 can hear us and Jenny Chambers is are just starting her
3 presentation on proposed feed changes.

4 STEVIE NEUMAN: Oh, ok.

5 DUDE TYLER: So listen in and we'll rejoin Jenny.

6 JENNY CHAMBERS: Ok. They also have to properly dispose of
7 any excess pesticide containers and they have to be a licensed
8 applicator from the Department of Agriculture and they must
9 allow access for us to do any on sight inspections, or follow up
10 on complaints, or issues that may be going on. So that's what's
11 been in the past, that's what's been on the books, that's what's
12 been in regulations. We've only got about 20-30 like I said that
13 comply with that 308 due to resources and other constraints. We
14 aren't out there looking for them either. I mean, we're not
15 going out and stating do you have a 308 authorization, but if
16 there's a complaint or if there's a fish kill or something going
17 on they could be in violation of the Water Quality Act for
18 discharging without an authorization. Basically the Clean Water
19 Act back in November 27, 2006 stated that application of
20 pesticides that was applied in accordance or consistently with
21 the relevant requirements under figure, does not constitute the
22 discharge of a pollutant that requires national pollutant
23 discharge elimination system. If it was applied to state law and
24 if it was following figure labels and doing everything it needed
25 to control. But then in January 7, 2009, the court ruling

1 indicated that that rule was vacated. That invalidates the
2 regulatory exemption for pesticides with permit coverage and
3 basically states that any pesticide users, state pesticide
4 controllers, and others who spray pesticides on or near the
5 water will have to obtain national a pollutant discharge
6 elimination system. So the regulation and this court ruling
7 basically say that the nozzle that's coming out of the pesticide
8 is a point source. Any pesticide that's supplied from the point
9 source that's a pollutant. Once the pesticide is used up,
10 there's some residual on the water or on the plants that are
11 near the water that isn't used for its intended use and purpose.
12 Therefore, that is a pollutant and that needs permit coverage.
13 So that's the game that we're playing in now. Basically working
14 on trying to develop a general, also EPA is working on a general
15 permit. April 9th, they received a 2 year stay from the court to
16 allow time to develop this, work with state, work with the
17 stakeholders, work with agricultural industry, work with the
18 environmental groups, and so April 9th, 2011 is currently when
19 you should have a permit on place as far as a general permit.
20 EPA policy was edited in July 2010. They've got massive amounts
21 of comments. They're working on revising and looking at those
22 comments. The game plan now is that they're hoping to have a
23 final permit out in January. Which if we waited for the EPA to
24 get their permit issued in January, I would have had time to
25 develop one that's Montana specific. Take things out of there

1 that doesn't make sense nationally for Montana, go out for
2 public comment, get response to comments from Montana, and get
3 the final permit issued. We're in the process of drafting ours
4 right now and working with stakeholders. There's also some
5 rumors out there that EPA may go back to the courts and ask for
6 another extension for states that are still struggling with
7 trying to meet that April 9, 2011 timeframe. So basically,
8 sometime in 2011 we're going to have a general permit. It's hard
9 to say exactly when, but we're working on a time to make sure we
10 don't do anything more stringent than the federal regulations
11 not knowing for sure what their final decision will be
12 (inaudible) It's kind of a "who's on first" type of thing.
13 We have developed a webpage for public and stakeholders to look
14 at. Just to kind of post things that we have. We have a working
15 group. We post work group meetings. We post any kind of draft
16 development documents that we may have. Once I get the approval
17 for you guys to move forward with finish dates for the Board.
18 We'll post that information on there. We'll post any draft forms
19 or facts sheets for pertinent development. There are some
20 general pesticide uses to be covered. We're still looking at
21 these categories and seeing if there's something that doesn't
22 make sense, something that we should add because if it's not on
23 this particular list for general pesticide coverage doesn't mean
24 that they don't have to get permit coverage. They just don't
25 qualify for general purpose and would need to get an individual

1 MPDES coverage. Which is a whole other game that's more
2 complicated and going to take more time, and got its own public
3 comment period and all those things. So just dealing with
4 aquatic insects, aquatic algae control, aquatic weeds
5 (inaudible) control, worst canopy pest control. We also added
6 one for research and development, Department of Ag folks said
7 that they do a lot of experimental and pilot projects, things
8 like that which we think should have permit coverage. They would
9 need an individual permit, but we don't want to do an individual
10 permit for all of those projects. So things that are exempt,
11 irrigation and turn flow. Meaning if you apply to a drainage
12 ditch to have standing water in there and doesn't return back to
13 state water that is exempt you don't need permit coverage.
14 There's no water in there that's going to return to state water.
15 An agriculture storm water. Agriculture storm water, just really
16 quick, is if you're applying to a dry field you did it when the
17 weather was really good, you followed the label, you said it not
18 supposed to be applied to water and you applied it to your plant
19 or your grain field and then 4 days later, it rains. Of course,
20 there's going to be some residual from those plants, that may
21 drain to state waters and that's also exempt. It's still not a
22 point source.

23 FEMALE VOICE: Do you want us to hold questions to the end?

24 JENNY CHAMBERS: You can ask now. I just wanted to get
25 through that last segment.

1 FEMALE VOICE: You may be touching on this. I thought that
2 it's applied to state waters and then you got forest canopy pest
3 control, if there is a chance it would get to state waters....?

4 JENNY CHAMBERS: Ya, on or near state waters, if its forest
5 canopy, it's going to drip into a state water. It's applied near
6 or on water. Ya, so we are trying to cover those. It does not
7 include dripped or over sprayed necessarily. And so that was the
8 intention of that is not to apply to state waters, and so they
9 have to do all of their BMPs, all their controls, because that
10 label probably says don't apply to state waters on a lot of the
11 pesticide uses, and so there could be some drift or downwind
12 use, and we are not covering that it's still a nonpoint source
13 type activity.

14 FEMALE VOICE: I'm trying to get an idea too of folks that
15 would cover public entities. I think like the example you gave
16 of a which I'm (inaudible) public water system for

17 JENNY CHAMBERS: Sure.

18 FEMALE VOICE:waste water system for algae control. And
19 then a private applicator as well so like a golf course - or
20 mean lawn type deal.

21 JENNY CHAMBERS: Yes, A lot of the folks at the stakeholder
22 groups were a lot of lawn care products, nitro green, places
23 like that apply really close to state water activities. Aerial
24 spray applicators for large crop fields or crop dusting
25 activities, mosquito control. A lot of the mosquito control

1 districts. A lot of the counties have mosquito control districts
2 all of those folks. Irrigation districts, private and public, it
3 makes my universe stakeholders a lot bigger I mean, before it
4 was so. This is one category can be that can be impacted. Go
5 ahead Christy.

6 CHRISTINE WEAVER. I am Christine Weaver and I am the one
7 that is actually putting pen to paper. There are thresholds
8 though. So it's not going to be like a homeowner who has one
9 acre and is you know trying to get rid of some cattails or
10 something. There will be like threshold to size. I couldn't
11 remember if you told her that.

12 JENNY CHAMBERS: Yeah. I wasn't going to get into the
13 specifics too much. I was going to ask them if they wanted me to
14 do that with the normal general permit. More ironed out as far
15 as to what the categories would be. But the general permit EPA
16 is looking right now is the threshold, so that if you meet a
17 certain threshold level on these categories, then you have to
18 submit a notice of intent to follow all these requirements. It
19 doesn't mean that everybody else is exempt. It just means that
20 your not having to go through all the steps, as far as a notice
21 of intent process and/or reporting all these forms, a discharge
22 management plan, and all of these other documentations. They
23 still technically should have been getting the 308 authorization
24 if they were applying pesticides directly to state waters. So,
25 it's going to be kind of a two-fold process if you meet the

1 threshold, your going to have to take other steps to follow
2 federal requirements to go through this process. If you are
3 still applying pesticides on water you still need a 308 water
4 quality cause your still going to state quality water acts and
5 getting coverage, so...

6 FEMALE VOICE: So, for a public entity, like a water sewer
7 system for cat tails.... cat tail control or things that are
8 really common, could they roll this MPDES permit in with the
9 other one? With the other discharge permit?

10 JENNY CHAMBERS: If its... No, if its drinking water, there is
11 a reservoir and that is a state water. They should get a 308
12 authorization and they have it. If it's a waste water lagoon,
13 that's not a state water. It's designed solely for the purpose
14 of treating and disposing and what ever state waters. And so
15 they can do whatever they want to that lagoon process because
16 it's out of state waters.

17 FEMALE VOICE: They are not discharging out right after him..
18 I understand.

19 JENNY CHAMBERS: Ya, ya

20 FEMALE VOICE: I understand. Thank you.

21 DUDE TYLER: And we are not talking, Jenny, about the
22 herbicides to control moths, etc., we are talking about
23 pesticides.

24 JENNY CHAMBERS: Pesticides are broad term, so it includes
25 herbicides, fungicides, algicides(inaudible) all those controls.

1 DUDE TYLER: It does, okay, okay we are talking about...

2 JENNY CHAMBERS: If that label says you that can apply to
3 state waters

4 DUDE TYLER: okay, okay

5 JENNY CHAMBERS: ...or to a waters, involve all of these
6 practices and your intention is to spray it on waters or right
7 next to water that it's going to unavoidable get into the water.
8 You should maintain some type of permit coverage. Again this is
9 a huge universe, Dept of Ag estimates that we should have been
10 having upwards of the hundreds, 4 to 500 of these possible come
11 in, and so we are only getting 20 to 30 of these coming in.
12 There is a huge universe that we have not been regulating all
13 this time. But again we, this is really the intention of the big
14 boys, the big players, the ones that are meeting the threshold
15 levels, the ones that are doing the mosquito control districts
16 and lest of all need to follow a best management control plan.
17 Then we probably are not going to be going out and looking for
18 those small ones, but if there is a complaint, or something like
19 that then they could be violation. Yea.

20 MICHAEL WENDLAND: Jenny, is there possibly that you are
21 going to start looking at peninsula storm water, because
22 (inaudible) down wind?

23 JENNY CHAMBERS: You know that's a great question, but yeah
24 that's where we are heading in water quality. That's where we
25 are heading in water discharges in general. Is that these

1 nonpoint source activities are coming in these point source
2 realms, and we are starting to look at all these different
3 things so at one time or possibly in the near future we'll look
4 at changing our MS4 regulations or permits to look at some
5 public education for post construction or pesticide use within
6 their permitized area. I have no idea where it's going to go.
7 This is just one of many they also have another ruling that I
8 wasn't going to talk about, but it kind of just goes through the
9 take aware of nationally where we are headed. Ninth circuit
10 courts are looking at a forest ruling. For forest services and
11 the projects they do for tree removal and strip cleaning their
12 fields from the forest area when they build roads and culverts.
13 They are calling those roads and culverts a conveyance, they are
14 calling those a point source. The courts are. So there is some
15 discussion with the forest service about whether or not they
16 need the MPDES coverage for storm water for an industrial
17 activity. That basically accepting the silver culture activity
18 so, I don't think we are in for, and I think there are a lot
19 more things that come down. So we are really just trying to read
20 those court interpretations, talk with our legal staff, figure
21 out what that means for Montana, look at EPA, try to get
22 guidance if they have any, try to provide some services to our
23 regulatory community in Montana. Work with the stakeholders,
24 meet the intent of the requirements, but not go too far left
25 field with the requirements, and just get what we need to do so

1 folks are protected. So they will not get environmental lawsuits
2 they need to maintain permit coverage. Really it's (inaudible)
3 quality and intent so. Any other questions? Sure Karen....

4 KAREN BUCKLIN SANCHEZ: I have one more questions. So Jenny,
5 you're talking about externally the customers of Montana.

6 JENNY CHAMBERS: Yes

7 KAREN BUCKLIN SANCHEZ: ..that your serving. What about
8 internally? I mean, that's quite a difference in work load for
9 profitability and permits and all that kind of stuff. Are you
10 looking at (inaudible)?

11 JENNY CHAMBERS: I would love to look at that more.

12 FEMALE VOICE: That's a unique question. Nobody usually
13 cares.

14 JENNY CHAMBERS: Nobody cares. Yeah. We are looking at what
15 we can do that's realistic, as far as not making the process too
16 complex, like this is a notice of intent process, verses a full
17 application process. You know, it lets staff time to review
18 that. To say operation is applied for notice of intent you have
19 coverage. We are not going to review the pest management control
20 plans, at the tail end, up front, but if there is a complaint or
21 a citizen or staffer doing inspections on the tail end, they
22 will ask them to show us that plan. So the upfront work not
23 quite as much, but the tail end. Yes it's going to be some staff
24 time and staff resources and that's going to follow Kari's
25 group, as far as finds and inspections and the oversight for

1 getting permit coverage. So at the due, or due diligence for the
2 polices of the Montana to say were issuing or actually checking
3 to see what groups are compliant with those. So...

4 FEMALE VOICE: So kind of like the storm waters you have
5 currently.

6 JENNY CHAMBERS: Ya. Ya. Ya. What we have 1,500 storm water
7 construction permits, and we only go out to a percentage of
8 those, and only in the same type category. And if we get too
9 many complaints or get down the road and in other legislative
10 sessions, ya, they put in a bunch of requests to say that I got...
11 I need additional FTE's because of these reasons, having pre-
12 staffing at this time, having all these regulations come. We are
13 trying do "x", but that just depends on where we go with
14 resources of the funding. But at some point my placement of
15 overtalk and I'm not going to have enough people to do all this
16 stuff we're doing. EPA did give a one-time grant, \$100,000,
17 which is not a lot, for strengthening compliance, and
18 enforcement activities and I may need to use that to for the
19 pest development permit and training and outreach and a few
20 other things, but... ya thanks for bringing that up, but ya that's
21 where we are headed.

22 FEMALE SPEAKER: Ya, and then they wonder when you talk
23 about training and outreach, cause I worked for a inspection
24 service, for a little is that something you can look at?

1 JENNY CHAMBERS: Ya, and that a great.... We are also working
2 really close with the Ag folks and other folks to figure out.
3 Christine actually tagged along with a couple of Department of
4 Ag training sessions to do some education outreach, and just
5 rode along with them to get save some of our travel training
6 budget and try to resolve some resources a little bit and figure
7 out some ways we can look at. They go out and do some
8 inspections, they get some data information in on (inaudible)
9 getting the reporting requirements, so we can see if any of
10 those forms are something that we don't have to duplicate. That
11 we can kill two birds with one stone or something. Ya, we are
12 trying all those things as far as work share and cooperation
13 agreement, but...

14 FEMALE VOICE: Can I ask another question?

15 JENNY CHAMBERS: Sure, sure.

16 FEMALE VOICE: How many reported fish kills in a year
17 happened in Montana that maybe attributed to pesticide
18 applications?

19 JENNY CHAMBERS: We don't get a lot, there are a few, but
20 they are mainly the piscacides. Which are actually applied to do
21 fish kills and that's a different category in here.

22 MALE VOICE: That was actually a question of mine, was how
23 pesticides will actually fit into this and I heard you guys in
24 the hopper, you were working on a separate or someone was

1 working on a separate rule on that and it might be corporate
2 under figure?

3 JENNY CHAMBERS: For which now?

4 MALE VOICE: For piscacides?.

5 JENNY CHAMBERS: It's going to be ruled under this general
6 permit.

7 MALE SPEAKER: It's going to be under this general permit as
8 well? OK.

9 JENNY CHAMBERS: It's under, which one is it?

10 CHRISTINE WEAVER: Nuisance animals.

11 JENNY CHAMBERS: Yes nuisance animal control, which doesn't
12 seem like its nuisance, but if you have trout in the stream that
13 needs to be some other kind of fish

14 MALE VOICE: OK, that will be all.

15 JENNY CHAMBERS: ...then that trout's a nuisance. This
16 terminology sometimes kills me using some other stakeholders
17 groups and you got all the other people that actually know the
18 talk the talk. You know.

19 TREVOR SELCH: Karen, I get contacted for all the fishy
20 tales, so usually I say 3 to 4 pretty evident ones, that are to
21 do with pesticides,

22 FEMALE VOICE: A year?

23 TREVOR SELCH: But again, it's one of those things, by the
24 time we get someone on the ground its' washed away and you know
25 you don't have the fish. Fish actually need to be actually

1 collected and kept when it's dying. (inaudible) otherwise
2 (inaudible) you can't prove anything per say, but it's one of
3 those things that you know someone knew someone put pesticides
4 on, you know got in and in a ditch, for example, and then got
5 into the river or the creek and then you've gone in there and
6 there's been you know all species of fish, large and small, it's
7 usually a good indication that pesticides application. We get
8 about three to four of those a year and we work with a really,
9 with the, where the problem is, and it's really hard to force
10 anything or take any action at that point, but it is you know
11 never usually an intentional thing, it's usually something like
12 that.

13 FEMALE VOICE: And this will allow tools for enforcement,
14 there will be some notification requirements at this piece of
15 this threshold, that they have to notify that there is a fish
16 kill, there's are other reporting requirements in place, so we
17 will work with, you know, Fish Wildlife and Parks and stuff like
18 that on trying to figure out some kind of system after we roll
19 this out and how we can, you know, go out and do you know site
20 visits or we get some kind of notification. Do we have somebody
21 that we can notify Fish, Wildlife and Parks so that they can
22 keep it on the ground faster; because we don't have that
23 expertise to collect fish samples and run them to the lab.

24 TREVOR SELCH: We have fish kill kits that put together. So
25 each of our biologist have those, so we are collecting water

1 samples and preserving samples and all that stuff, but it's the
2 same thing, it's like Montana's so big. So they get a call, and
3 you know, its four or five hours after the event, by the time
4 they get out there it's the next day and at that time, it's kind
5 of too late. It's one of those things.

6 FEMALE VOICE: I am learning a lot today.

7 JENNY CHAMBERS: So now with the draft rule packages, do we
8 have anything to do with the development of the program. We
9 already have the legal authority to do what we were needing to
10 do through the clean water act, we have the state regulations,
11 we can do general permits, we can do all those different
12 activities. So the rule package basically the Board requires the
13 BER to adopt rules that are sufficient to the program to recover
14 the costs. We do have a category in the rule package that I'll
15 go through that does allow me to charge a fee for another
16 general permit because we knew, not knowing that we don't want
17 to go up and update the rules periodically just to update them,
18 that we provided a kind of a safeguard to add another other
19 permit general category, just the fee is fairly large. And the
20 stakeholder group was a little worried about how large that fee
21 package was our fee rule was, so

22 DUDE TYLER: You dropped a paper Jenny.

23 JENNY CHAMBERS: That's alright I don't need that one
24 anymore. So the rule package basically is pretty minor. It,
25 basically we need to correct some clerical errors and typos,

1 provide clarification, and some questions and things. We didn't
2 think there would be issues from the 2009 rule package. We
3 figured since we are going in here to open it up, we would
4 provide additional clarification on some things, expand a few
5 definitions, and then basically add this new storm water general
6 category, which is a category for pesticides, specifically. So
7 from now on if we want a rule package documents, she said it was
8 one here, but I don't....Corey, Stevie and Roger on the phone, do
9 you guys want me to try and open that up for GoToMeeting so we
10 can follow through?

11 MALE VOICE: That would be great

12 FEMALE VOICE: It's easy.

13 JENNY CHAMBERS: OK, I don't know ... yep, it's easy, I got it

14 STEVIE NEUMAN: I can't get on the web

15 JENNY CHAMBERS: Oh, okay that's alright, OK. So I am on
16 page two, we just basically added their definition on K down
17 below that basically says that, what a pesticide means, it's a
18 new term that we haven't used in the rule package, so if you
19 have a new term that you need to define, and there is no other
20 definition you can refer to define or to define that definition.

21 STEVIE NEUMAN: Does this come from somewhere? The
22 definition? Is it a boiler plate from somewhere?

23 FEMALE VOICE: The pesticide act.

24 JENNY CHAMBERS: The pesticide act, yeah the Montana
25 Pesticide Act, thank you. See that's why I have my three staff

1 back here so I can keep on track. I figured it was. I just
2 didn't know where. So we added a couple of other definitions,
3 with the application of pesticides. A lot of them do it within
4 the county, like in the mosquito control district, or you have
5 an aeriell sprayer that mainly works in western Montana. There
6 was a lot of concerns from the stakeholder group, that we were
7 going to try and do it like other permit coverage, a single site
8 or facility location or a lat/long. A storm water construction
9 project is this township range, and this district in this
10 particular area. For pesticide applicators, they didn't want to
11 have to come in with a NOI for this location, that location,
12 that location, this location, and so we are looking for some way
13 to say this is a single site all in one county. All Rosewood
14 county, all Fergus county or you can have a multi-county site.
15 Which is by the Department of Montana Agriculture's actual
16 districts, spray districts. So that's kind of how we set that
17 up. So there are two definitions to try to cover those. We are
18 working with our legal staff to try and make sure that those are
19 actually saying what we are continuing to say so there might be
20 some tweak actually before going into the public comment. But
21 that's also for Karen's questions as far as watching our
22 resources and constraints. We knew we were going to be able to
23 do hundreds of hundreds of these locations, so it's a way that
24 we can streamline the application process to make it a larger
25 area or size to get coverage verses have more of these come in.

1 So, it's a two fold. Help them out, help us out as far as the
2 applications that we are going to process.

3 FEMAL VOICE: So there is no size category between single
4 site and Multi County?

5 JENNY CHAMBERS: Right, you either get one county or you get
6 more than one county by the districts. A single site could be a
7 whole county or it could be one location.

8 FEMAL VOICE: So it could be 30 sites within the county
9 would be a single site?

10 JENNY CHAMBERS: ya, ya, right

11 FEMALE VOICE: Maybe renaming that single county, we
12 discussed it back and forth which is clearer.

13 JENNY CHAMBERS: To change a single county instead of single
14 sites?

15 FEMALE VOICE: Yes, is that clearer to say single county?

16 JENNY CHAMBERS: On the definition? This is still a draft,
17 so we can change it to single county verses single site. The
18 trouble is we didn't want people to think that if they met the
19 threshold for whatever project that doing it really was, just
20 one what that management area, or something like that. But that
21 means they could have permit coverage or met the threshold
22 requirements. And so that's a single site within the county, but
23 they don't necessarily need coverage in the whole county. So
24 it's both. You can have a single site or a whole county. Kari,
25 do you have anything to clarify that?

1 KARI SMITH: Interest and indirect concern is from
2 agricultural stakeholders that by the strictest definition of
3 the application, the theory would have to submit an NOI when
4 they have one project that they are contracted for, and they
5 have 30 spots spray applications in that one project. The intent
6 was is that one project, in one county, that they actually had
7 the potential 10 to 30 spot applications, so we try to address
8 the concern that we were not trying to over regulate them. That
9 every time they went down to a bend in the road that they needed
10 to have a new NOI and a whole process.

11 DUDE TYLER: But what about the custom applicators ground or
12 error who are crossing to county lines and are working for a
13 bunch of different farmers?

14 JENNY CHAMBERS: That's that multi county one, that's the
15 other fee.

16 DUDE TYLER: OK. Same thing.

17 KARIE SMITH. And depending on what type of project, you
18 have, most of the time. Aerial applicators object they have, say
19 in Lewis and Clark county they are handling all of mosquito
20 abatement, yet they are traveling over several different water
21 lines, that would be a single county and that's a single
22 project, but it is one applicator. One aerial applicator. One
23 aerial applicator in control of that, so they have a single
24 pesticide management plan for that entire activity.

25 DUDE TYLER: Oh, OK

1 KARI SMITH: Where you can also have one that is doing
2 multiple projects but they actually are using a different
3 product, different process, and staying with it in a Department
4 of Agriculture district. So if this process actually... ya know.
5 I asked Christine that and you could still be in develop. So if
6 there is something we need to consider, then...

7 DUDE TYLER: I'm thinking of the guy that, you know, needs a
8 custom applicator but now with the ,you know, change in our
9 culture, he is going around spraying peoples places before they
10 have a party or the state for mosquito's, that its' just a new
11 thing in business .

12 JENNY CHAMBERS: Just as long as he doesn't spray it on
13 water.

14 DUDE TYLER: Just wondering

15 JENNY CHAMBERS: So, and the thing is that this is, you
16 know, the draft will get the Board to hopefully allow us to
17 initiate. We will get a public hearing, and some opportunity for
18 comments that will go out to all of the stakeholders and
19 workgroups so if there is something we are missing basic from
20 those applicators or people that do the actual job do have to be
21 covered, hopefully we will get feedback questions or comments
22 effective from them but to take another look at this. Down in
23 the one application schedule 1B, application fee for non storm
24 general permits, you see there is an underline and scratch out
25 for suction dredge, residence of Montana, non-residents of

1 Montana that really was just an error in the 2009 package. Those
2 fees announced \$25 and \$100 are locked in statute and so we
3 can't change those unless we go into the legislative session, so
4 it was just an error on our part because that new permit fee
5 includes an annual fee. So \$25 plus another \$25 annual fee is
6 actually \$50. \$100 plus \$100 annual fee is \$200. And so they pay
7 that up front when they get authorization that covers them for
8 one year that includes the annual fee so that is just for
9 clarification.

10 TREVOR SELCH: That's recreation suction dredging.

11 JENNY CHAMBERS: Yup. Recreational suction dredging, yep.
12 The 1B, application fee non-storm water, general permits those
13 are the two categories and dollar amounts we are toying with and
14 trying to go out to the Board with. Is pesticides for a single
15 site if you came in for a new single site, which could be one
16 single site or a whole county that would meet the threshold.
17 Remember, a threshold level, is basically would cost you \$900
18 for a new fee that includes the annual fee amount. Then a
19 renewal after five years, would be \$450 and multi-county has the
20 \$1427. And that was to... we looked at one and a half FTE's,
21 roughly on what it would take to make the program self-
22 sufficient, we are estimating about one and half FTE's to
23 process the new applications and do compliance and oversight in
24 this section and follow up with complaints. So, it's about a
25 hundred thousand dollars a year, a hundred and twenty thousand a

1 year in revenue that we are anticipating. We would project to
2 get in these fees that would cover that. That whole...(inaudible)

3 FEMAL VOICE: There was one item on that the other category
4 was not intended to be eliminated but it's the beauty of
5 Microsoft word and one who typed over promptly with this year,
6 so it would be added in the final the other category, was not to
7 be eliminated, we can just add ..

8 JENNY CHAMBERS: Ya. They don't have it on the screen
9 underneath the, right underneath petroleum cleanup before we
10 added the other pesticides. There was another category, and
11 that's the category we could have used, to charge for the
12 pesticide rule. If you guys remember the dollar amounts for
13 those?

14 FEMAL VOICE: \$600...

15 JENNY CHAMBERS: \$600?

16 FEMAL VOICE: \$600 and \$800?

17 JENNY CHAMBERS: \$600 and \$800? For the other...I thought it
18 was like \$1200?

19 FEMALE VOICE: I am not sure.

20 JENNY CHAMBERS: Okay we will put it in there, but the idea
21 was that didn't make sense because it was a larger amount of fee
22 for the single sight, so we wanted to give them their own
23 category and own justification and own process into looking at
24 what it would actually cost for the pesticide program. Not just
25 throw it in some other Hodge-podge category that wasn't really

1 evaluated, which is their place holder, if we can re-use it for
2 whatever purpose.

3 MALE VOICE: Jenny, the renewal fee for those that would
4 have to be every year that you would have to renew that and if
5 there was a break there would be a new?

6 JENNY CHAMBERS: Um, pesticide and MPDES permit is a five-
7 year permit. So is a general permit, they would be authorized or
8 notice of intent for five years. They have an annual fee that
9 they would have to pay and then when we renewed that five year
10 permit, they would have to apply for the renewal permit at that
11 time. So it's not like the 308 authorization, which was an
12 annual, just one-time, one year each year you have to come in
13 differently. They could do this for five years, once they
14 maintain annual fee and they maintain permit coverage and they
15 take compliance with the permit. So its lets onerous on their
16 part, and our part, as well, as far as processing all the
17 paperwork.

18 FEMALE VOICE: Do you want to mention 1D?

19 JENNY CHAMBERS: Let me see this

20 DUDE TYLER: Jenny, are Roger and Corey seeing what you're
21 scrolling?

22 JENNY CHAMBERS: I believe so. Are you guys seeing? Corey
23 and Roger are you seeing the GoToMeeting and seeing what I am
24 scrolling through?

25 COREY FISHER: Ya, I can see it here

1 ROGER MUGGLI: Ya

2 JENNY CHAMBERS: That's why I am trying to get on the same
3 page. On what we are talking about but hopefully its working.
4 (Discussion on Technically difficulties). So on page 9 there was
5 a schedule 1B, is that annual fee amount, Trevor that you were
6 asking about? They were covered for five years, they just have
7 to pay the annual fee. With the \$450 for single site, and \$1400
8 for the multi site? So the big players that have multiple
9 counties, big district areas pay \$1400 every year. And we are
10 anticipating we are getting comments on these and we just had a
11 couple with a number and some justification on where we are at.
12 Make it representative of what we are trying to do. On page 10,
13 under E there, we added a new line just for clarification. This
14 doesn't change the intent of the 2009 rule package it's just for
15 clarification purposes. For incentives for those folks that
16 maintain compliance we get back a portion of their annual fee
17 amount. So if there is no violations for the year, they get a
18 25% fee reduction in their annual fees. So, there is some
19 incentive to maintain compliance which is what we are trying to
20 do for the state of Montana, is keep people with permit
21 coverage. This is just providing the census to clarify that if
22 they are under formal enforcement, which is an administrative
23 order, or consent or an actual court order consenting for that
24 particular year. That means that they have been in violation. We
25 are working with them, we are staying some current limits, we're

1 trying to get them back into compliance. They lose that 25%
2 reduction in the form of a fee. It's a clarification of what we
3 have some confusion on.

4 FEMAL VOICE: How do you verify that they maintain
5 compliance?

6 JENNY CHAMBERS: We track the... all have usually some kind
7 of annual report requirement on what they have to fulfill. They
8 have to do discharge monitory reports, that have to do sampling
9 and self-monitoring to maintain permit limits and compliance. We
10 track those on a monthly basis, we set up violation letters on a
11 monthly basis, we have compliance inspections that we do and hit
12 the majors. Every three years go to the minors, and we go to the
13 major, how often? Two years.

14 FEMALE VOICE: Every other year for majors.

15 JENNY CHAMBERS: Every other year for majors. Minors, we are
16 going out, we are doing compliance inspections plus a lot of the
17 annual reports and discharge monitory report forms, so we know
18 who is in compliance and who is not. And then with the most of
19 time, which is, the permittees know who is in compliance and who
20 is not. I mean we know. You know whether or not you are
21 maintaining compliance. You either received numerous violations
22 letters or technical assistant visits or site business trying to
23 get in compliance before we take that next step with formal
24 enforcement.

1 MALE VOICE: Is the DMR for the general permit, less than
2 the special permit type that regulate?

3 JENNY CHAMBERS: The general permit? Ya. Will have less
4 steps there won't be maybe a monthly DMR, discharge monitoring
5 report. But there will be annual report form, that says, on an
6 annual basis that you need to send us and let us know what you
7 have done for the previous year. If we had some kind of
8 compliant and they didn't notify us, of a fish kill, and we
9 found out later they didn't notify, they would probably get a
10 violation letter for that. For not providing notification of the
11 following reporting requirements based in the permit. We also
12 could go on inspections and they could get a violation under for
13 something for inspections, but normally on those particular
14 cases. For these general pesticide permits... because they can
15 submit their annual report or there has been some kind of
16 complaint or violation that we just, that they didn't follow the
17 notification procedures. It really, this category, this permit
18 for violation really does follow in more municipalities, the
19 industrial users will want to have to individual MPDES permit.
20 That has monthly DMRs, quarterly sampling, inspection reporting
21 requirements, so..

22 FEMALE VOICE: I think this will also bring.. All come
23 together once you've seen Mr. Arrigo's presentation.

24 JENNY CHAMBERS: Ya.

1 FEMALE VOICE: On it talks about the enforcement initiative.
2 There are some, for the most part, what was called the minor,
3 traditional minors, for the most part, small communities. They
4 have some very long term upgrades and process that they need to
5 go to in order to meet the limits in their permit and protection
6 of water quality. So there is some small towns that will be
7 under formal action, and require a lot of technical assistance
8 over the course of the next 2 to 4 years. So that kind of pulls
9 it together, here, not complying with your permit, and your
10 exceeding your limits, then the 25% discount isn't awarded to
11 those until they get back on track, and then they'll be in
12 compliance and have 25% discount.

13 JENNY CHAMBERS: And it does take a lot more of our staff
14 time and resources, to try and you know, send out this
15 violations, address and come to compliance, work with
16 enforcement division to return to the clients tracking, you know
17 annual submittals or different submittals based upon their
18 administrative order and consent. And so the 25% reduction, you
19 know is for those who maintain compliance and it does take
20 hopefully less time that they are in compliance with us. And
21 the program Water Protection Bureau does give money to
22 Enforcement Division that's how they get their funding and a
23 percentage of our all of the permit compliance division programs
24 have to support the Enforcement Division, so it also pays for
25 their staff time a little bit on the money that I have to give

1 them to manage the (inaudible). It generally doesn't really
2 change the intent of BER, it already got passed by the Board in
3 2009, and it just provides another sentence for clarification.
4 It's a good thing to do in there as far as that goes, so part
5 F... I am excited to say that we are adding the category that fee
6 can be paid either in mail or can be paid online at our e-bill
7 payment service sight. So I did promise the group when I was
8 working on the 2009 fee rule that we would try make up a way to
9 make it streamline, and get to a way that they can make their
10 MPDES and Water Protection Bureau fees online and successfully
11 done this. Now, so we are in the current 2010 year, along with
12 everybody else, hopefully, so. Let me see, this is a different
13 subpart, 1340-1341 is not part of our fee rule package, it is
14 part of our actual state circuit law to regulations to issue
15 MPDES permits. There is a general permit category that says that
16 permits department they issue general permits in the following
17 category. I didn't really want to reopen this category, because
18 you will probably see me back sometime in 2011 with our gigantic
19 rule package that we are still working on that is going to be a
20 three phase. Phase one, phase two, phase three. Tom Reid and I
21 have been before you before to talk about that. Basically we are
22 going to look at 1341 or we are going to probably wipe out all
23 of these particular categories that just say that we have
24 authority to issue general permits. To make it consistent with
25 the federal Clean Water Act and EPA regulations, that allow them

1 to issue general permits for whatever categories. Basically
2 issue a general permit for categories that are similar in
3 nature, similar in categories, and there is a multiple group of
4 those that you are trying to regulate. So for fish farms, we
5 have about twenty fish farms in the state, they all have a
6 general permit. Animal feed lots, we got 200 of those. They have
7 got a general permit. So when there is a large category of a
8 similar nature, of a pollutant, and concern, as far as managing
9 those of we issue general permits. So, on behalf of my legal
10 staff, I am making them happy to reopen this category as well,
11 with the Board. To add the category on the bottom that says
12 pesticides. This will allow me to actually issue a pesticide
13 general permit. But...

14 FEMALE VOICE: It just seems like pesticide applications
15 other than just pesticides.

16 JENNY CHAMBERS: Well it's a discharge of a pesticide that
17 is a pollutant. So its... swimming pool discharge, is an actual
18 discharge. I guess I can say... you know a lot of them are just
19 generic. Animal feed lots, you know I don't regulate all animal
20 feed lots, they have to meet the intent of the actual feed laws,
21 and they have to meet the intent of the actual permit. I mean we
22 can look at it, it just...

23 KATHLEEN WILLIAMS: It seems like the others are just more
24 descriptive.

1 JENNY CHAMBERS: Ya. Fish farms. Ya. It's a discharge of a
2 pollutant site. We can look at that Kathleen, to see if we can
3 come up with a more descriptive purpose to not cause any
4 confusion. And then there is some general language there that we
5 are still tweaking on the reason the whole necessity part is to
6 kind of read through what I kind of already described. It
7 doesn't really say anything differently, I don't think, then
8 what I have gone forward with. And that's basically the package
9 in a nutshell. It's mainly just to add those, the pesticide
10 general permit category and then to add a separate fee to those
11 two other areas. For them to clean up and that's the definition
12 and classification.

13 MALE VOICE: What's the turnaround time going to be on that
14 general permit with the... what kind of timeline are you guys
15 putting on that?

16 JENNY CHAMBERS: To maintain coverage on the general permit?

17 MALE VOICE: Well if you apply for a new permit, until you...
18 can tell how much ahead a time on your project ?

19 JENNY CHAMBERS: If it's a notice of intent process, which
20 you are looking at doing, once they apply for coverage, they
21 have coverage and then we just send them a confirmation if we
22 still haven't received their information.

23 MALE VOCIE: Oh, ok

24 JENNY CHAMBERS: So it's, we are turning those "we received,
25 we acknowledge, you now have". Your good to go within less than

1 10 days, on full market structure unless we give maximum amounts
2 of (inaudible), then it will be three to four days probably.

3 TREVOR SELCH: And then the language of suction dredging
4 kind of implies that you are using less than four inch hose,
5 your good to go, but I know, when we put in for ours, we didn't
6 qualify for a general permit, and I know I heard that there is
7 going to be a lot more applications, especially with (inaudible)
8 and people trying to use dredges and I just don't know if they
9 qualify under this general permit or if that would be a
10 separate...

11 JENNY CHAMBER: No. They would have to get an individual
12 permit for suction dredging. You guys were adding additional
13 populates and different chemicals to settle stuff out. I believe
14 on the suction dredge project that you guys were working on and
15 so that triggered it too. You were adding other pollutants that
16 didn't cover on general permit, so you need to come in for an
17 individual permit.

18 TREVOR SELCH: So if you're not adding anything.

19 JENNY CHAMBERS: If you're not adding anything, this
20 strictly less than four inches, suction dredge, recreational
21 use, you're just going out and stirring stuff up, you're don't...
22 you're not adding any kind of chemicals or populates for
23 settling, or trying to reduce any amount of the sediment intake,
24 then your good to go under this permit. If you're anything
25 larger than that... We do have Montana Golden Sapphire and it can

1 vary, within 8 inches to a 16 inch dredge. He also has an
2 individual MPDES permit. You guys are adding chemicals and stuff
3 because the purpose of your project was to do clean up.

4 TREVOR SELCH: Ya.

5 JENNY CHAMBERS: For PCB's that needed an individual permit.
6 This is kind of just recreational use. So ya. Yes we have all of
7 these kind of nuances depending on, and the general permit will
8 basically line out this says you can get coverage if you meet
9 those categories. If you're not in those categories or don't
10 meet the requirements in there, then you have to get an
11 individual permit. It does not necessarily mean that you are
12 exempt. And so ya, an individual permit, as you are aware is a
13 little bit longer so it's anywhere from five to eight months.
14 Depending on the complexity and what else in getting the
15 application turned around and Fish, Wildlife and Parks and we're
16 proud of that one so. Kari...

17 KARI SMITH: The one thing that I thought you might want to
18 mention is what you propose to do with the 308 authorization,
19 those that don't meet the threshold.

20 JENNY CHAMBERS: Oh, right, ya so basically looking at... we
21 are hoping that with all of this process, with all of these
22 stakeholders, with all of these folks that we haven't met with
23 before, let them know that this is not new, that they 308s all
24 along to meet the Water Quality Act requirements, that that
25 number will go up, from 20 to 30 days to 50's or 60's. So we put

1 that in our budget projections, as well, thinking that we will
2 increase authorization with our 308, we probably don't need to
3 charge \$400 with that category. With these bigger players
4 though, they will have to meet a threshold that will charge us
5 bigger, higher fee, we are looking at reducing the 308
6 authorizations to \$250. So people say that we never look at
7 reducing fees, or lowering fees, we are in this particular case
8 looking at the numbers and hoping that this public education &
9 outreach will actually increase the numbers of 308s and coverage
10 on that group and then also add this other category when we get
11 some kind of (inaudible). At a higher amount to actually help
12 with that program, self-sufficient. So if that makes sense, I
13 did miss that there is a category here that we are crossing that
14 out and lowering the fee amount. So that was kind of a
15 whirlwind, it's right there, on schedule 1D, third term water
16 quality operations has application 308 from \$400 down to \$250,
17 to make it consistent with the other short-term opposition of
18 the 318s. And that really is because we think the projection of
19 the numbers is going to increase and that we are going to get
20 more folks that will at least come in with a 308 authorizations
21 that might not meet that other threshold. So that's been a
22 whirlwind trip, but actually basically our request is your
23 support to move forward to the Board but I will be happy to take
24 any other questions.

25 DUDE TYLER: Thank you Jenny

1 FEMALE VOICE: Ya, thank you. What's the threshold?

2 JENNY CHAMBERS: The threshold EK is proposing to have
3 certain thresholds, those are those four (inaudible) categories
4 is what we are looking at and so and it's still going to be
5 determined because that's... you have to, we're just drafting the
6 permits right now. Well allow for public comments on the permit
7 will be finalized. But in the general permit, will indicate that
8 if you meet for like mosquito, the top one, mosquito, mosquito
9 insect pest control if you are applying mosquitoes to more than
10 640 acres is what we currently playing with.

11 FEMALE VOICE: Well it depends, the ones that were the
12 direct application right to the water, that ? We were looking at
13 64. If they are doing the algecides over the water or the of
14 course can be that 640.

15 JENNY CHAMBERS: 640, so we are looking at different
16 categories and thresholds, meaning if you are below that, the
17 volume and the concentration of the pollutants and the amount of
18 pollutant that you can discharge, is less of an impact. So, that
19 you don't have to follow the full blown steps of the, you will
20 still get oppositions of the 308 that have that other follow the
21 label, follow the practices, due to the reporting just
22 notification, tracking where they are at, knowing who the
23 applicators are. But if you meet the threshold, you're
24 increasing your amount of risk, environmentally. Then you also
25 have to follow more steps, like a discharge management plan.

1 Additional reporting, these are the reports on where you apply
2 behind new applied. We will probably do inspections on those, we
3 will do a certain percentage of inspections on oversight of
4 those, and we will report to Department of Ag on those, and the
5 fishery biologists at Fish, Wildlife and Parks. The
6 implementation on how we are going to do this later on is still
7 up in question.

8 FEMAL VOICE: So the thresholds are being determined use by
9 use?

10 JENNY CHAMBERS: Yes, use by use and like research and
11 development, we are looking right now at a zero threshold for
12 those. We are basically saying you're doing stuff that's
13 experimental, it's a pilot project, and you're not sure what's
14 going to go on. You're going to need coverage for that at any
15 amount you're going to spray on cover.

16 FEMALE VOICE: Ok, and then this is sort of a bigger picture
17 question. Obviously we are talking about fees, kind of a big
18 program here revised program and this all started because asking
19 people to follow labels wasn't enough, is this going to clean
20 up, improve water quality?

21 JENNY CHAMBERS: Yes, I believe it will. I will believe it
22 will get people more accountable, be more aware of what is going
23 on allow us to have some coordination with six months, like
24 (inaudible) said but if you get notifications with fish kills
25 ahead of time, they don't have any strengthening tools or teeth

1 to do enforcement on those activities, but there is some major
2 fish kills in Montana and those folks can have permit clauses
3 involved the notice of intent procedures. We will take them to,
4 ya know, to enforcement and maybe charge them a penalty for not
5 following rules and regulations. All of those usually are
6 deterrents for future violations, whether or not it is you or
7 somebody else. If you just hear about it in a press release or
8 public notice that we do, it's going to change your practices
9 and make sure you follow the rules a little bit closer. So
10 ultimately I do think that, you know, as long as we get through
11 these hurdles and follow these procedures and try to keep it
12 minimally, as far as resource constraints and what they have to
13 do as far as an applicator because there is applicator jobs that
14 you don't want to punish either for doing more steps or not
15 doing the right thing because it costs too much to come in for
16 an application. Ultimately I think what will be a good
17 improvement. And so hopefully we will see that with some of the
18 sampling, I know the Department of Ag does do some service water
19 sampling. So maybe over some time we could do some tracking to
20 see whether it was a benefit or not or how the impact was. Ya, I
21 hate to say that we are doing all this stuff for nothing and
22 then not having any kind of outcome on it, so. That's my little
23 cheer in the morning I do myself, when I get up. So, any other
24 questions? Yep, Kathleen?

1 KATHLEEN WILLIAMS: Just one more, is how your stakeholder
2 group responding to this, are they flipping out or are they
3 generally supportive and ya know?

4 JENNY CHAMBERS: They were flipping out at first. Ya, they
5 were flipping out at first that is why we had that work group
6 meeting, kind of a kick off thing, I've got a lot of phone calls
7 that is why we double up on the web page so that we have some
8 place to direct them. Christine's big thing I think with the
9 group via email, they are calming down now. They really are at
10 first. They thought with any applicator pesticides, in the whole
11 state of Montana. So I had the grain growers association, I had
12 the..... anybody that sprayed pesticides anywhere, you know
13 fertilizer applicators, anybody, and when you kind of narrow it
14 down to say what do you do? What is your practices? Where do you
15 apply it to? How close are you to surface water? What is the
16 intent of your label? You don't have to be perfect coverage,
17 you're not applying that to state waters and you're not even
18 having any kind of intent to have any avoidable impact to
19 waters. Just to maintain practice that you're doing, follow the
20 label, ya know. So the grain growers kind of dropped out from
21 the larger, some of those groups dropped out so, I mean if they
22 don't like it they think it's a duplication of efforts because
23 of the farms and the Department of Ag are corrupt. But they do
24 understand that we are just trying to do our jobs and follow the
25 intent of the court. They want to make sure they have coverage

1 that's why we are looking at trying to get a permit out ahead of
2 time, so that they can get good coverage and they don't have to
3 be liable for lawsuits for not maintaining coverage. They are
4 working with us to give us comments and feedback so I think
5 that's definitely. And we will continue to do that through the
6 whole process and hopefully at the tail end won't get a bunch of
7 comments during public comment period and have that worked out
8 ahead of time. So...

9 TREVOR SELCH: Did you say you're going to still develop
10 after this is, goes forward to the Board you are still going to
11 develop specific language for individual stuff? I am just
12 looking at our piscacides applications being so different than
13 anything else and I mean I know it's under the pesticide but its
14 complex.

15 JENNY CHAMBERS: Ya, and you'll have a category under the
16 general permit that will be for piscacides use and there will be
17 a certain amount of threshold for that particular category.
18 Probably zero... there will be certain category in that general
19 permit that you'll know for sure that you fall in that category
20 and that will be the section of permit that usually you follow.
21 We don't have language in there that you are concerned about
22 then you would drop out and have individual permit but I think
23 we can work to make sure that peoples uses and coverage's are
24 covered in that general permit. So I'm definitely taking a look
25 at that website Trevor and we can definitely add you to our

1 email list. And only get actually a working draft document for
2 people to start tearing apart.

3 FEMALE VOICE: We are hoping in a couple of weeks.

4 JENNY CHAMBERS: Ya we are hoping in, with that start of it,
5 its long though, I mean EPA is like a 140 pages long for the
6 fact sheet or their statement of basis and I think we dwindled
7 ours down to like 70 to 80 pages which generally are around 20
8 to 30 pages and so we are trying to dwindle it down to a little
9 longer, that's just the statement of basis which makes our...
10 supports our decision for action permit development, so.....

11 DUDE TYLER: Roger are you listening?

12 ROGER MUGGLI: Yes

13 DUDE TYLER: Are you guys still spraying alfalfa weevil?

14 ROGER MUGGLI: No.

15 DUDE TYLER: No.

16 ROGER MUGGLI: You mean long term or just... no we spray
17 involved into different trusts over the years and we are into
18 one that don't carry a hazardous label anymore and of course all
19 of our places are.. we have set back on the river from the river
20 and we have a draining water that goes off of our field, run off
21 of our field that goes into a grass filtrate that we have
22 developed over the years to try to minimize and limit our, you
23 know, our fertilizer pesticide issue. We did this many, many
24 years ago we were a little perceptive of the situation. Meaning
25 that it would come to a problem at one point in time that so

1 we've put these filtrates in and these filtrate areas we don't
2 have livestock on them so they can work in their maximum ability
3 and some of these are as long as $\frac{3}{4}$ of a mile long before the
4 water gets to the water, gets to the river. So I haven't taken
5 any water samples off of them in the last couple of years but
6 what we did years ago sent water samples in and there wasn't any
7 pesticides in them, there wasn't any fertilizers in it. Now we
8 kind of made a lot of states recommend both doing control among
9 this field trying to you know trying to get a handle on what
10 filtrate was worse like and a lot of the states make suggestions
11 for field run on in this stream that they have to sink both bans
12 of grass and natural grasses and this ban that doesn't have
13 livestock on it and isn't farm, that the water will travel
14 across it and I thought that was a pretty minimal recommendation
15 when ours are and one of them for certain is $\frac{3}{4}$ of mile long, and
16 there are others that are hundreds of yards. And so the water
17 picking comes off these fields and the samples that I send in
18 years past have just virtually no fertilizer, no pesticides and
19 I am quite tickled that's the way they work.

20 DUDE TYLER: And Roger is the industry trend also away from
21 spraying labeled products?

22 ROGER MUGGLI: Yea, it's where it's going because it's...
23 because of this there is a lot of ramifications, for one thing
24 there's some safety issues. Human safety issues is really,
25 really drive home the significant of these individual sprays and

1 of course there's people, farmers that seem like we are sort of
2 behind the curve at times that believe in what the dangers say
3 in labels and I know a lot of people that have killed their dog
4 or livestock with spray accidents and just spraying the areas
5 that they shouldn't where there were livestock and animals and
6 that's why we ran into a great deal of trouble. One guy that I
7 know of that I have known him for years and he opened up his
8 sprayer, left the field. The field that was a Furidan incident
9 and he called one of the nozzles, I don't know quite how it
10 works anyway, one of the nozzles was drizzling spray out and got
11 into the back draft of the machine going back to the farmhouse
12 and two of his dogs were running behind there and it was
13 virtually just dripping and air was circulating, picking up this
14 Furidan drip and when he got to the house and got to his sprayer
15 and his dog trotted up there and fell over virtually dead and
16 the other one didn't make it to the house and then that really,
17 really drives home the importance of labels. Oh, implying the
18 labels, you know issues and things like that and then of course,
19 I became a baptized Christian entirely on pesticides spraying.
20 Yes, I almost killed myself once with Furidan and that was that
21 really makes a believer out of you when you need to re-label and
22 it was an accident. It wasn't that I didn't read the label, but
23 anyway, it drives home a significance of pesticides and how dang
24 dangerous they are and so we pretty much gone to the ones that
25 have a non-hazardous label on them and that usually includes

1 really the scope of them, covers fish. Fish kill loss and that's
2 so blasted important the fish situation in the streams is that
3 they don't tolerate much of them those pesticides and when you
4 get a label and its cleared and it doesn't harm fish, well then
5 you're pretty safe on it, so that's kind of how these things go.

6 DUDE TYLER: Thank you Roger

7 ROGER MUGGLI: You're welcome

8 DUDE TYLER: Any other questions for Jenny or comments?

9 Jenny could you, we know what you want, and could you help us
10 phrase it?

11 JENNY CHAMBERS: Jenny - well um, sure.

12 DUDE TYLER: For discussion purposes

13 JENNY CHAMBERS: WPCAC agrees to allow me to move to the
14 BER, we just have a Board meeting to initiate it. That is the
15 fee rule package.

16 DUDE TYLER: That's helpful, thank you. Discussion? ... Do we
17 have a motion? First, approved, so moved and would you like to
18 repeat exactly what Jenny just said, for the minutes?

19 FEMALE VOICE: The staff nothing.

20 JENNY CHAMBERS: Just will allow me to go to the Board in
21 December to initiate where we are going to be.

22 DUDE TYLER: That's and eloquent motion. Thank you, is there
23 a second?

24 MALE VOICE: Second

25 DUDE TYLER: Thank you, further discussion?

1 STEVIE NEUMAN: Hello, this is Stevie

2 DUDE TYLER: Yes Stevie

3 STEVIE NEUMAN: I couldn't here the motion.

4 DUDE TYLER: Trevor, can you repeat it?

5 TREVOR SELCH: Have Jenny go take the WPCAC approval before
6 the Board to initiate rule making to the Board of Environmental
7 Review.

8 DUDE TYLER: Did you get that Stevie?

9 STEVIE NEUMAN: To initiate rulings of the Board on the
10 fees. Was that what it was?

11 DUDE TYLER: Yes. Yes

12 STEVIE NEUMAN: Okay, thank you.

13 DUDE TYLER: Okay no further question. I believe we can do a
14 voice vote, including the phone people, unless we have a
15 contested vote. All in favor

16 Group: I (unanimously)

17 DUDE TYLER: All opposed? (Silence)

18 DUDE TYLER: Thank you Jenny, motion carried. And somebody
19 has decided to give us a break here should we take a 10 minute
20 break. Alright? Thanks everybody on the phone, back in ten.

21

22 DUDE TYLER: John is going to give us an update and skip the
23 presentation by Todd because he is sick and then Rod McNeil will
24 give us an update on DEQ. Okay, who is on the phone?

25 ROGER MUGGLI: Roger.

1 DUDE TYLER: Just one? We are still not worried about quorum
2 though, this is just an update. John?

3 STEVIE NEUMAN: I'm on Dude

4 DUDE TYLER: Okay, there is Stevie, okay good. John, you're
5 up, Sir.

6 JOHN NORTH: Thank you Mr. Chairman and members of the
7 Council. John North, Chief Legal Counsel for the Department.
8 This upcoming 2011 session, the Department has five proposed
9 bills, two of them relate to water and water quality and those
10 are the two that I will talk to you about today. You have
11 gotten, I think already a handout that basically describes them,
12 so I will try and just maybe get you a few more details and a
13 little extra context for those, the first one is the waste water
14 reuse bill. This bill will amend the public water supply act,
15 right now it's unclear in the act whether or the Board will have
16 the authority to adopt rules regulating reuse of waste water
17 from public water supplies and that there has been a trend
18 across the nation over the past few years for legislators' to
19 adopt a fairly comprehensive statutes detailing uses of

20 DUDE TYLER: - Hi Corey, we are getting an update from Mr.
21 North, who is an Attorney for DEQ about their legislative plans

22 JOHN NORTH: ...and I am talking about the waste water reuse
23 bill, a number of states across the nation have adopted statutes
24 authorizing and regulating that and reuse does serve a couple of
25 objectives, it conserves water and then also reduces nutrient

1 pollution. So our bill would amend the public water supply after
2 you give the Board of Environmental Review, the authority,
3 specific authority to adopt rules and the rules would define
4 what uses can be made. Public of, waste water from public sewage
5 treatment plants. And of course, by defining which are
6 permissible but then defining which uses are not permissible,
7 and then it would provide treatment standards and essentially
8 water quality standards, or the waste water and it's envisioned
9 that those would be tailored to the particular use. The uses
10 would be classified and then there would be particular
11 requirements and standards for each of those uses. Now, those
12 rules I don't think would come before this council because their
13 public water supply statute rather than water quality, but there
14 are a couple of accompanying rules that probably would. I think
15 it's anticipated that there will probably be a need to amend the
16 rules for exclusions from the ground water permit requirements
17 for these particular types of uses and then secondly, for at
18 least the higher treatment requirements in the water that was
19 produces from those. We may also be proposing exemptions from
20 nondegradation statues as well, of course the Board does have
21 rules that exempts certain types of uses of water from the
22 nondegradation rules and I think its anticipated at least at
23 this point, that we might come to you and to the board for
24 amendments for those rules to accommodate at least the higher

1 treatment levels. So, you want to take, are there any questions,
2 or do you want to take the next one?

3 DUDE TYLER: Anybody? Anybody on the phone? (silence)

4 JOHN NORTH: Okay, the second bill then is a bill to amend
5 the Water Quality Act as it relates to TMDLs, the total maximum
6 daily load requirements. As you probably all know, the federal
7 Clean Water Act does section 303D requires states to have a list
8 of those streams, stream segments that are not meeting their
9 designated uses. That means that they basically have water
10 quality that's below the standards and then it requires that the
11 states adopt TMDLs, and TMDLS are the maximum loads of
12 particular pollutants that the stream can bare and the idea then
13 is to come up with voluntary mitigation measures for nonpoint
14 sources. And for point sources, actually ratchets back to the
15 permits so that eventually those uses are achieved, the
16 standards are met. Excuse me. Back in 1997, Montana our
17 Department and EPA was sued because we weren't coming up with
18 TMDLs for impaired steams, in the way and of the courts, of the
19 schedule of federal act required. The suit was filed in Judge
20 Malloy's court, Federal District Court in Missoula, it was
21 against EPA, we intervened, and basically Judge Malloy held that
22 for 1996 list that the water bodies that were on the 1996
23 impaired waters list, EPA and DEQ had until 2007 to come up with
24 TMDLS for all of those, and we then beefed up that program, the
25 legislature adopted a specific TMDL law and gave us a budget and

1 by 2004, it looked as we weren't going to meet that deadline.
2 Although, we could show that we made substantial progress, so we
3 entered into a stipulation with the plaintiffs in that case.
4 Went back to Judge Malloy and he gave us until 2012. Now the
5 TMDLs statutes and the Water Quality Act were amended both in 97
6 and then in 2005 to reflect those deadlines, so we do have that
7 requirement in the act. And basically it requires that the
8 Department do TMDLS for all water bodies that were listed in
9 1996, that are still on the list and do that by 2012, well, the
10 Department and EPA have come up with, we think is a more
11 efficient way of doing this, which is called a watershed
12 approach, under the current statutes and under Judge Malloy's
13 order, there were... We are suppose to do everything on the 1996
14 list that is still is in the 2006 list and that would mean that
15 we would have to jump around between drainages. And we might not
16 catch all of the impaired waters within a particular drainage
17 because there may have been some segments in that drainage that
18 were added after two thousand... 1996, and it's an inefficient way
19 of doing it. The better approach, the more holistic approach, is
20 to do everything within a particular drainage at the same time
21 and then go to the next drainage. So, what EPA and DEQ is
22 proposing then is to both to Judge Malloy and to the Montana
23 legislature is that the statute and the order be amended so that
24 we can do this watershed approach. And the way we would do that,
25 is that we would amend the statute and the order to say that

1 rather than to doing all the stream segments that were on the
2 1996 list it would say that we would do the same number of
3 waterbody pollutant combinations. As we would have had to do
4 under the current statute order. That happens to be 904
5 waterbody pollutant combinations, so we are asking them that the
6 statute and the order be amended that by 2012 we have to do 904
7 waterbody pollutant combinations. Now the additional thing that
8 isn't in the write up there is that we are currently in
9 negotiations with the plaintiff's in that suit to see if they
10 won't agree to that approach and we don't know whether they will
11 or not at this point so if they don't, I don't think we will be
12 going into Judge Malloy we haven't filed a motion yet, we wanted
13 to negotiate this with the plaintiff's and of course we would
14 withdraw the bill but we weren't able to achieve some kind of
15 consensus on this. And basically we have until about the first
16 of the year, about January 1st, to get this figured out because
17 given that 2012 is just around the corner, if we are not going
18 to be able to use this approach then we simply need to be able
19 to stop the watershed approach and start working on specific
20 stream segments that were spawned in the 1996 list. So whether
21 this legislation will actually move forward or not, I don't
22 know. And Mr. Chairman, that's my report.

23 DUDE TYLER: Thank you Mr. North. Questions, comments?

24 FEMALE VOICE: If you did get approval, for the 906.

25 JOHN NORTH: 904 - 906 something.

1 FEMALE VOICE: How many water bodies on the 1996 list would
2 that not cover?

3 JOHN NORTH: Ya know those are the kind of details that I
4 can't give you. We have to have somebody from, Mark Bostrom is
5 here and he might be able to answer that question.

6 MARK BOSTROM: I am not sure I have the exact number but I
7 think it's about 400 are on the 96 list as of 2006 - there would
8 be an upwards of about 200 I think, that wouldn't be addressed
9 and those are primarily the ones in the Eastern half of the
10 state which is in our prior conditions kingdom that would be
11 around (inaudible) it would mostly be in, and the intention is
12 that resolution of the lawsuit in 2012, we would then move that
13 rotation to the East. Basically the current statute says at
14 2012, which we completed in the 96 list, and then you will
15 develop a reasonable schedule for the remaining waters. It's
16 the, the same thing would apply. Adopting a reasonable schedule
17 (inaudible).

18 DUDE TYLER: That would take 100 years, right?

19 MARK BOSTROM: It would take a hundred, I am sorry, Mr.
20 Chairman, that would take a hundred years if we continue with
21 the approach, which I equate to a farmer asking a ranch hand to
22 go around to the property to fix the bottom rail of the fence,
23 reload, the second rail, reload, fix the third rail, if we
24 continue to lock ourselves into date specific lists and then tie
25 ourselves to an efficient schedule, for those individually, all

1 of those occur all over the state, and we would redefine issues.
2 So the best approach is to go through it holistically and try to
3 capture the whole state with one fell swoop and then it becomes
4 more of a maintenance issue with the program, maintaining the
5 new listings and perhaps any changes to that would have
6 standards those would have to be appropriate with the TMDL
7 projects.

8 DUDE TYLER: Thank you. Stevie please.

9 STEVIE NEUMAN: Is the list of these streams or running
10 water available online or otherwise?

11 DUDE TYLER: I believe so

12 MARK BOSTROM: Yes. Mr. Chairman there was a council
13 meeting..

14 DUDE TYLER: Can you hear, on the phone?

15 STEVIE NEUMAN: Pretty good, not real clear.

16 DUDE TYLER: Do you mind coming a little closer? Thanks

17 MARK BOSTROM: Mr. Chairman, members of the Council, we
18 right now, we have our 2010 version of integrated report out for
19 public comment and that's available on the web and the URL.
20 That's the CWAIC site. The address for that is cwaic.mt.gov.

21 BOB BUKANTIS: Dude, should you know... Excuse me. Maybe what
22 we should do is email out a link after the meeting.

23 DUDE TYLER: That would be very helpful

24 STEVIE NEUMAN: That would be very helpful, yes

25 DUDE TYLER: Okay Stevie?

1 STEVIE NEUMAN: It's great, thanks

2 DUDE TYLER: Other questions? Kathleen do you see what
3 you're getting into?

4 KATHLEEN WILLIAMS: I do have another question, John you
5 mentioned that many states have been active and this goes back
6 to (inaudible) one many states have been active and I think you
7 said details statutes?

8 JOHN NORTH: Ya, and my understanding is that some states
9 have been detailed statues, others have done more like what we
10 are doing which is simply grant the authority with some overall
11 guidelines and that's done by rule.

12 KATHLEEN WILLIAMS: And well, did you debate wanting more
13 detailed statutes? What was the thinking vs. you know the
14 authority with the government vs. something that was a little
15 more detailed than statues?

16 JOHN NORTH: The thinking, I think was two-fold, one was
17 that we are still sort of in the process of trying to figure out
18 exactly what the parameters ought to be, the specific
19 parameters, the second is that we felt (background noise,
20 inaudible) ... it's just made for rule making, made for a body
21 like the Board of Environmental review, to there is a lot of
22 science involved in that, rather than becoming a more broad
23 policy thing that would permit the legislature. That would
24 really the thinking was that if you tried to get more detailed

1 it would be a huge bill and it would leave us bogged down in the
2 details.

3 KATHLEEN WILLIAMS: I think in a previous meeting there....
4 when were discussing the gray water rules there was a comment
5 that we did need legislation to be able to move that forward, so
6 this deals with public treatment systems reuse right? But what
7 about individual, do we still need legislation to allow for
8 individual reuse?

9 JOHN NORTH: I think that there is going to be a bill,
10 Jenny, do you remember?

11 JENNY CHAMBERS: This is one of the policies that I think
12 that definition of communities of 25 or more.

13 DUDE TYLER: Right.

14 JENNY CHAMBERS: This wouldn't authorize individual
15 homeowners or...

16 KATHLEEN WILLIAMS: I know, that's why I am asking if there
17 is another bill.

18 JENNY CHAMBERS: I don't know if this would be something
19 that you would want to do or what practice you would want to
20 maintain, because the level of treatment for that waste water
21 being disclosed of would have more environmental health impacts
22 then stuff that was regulated. A septic tank or a homeowner with
23 the land reuse their waste water if it wasn't treated to meet e-
24 choli standards and public health impacts so I don't know if you
25 would ever want to do that for an individual vs. state water.

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(inaudible two conversations going on at once)

Jenny Chambers: higher level of treatment unique control setbacks for surface water discharges restrictions on public access points, for like a golf course, does that answer your questions?

KATHLEEN WILLIAMS: We have been talking about gray water reuse and I thought we were told that legislation was necessary to make the DEQ rules that were under development credible.

JENNY CHAMBERS: I don't think it was necessary for the gray water because the Board did review and approve those and there are systems that people have applied for using gray water.

KATHLEEN WILLIAMS: Did that pass?

JENNY CHAMBERS: Yes, that was passed, I think that they looked at it and it wasn't necessary.

DUDE TYLER: Questions?

ROGER MUGGLI: This is Roger Muggli, I would like to comment and if this is an appropriate time... I have a difficult deal on this phone saying on which is not anyone's fault, but my own, but I can't make it to Helena now. Sometimes that we don't have air service so it's a real important deal to get there in a timely fashion and get back to my business, but anyway, the bottom line is that I am pretty skeptical about a lot of this water legislation and a lot of this water fields and laws

1 relative to water, to the Clean Water Act, as you well know that
2 we had that supreme court decision came down as seven to zero in
3 our favor, on the CBM water discharge and I guess what the
4 disconnect to me is with DEQ and the fact that there are the
5 laws and what happens to clean water it is disheartening to have
6 to pull both of the feet to the fire with the law with the
7 existing laws and to get them enforced. We would can have them
8 become a court action and I am upset in the fact, that you know,
9 I am delighted to won the case, the supreme court case, but what
10 this tells you is there's not much wiggle room in these laws,
11 like the Clean Water Act. But yet, we have this difficult time
12 with going on a ten year history now, of CBM water and finally
13 done this ruling and all the while, I stand here and watch our
14 farm and other farms go down the tubes, because we don't have,
15 we have no one and no way to implement things like the Clean
16 Water Act, so I am a little dismayed at a lot this sort of thing
17 that to be able to be able to have protection under these laws,
18 it has to become a court action and I not sure why, I don't know
19 why this is such a huge disconnect. Now, just to put
20 perspective.....

21 DUDE TYLER: Roger, hey Roger I think we are getting off
22 topic a little bit, in terms of the legislative update from Mr.
23 North. And obviously, we are glad for you to be testifying but
24 we got to move on Roger.

25 ROGER MUGGLI: Okay

1 DUDE TYLER: Thank you. Any further questions for Mr. North?

2 (Silence) Thank you Mr. North

3 JOHN NORTH: You bet.

4 DUDE TYLER: Okay, so Todd Teagarden is out sick and Rod
5 McNeil is going to present on DEQ.

6 ROD MCNEIL: Okay, anyway what I wanted to do today is go
7 over what we are proposing for consideration in the DEQ-7 for
8 2011. As you know, I brought a bunch of action reports for you
9 earlier this year on what became DEQ-7 2010, those approved by
10 BER, became rule in August of this year and this is stuff I have
11 in the new year. (inaudible) One of the principal focuses that
12 we are going to have this year in DEQ-7 is the required
13 reporting values.

14 DUDE TYLER: Rod, let me interrupt you, can you three on the
15 phone hear Mr. McNeil

16 ROGER MUGGLI: Yes.

17 COREY FISHER: Yes.

18 STEVIE NEUMAN: It's just a little bit hazy, but that that's
19 okay.

20 DUDE TYLER: I'll move this speaker over.

21 ROD MCNEIL: Anyway, over the last decade criteria limits
22 for many compounds have been reduced, the required changes, the
23 required reporting values have not followed those changes, so in
24 some cases we have laboratory quantization values much higher
25 than the sensitivity required to measure the human or aquatic

1 life standard. An example would be priority acrylonitrile out
2 which was put in about 1993. Where the human health standard is
3 now .51 parts per billion, yet the lab required value is 20
4 parts per billion. So it's almost forty times higher than the
5 health standard. The RRVs need to be low enough to determine if
6 the human health standard is being met. Now acrylonitrile has
7 had its level decreased twice in the last about 15 years. So in
8 this particular case, the original required reporting value of
9 20 parts per billion was habit for the compound as the detection
10 requirement has dropped, the required reporting value hasn't
11 been changed.

12 DUDE TYLER: What is an acrylonitrile for the layman?

13 ROD MCNEIL: Acrylonitrile is an additive used in some
14 plastics manufacturer, it is also used as a carrier compound for
15 some pesticide applications, and it had a wide-variety of
16 industrial applications, principally with pesticides and
17 plastics. As people became aware of its toxicity, their
18 interests in getting rid of it and substituting something else
19 increased. It is also very persistent compound, its' fairly
20 stable in the environment, so as we started to see more and more
21 that accumulate in the environment and start to see affects of
22 particularly aquatic life, reassessment of the sensitivity
23 requirements of the threshold levels required to give you
24 adequate protection, get going down.

25 DUDE TYLER: Okay, thank you.

1 ROD MCNEIL: Sure, the effort to update required reporting
2 values requires canvassing the state, private labs in terms of
3 current capabilities as many as 140 values will be entered or
4 changed in DEQ-7. So, this is a big effort. We are also
5 gathering information on the protocols used to report these
6 values. Now, there are standards in terms of methodologies that
7 are supposed to be used to report for priority pollutants, non-
8 priority pollutants, know that they are set forth in 40 CFR 136.
9 So, this is rapidly evolving few, we have a situation where labs
10 that were state of the art, say, ten years ago can't even
11 measure half of the compounds that are in our state standards.
12 So there is a requirement to make the labs aware of what you
13 require reporting values are and correct or update the state
14 standards to reflect those new values, there is also a new
15 analytical equipment out there that's much more sensitive and
16 allows us to detect these compounds much more readily and much
17 more efficiently. So you want to take advantage of that. Those
18 changes as well. Under the Montana Agricultural Chemical
19 Groundwater Protection Act, they detected four new pesticides in
20 our groundwater supplies here in Montana this year and there
21 groundwater monitoring system. They are listed here, these are
22 all quite new as pesticides, these have only been commercially
23 available for all of these, less than ten years, some of them
24 less than five. So it indicates that this stuff is showing up in
25 our ground water drinking supplies pretty quickly relative to

1 this introduction. So we have to develop these as standards in
2 2011, to comply with Montana Agricultural chemical and
3 groundwater profession. Got to get better at saying that. We
4 also have a group of compounds, all of these are pesticides,
5 these are what we call I class source information. If you look
6 at the DEQ-7 2010 or any previous version, you will see that the
7 attribution where did this information come from? And the class
8 I compounds were derived by essentially analytical extraction
9 from the literature, done in 1998 or previous to that time, well
10 a lot of water has gone under the bridge since 1998, and
11 typically the standards are reviewed every 5 to 10 years in the
12 EPA program. So, these are all compounds that we need to take a
13 look at and verify that information was used in deriving the
14 original standard is still accurate and complete based on
15 whatever the most recent aquatic life and human health standards
16 are. And that leads into the issue of verification of
17 attributions, a few compounds and DEQ-7 have had their numeric
18 values attributed to the wrong source, now the reason this
19 happens is in some cases, the original criteria was established
20 by maximum concentration from the federal drinking water
21 standards and the compound later became a non-priority or a
22 priority pollutant. The source attribution wasn't changed when
23 the numeric values changed. Okay, so these need to be updated.
24 This has importance of, and we were considering things like
25 anti-degradation so we just need to correct these attribution

1 errors. One of the major issues that we have to consider in 2011
2 or thereafter is how we make measurement of hardness corrected
3 metals. Currently the correction to hardness for copper, lead,
4 cadmium, chromium, silver, zinc and lead or nickel, sorry
5 reverse the order, is limited to a range of hardness extending
6 to 25 parts per million to 400 parts per million. The EPA is
7 recommending the removal of the floor so that we would make this
8 hardness correction all the way down to zero. So you if you have
9 very soft water, you would be making these corrections, which
10 would lower the standard more in the meantime. Eventually, the
11 intent is to replace this hardness correction value with what's
12 called a biotic ligand model, which is more complex tool that
13 more accurately reflects a specific toxicological exposure. So,
14 if we want to look at gill exposure in fish the BLM is
15 specifically developed to evaluate that issue, there are other
16 issues involved in adopting biotic ligand model. So this is an
17 interim measure that would get us closer to the correct answer
18 when we have very soft water. But it's still not a full
19 correction as would be indicated by use of biotic ligand rule.
20 We are evaluating the BLM and its affects and how we will
21 integrate it into our monitoring program, permitting it has
22 implications throughout our program so, it's a bigger issue.
23 This, I guess I will say has interim impact as well as compared
24 with BLM and so it something we would like to consider. IRIS, is
25 a Integrated Registry Information System for toxicants, it

1 includes not only all priority and non-priority pollutants and
2 most pesticides, but other compounds that are consider toxic in
3 other countries, so it is an international registry. Over the
4 past ten years, new research on many compounds has resulted in
5 there being re-categorized. Now when we talk about
6 categorization, we are talking about how that chemical is
7 considered and it's affects, so if a compound is harmful, that's
8 not a serious as something which is toxic or carcinogenic. So,
9 these are relative positions of scale, in terms of their
10 potential or permanent harm and so some of these have been re-
11 categorized. So if some compounds which were considered toxic,
12 are now considered carcinogens, and some carcinogens, with more
13 say have been recognized as only being toxic. So these scale
14 changes and category classifications need to be reviewed and
15 updated to make DEQ-7 more accurate.

16

17 The EPA issued a new list of human health list advisories in
18 November of 2009, just in time to miss our 2010 update. And
19 these involve 15 criteria, six of these have gone down, in other
20 words, they reduced the sensitivity requirements to be
21 considered a human health advisory and 9 have gone up. This EPA
22 review is carried out on all compounds, every five to ten years
23 and all the changes made for the compounds in this next flight
24 will be considered for the next version. Now, this list is
25 interesting in a couple of ways, (inaudible) those that are

1 going down like Dichlorobenzene, Carbaryl, Metribuzin and all
2 the others. Particularly Phenol and Xylene, have wide industrial
3 uses. And so current industry would like to see those numbers,
4 toxin levels essential going up. The going up list, I already
5 said this, a percentage going down, going up Acetone, Boron,
6 Chloromethane, Dibutyl Phthalate has been called out as a
7 chemical compound of serious concern, because it's been found to
8 have endocrine disruption affects in an aquatic environment. And
9 some in doing some of the exposure analysis, the Chinese weighed
10 in with a whole bunch of information that they had on
11 accumulative exposure to Dibutyl Phthalate and plastics
12 manufacturing and found that it reduced a spur thyroid and so
13 the numbers for Dibutyl Phthalate are going up in terms of human
14 health requirements and there will probably be a new number of
15 issued this year for Dibutyl Phthalate for aquatic, because it's
16 been found extremely disruptive and causing sex reversal in
17 fish. So, ya

18 FEMALE VOICE: Going up you mean less restrictive or more
19 restrictive? Than going down.

20➤ ROD MCNEIL: Going up is less restrictive, Oh yeah.

21➤ KATHLEEN WILLIAMS: Going down is.. I'm sorry I misspoke
22 (inaudible). Going down means the numbers, the standard numbers
23 are going down.

24➤ KATHLEEN WILLIAMS: Its' going to be more restrictive?

1➤ ROD MCNEIL: Yes and going up, it means doing just that, the
2 numbers are going up.

3➤ KATHLEEN WILLIAMS: Even though what you just said about the
4 Dibutyl Phthalate?

5➤ ROD MCNEIL: Yes, this is brand new information that was
6 just brought forth by the Chinese that will require yet another
7 revision of the standards but the principal cause of that review
8 was the effects of the fish that brought out a concern for the
9 aquatic life standards.

10➤ MALE VOICE: Wouldn't that mean that the Dibutyl Phthalate
11 is less toxic then? Then they thought.

12➤ ROD MCNEIL: That would be... that is correct it would be
13 considered less toxic for the present the likelihood is in the
14 longer term for human health. For human health it would probably
15 consider it more toxic. So these numbers go up and down as the
16 information database increases. So that's why we keep changing
17 DEQ-7, we are not doing this for fun, its' the best scientific
18 available information and requires us to resubmit this so, at
19 reasonable intervals. The EPA requires that they themselves to
20 review them at five year interval for human health advisories.
21 So, depending on where we are in the scheme of things we will
22 always be dealing blocks of these to be considered.

23➤ MALE VOICE: So endocrin disruption would make it toxic,
24 though, toxicity isn't restricted to mortality or being

1 carcinogens like the endocrin disruption would make it a higher
2 (inaudible).

3➤ ROD MCNEIL: Yes, it would not be re-classified as
4 carcinogens but its toxicity level would be (inaudible). OK
5 these are. So in 2011 primary focus of what we are going to be
6 looking at, true to accuracy and proper category assignment for
7 all current standards, update the required reporting values to
8 accurately reflect changes and standards over the past 10 years,
9 we're going to add four new pesticides, required under the
10 Montana Agricultural Chemical Groundwater Law Protection Act,
11 and we are going to consider revision of 15 federal health
12 advisories released in November of 2009 as this can show you.
13 So, that's a lot, of changes, particularly RRVs is a big
14 undertake of federal change, roughly 140 numbers that are
15 currently taken DEQ-7. So, once that is done, then we can go the
16 next year and take a look at trigger values and make
17 modifications for all of these. We have to have all the required
18 reporting values finished first before we can move the trigger
19 values. Are there any questions?

20➤ EARL SALLEY: How many labs are you talking about?

21➤ ROD MCNEIL: We're canvassing all of the labs that are ready
22 to say perform water quality analysis plus Montana Department of
23 Agriculture human health and services lab, basically everybody
24 who claims they want to do lab analysis.

25➤ EARL SALLEY: Is that a lot of labs?

1➤ ROD MCNEIL: I think the number right now is 13, private
2 labs proceed.

3➤ MALE VOICE: Is there any samples submitted to those labs to
4 confirm that they can and do measure what they say they can? Do
5 they get tested in anyway?

6 ROD MCNEIL: Mark, maybe you can help me there? Labs have
7 internal quality with the control programs that require them to
8 run them. Reports that they can meet require the importing
9 values. External are we talking about samples that are consider
10 external?

11 MALE VOICE: Ya, like wide samples or something like that?

12 MARK BOSTROM: I don't know of any. Chairman Tyler and
13 members of the Council, Mark Bostrom. I was formerly a quality
14 assurance officer for the Water Quality Planning Bureau. One of
15 the things we look for, we did this exercise of revising our
16 RRVs back and I think 2006, certainly one of the things that you
17 look for is the lax ability to do that. The performance
18 evaluation studies that are run by EPA, whether it is water
19 pollution or water supply generally will only contain those
20 compounds that regulated, so when you're dealing with those new
21 chemicals that come under the Montana Agricultural Chemical
22 Groundwater Protection Act, what they are doing is their
23 identifying these compounds using techniques such as LC/MS/MS
24 that identifies the compounds based upon their ions. And once
25 they identify them, then they can request in their calibrations

1 that they would set up later to add that compound to initial
2 calibrations so that they can identify against that. So there's,
3 it's a little bit of a circular game, they don't go out and run
4 an initial calibration for every single compound under the book,
5 until they know that they have to look for it. So they play a
6 little bit of a cat and mouse game but once they identify it,
7 then they can request that compound. Then they can see so it
8 becomes an internal process that quality assurance and quality
9 control moves through their laboratory.

10 MALE VOICE: OK.

11 ROD MCNEIL: As far as I am aware, the same doesn't submit
12 double wide samples so to outside to labs for confrontation.
13 Its' a business decision, ya know something like the Metochlor
14 or Prometon on this list, represent the new wave pesticides.
15 The machine that he is talking about the LCMS is about
16 \$750,000 so you better have a lot of samples if you're going
17 to try and pay for it by doing specific pesticides and
18 fortunately it's very difficult, highly specific general piece
19 of equipment so you can address any different compounds with
20 the same (inaudible) so it (inaudible) there. But, adding new
21 pesticides every year, as required by law, means that labs are
22 always certainly playing catching the numbers. Like last year,
23 in 2010 we introduced 19 new pesticides. I didn't know they
24 had the nature or the ability of nature to before that so we
25 should be able to look at the market and make (inaudible). On

1 the average here we have about four or five pesticides
2 unfortunately, to list, and the driving force to add this to
3 DEQ-7 is that they are detected in state waters and
4 groundwater. So, this is sort of a pre-emptive strike, so that
5 at least labs are aware this is now on the radar, it is a
6 compound (inaudible). Any other questions? (Silence) Thank
7 you.

8 DUDE TYLER: Thank you sir. So....they gave us a half hour
9 lunch should we take it? You all you folks on the phones, can
10 you go to lunch in half hour and get back?

11 COREY FISHER: Like ten minutes.

12 STEVIE NEUMAN: Dude, I don't know if I can get there that
13 quickly from that.

14 DUDE TYLER: I say I got a whole sandwich Stevie, I'll save
15 half one for you.

16 STEVIE NEUMAN: Enjoy.

17 DUDE TYLER: Okay, well let's come back in, I can't do math,
18 what's a half an hour from now?

19 BOB BUKANTIS: 48.

20 MITCHELL LEU: Ten till?

21 DUDE TYLER: Ten till, thank you Mitch.

22 KATHLEEN WILLIAMS: It's easier with a dial.

23 STEVIE NEUMAN: Okay, bye bye.

24

25 DUDE TYLER: John, it's dangerous to walk up there

1 JOHN ARRIGO: I know. This is what's dangerous.

2 DUDE TYLER: So do we have our gang on the telephone?

3 COREY FISHER: Yup.

4 DUDE TYLER: Corey is Roger back? Is Stevie back? We will go
5 ahead and re-convene post lunch. John is doing an enforcement
6 presentation.

7 (Misc talking amongst everyone)

8 JOHN ARRIGO: Nice to be here, my name is John Arrigo, I am
9 the Administrator of the DEQ Enforcement Division. I recognize
10 quite a few faces and nice to see you here. I probably have not
11 been in front of WPCAC since 1997, and we were trying to pass
12 water quality penalty rules. Try this. The Enforcement Division
13 is one of the main divisions of the Department, we have
14 Permitting, Planning and Mediation and little ole enforcement
15 but we get an enforcement (inaudible). A little bit of history
16 and this crop is moving it's effectiveness, this is a newspaper
17 dated July 17, 94, headlines in the Independent Record were
18 toothless. There was no water enforcement occurring. For a
19 variety of reasons, and as a result of that in 1996 the
20 environmental quality council did a study on enforcement and
21 compliance of the environmental agencies. Kathleen was
22 intimately involved in that. And they came out with the report
23 that recommended that enforcement should be fair, and consistent
24 and we needed better tracking, and we needed written procedures,
25 and at about the same time, actually I believe in 1995, the

1 legislature passed a law that created the Department of
2 Environmental Quality, it was formed from various parts of
3 Department of Health and Environmental Sciences, Department of
4 State Lands and the Department of Natural Resource and
5 Conservation. We didn't actually move into this building as
6 workers for the Department until mid-1996 but we created a new
7 centralized Enforcement Division, today we have a budget of
8 about 1.4 million. We have 15 FTEs, one in Billings, almost half
9 general fund, the rest is federal grants and then 22 percent of
10 our budget are fees paid by the permit holders, in the various
11 programs. And what's really unique about the Enforcement
12 Division that it's centralized enforcement, a lot of states have
13 say in their water quality programs, they'll have attorneys in
14 that, assigned that to a program that will do their own
15 enforcement or they will refer to the Attorney Generals' office.
16 Here, we have attorneys in the Department who are not assigned
17 to the Enforcement Division but they work for us. And their
18 special assistants to the Attorney General. So their equivalent
19 to the attorney general filing a case in court. And all the
20 formal enforcement actions for the department are channeled
21 through the enforcement division so we get a lot of consistency
22 and standardization through that. We also have legislation
23 passed a couple of sessions ago which standardized our penalty
24 process, it used to be that we had Water Quality Act penalty
25 rules, we had EPA penalty policy for error, we had a Department

1 draft policy for solid waste, the penalty calculations were all
2 over the board. We had legislation pass... that established a set
3 of factors that we to consider in all penalties and then we
4 passed a set of rules which described how we quantified those
5 and so anybody on my staff can calculate a penalty all you have
6 to start from is the maximum penalty authority and then we work
7 down from there. On average, we receive about 950 complaints or
8 spill reports each year and so far, since our creation we have
9 processed over 2000 formal enforcement actions. We do two main
10 things in the Enforcement Division, all the spill calls all the
11 citizen complaints about anything get channeled to us, and then
12 we do formal enforcement for 16 different statutes administrated
13 by the Department. Our particular duties are we validate,
14 investigate and manage complaints, we develop and manage formal
15 enforcement cases that involves drafting an order, calculating
16 penalties, and then the attorneys review and approval all of
17 that, so we are not practicing attorneys. More like paralegals,
18 and then we have a great database for tracking all of this
19 stuff, and then we provide enforcement assistance to the
20 programs. We ask that all citizens complaints and still reports
21 be called into the Enforcement Division. Often , the public is
22 very smart out there and they will say I got a water complaint,
23 I am going to call Jenny Chambers or I'm going to call someone
24 on Mark Bostrom's staff or I am going to call the Directors
25 office. And they will call four or five people in the Department

1 if those calls are all sent to us, we log them in and we keep
2 track of them and it saves a lot of time on the rest of the
3 Department's behalf. We have a complaint form, we track it in
4 the databases, almost real time entry so if somebody calls in
5 the morning, its entered, and then that afternoon if we get a
6 call from a different person about the same thing, we already
7 say we already heard about the same thing, thank you, what can
8 you tell us and it's a lot more stream lined. We investigate the
9 complaint and then try to validate if the violation of any law
10 permit or rule we enforce, was violated. And then we send a
11 violation letter to notify the responsible party of what is
12 required to return to compliance, if they fail to comply or if
13 the violation is considered significant under defined criteria,
14 they may be referred to formal enforcement. In the area of
15 complaints, we do almost everything. Spills and leaks, spills
16 into water, on land, where they can leach into water, air
17 quality, dust, open burning, are big common violations. If there
18 is prohibited materials that you cannot burn, like painted wood,
19 asphalt shingles, and a lot of people will tear down an old
20 trailer and burn it. We can't do that and we have actually gone
21 after a county for dust violations because they failed to take
22 reasonable precautions to control dust on the county roads.

23 MICHAEL WENDLAND: I have a concern of that one there
24 though. How can in north central Montana, how can you abate dust
25 control like that?

1 JOHN ARRIGO: You can... You can..

2 MICHAEL WENDLAND: I mean is it their fault, is it the
3 weather's fault? Or is it the dust abatement?

4 JOHN ARRIGO: It's a requirement that all property owners
5 take reasonable precautions to control dust, the reasonable
6 precautions are not defined and that is a gray area but if we
7 have a saw mill with wood chips blowing all over, they have to
8 control it. In the case of a county road, the county owns those
9 roads and they were not taking reasonable precautions, there are
10 precautions you can take such as boiling, putting on dust
11 depressant, you can pave it, and your correct, it is expensive.
12 This was Flathead County. They had 700 miles of gravel roads,
13 and we sited them for failing to take reasonable precautions and
14 they agreed that it was a violation but they said hey, we can
15 only do so much, it costs too much money and there were citizens
16 screaming you know, pave my road, pave my road. What happened
17 was rather than obtain a penalty from the county for the
18 violations, we entered into an order on consent, where they
19 agreed to do certain things and we bought off on it. They formed
20 a committee to study the problem and prioritize the roads, they
21 dedicated some money for paving, they looked at their
22 ordinances, and for example if a gravel pit goes in, that gravel
23 company has some responsibility to control dust that's caused by
24 its trucks. They looked at their subdivision requirements and
25 may require a developer to pave a new road and then they... this

1 is getting off too detailed but I'll try to answer questions.
2 Well anyway, they hired a dust sheriff, they lowered speed
3 limits, they offered a matching program for land owners to apply
4 dust depressant and their not satisfying the whole problem, but
5 they are making an earnest effort that we believe is reasonable.
6 So and we get a lot of dust complaints. We deal with asbestos
7 and if you demolish or remodel a building, you have to have a
8 asbestos inspection first and if there is asbestos, that has to
9 be mitigated, this is really important for schools, and other
10 commercial buildings.

11 DUDE TYLER: Was that the slide from Livingston?

12 JOHN ARRIGO: Yes.

13 KATHLEEN WILLIAMS: The Guest House. I loved staying there.

14 JOHN ARRIGO: Yes, it was the Guest House you don't want to
15 go there now. They were trying to turn it into retirement
16 apartments and the owner absconded to Iran. Solid waste land
17 owners can dispose of their own waste on their own property, if
18 it is generated in reasonable association with their household
19 or their agricultural operations but this is not reasonable, so
20 we go after these kind of open dumped. We use to track a lot of
21 meth labs, there is a program now, legislation was passed, and
22 there is a ...

23 (inaudible)

24 JOHN ARRIGO: Pardon me? Hello? Can you guys here me?

25 STEVIE NEUMAN: Just checking on my class. (inaudible)

1 DUDE TYLER: Stevie is pulling a Dude. Remember that day I
2 thought I was on mute? Hey Stevie can you hear us?

3 JOHN ARRIGO: Can you guys on the phone, can you hear us
4 this is John Ariggo.

5 COREY FISHER: This is Corey I can hear you just fine.

6 JOHN ARRIGO: And there is a Stevie and is Roger still on?

7 DUDE TYLER: I can hear Stevie talking in the background
8 (inaudible). OK.

9 JOHN ARRIGO: Of course you can see from the slides on the
10 GoToMeeting that we use to deal with drug labs, but now there is
11 a law where DEQ has a program to keep track of all the sites
12 where meth labs were found, and they certified meth lab clean up
13 folks so if you say you're a landlord, and your apartment was
14 used to create a meth lab, its posted on there, on the webpage,
15 to advise future renters that there might have been a meth lab
16 there. If you hire a certified meth abatement contractor, they
17 can come in a clean your place up, it usually involves ripping
18 out carpet, and drywall and then your name will come off the
19 list. And you are somewhat protected from liability from future
20 renters who may claim they got contaminated from the meth
21 chemicals.

22 DUDE TYLER: Real Estate industry treats that as the tear
23 down.

24 JOHN ARRIGO: Yep, sometimes. I don't know where it is now,
25 but so use to track a lot of meth labs, we don't anymore, the

1 meth programs does that, we deal with underground storage tanks,
2 the operation of them, the cleanups of leaks, hazardous waste,
3 junk vehicles and this is one success story, where we had to go
4 to court and essentially go possession of the wastes and
5 cooperated with Butte Silver-Bow to remove them and the money we
6 got from selling the scrap almost paid for the cleanup.

7 KATHLEEN WILLIAMS: That makes (inaudible).

8 JOHN ARRIGO: Water quality, there is all aspects of water
9 quality, this top, the top picture is an adit that blew out.
10 Public water supply wells, sub-divisions, septic pumpers, waste
11 water discharges from permittees, storm water from permitted and
12 unpermitted storm water operations. CAFOs and AFOs and then open
13 cut mines, gravel pits, hard rock mines, and coal mines, we have
14 done enforcement under I think pretty much all of those. This is
15 probably too much detail, but if we receive a complaint, there
16 is a couple of things we can do. If it's a permanent facility,
17 we refer it to the permit folks and say we think you have a
18 problem with one of your permitted a entities, if it's something
19 like Fish, Wildlife and Parks or the Core of Engineers we refer
20 to them. Most of them though, are something that DEQ covers and
21 we will try to investigate to see if a violation has occurred.
22 Our policy and some of the laws require that we send a letter to
23 notify the responsible party that a violation has occurred or we
24 believe that a violation has occurred, we give them an
25 opportunity to comply. If they blow off those letters, we will

1 take them to enforcement. We try to work with people, give them
2 a chance but some violations are defined as significant and
3 whether or not they are fixed, they get a penalty. This just
4 shows kind of the history of the cases we've managed over the
5 past, we get about.... we probably get about 150 to 200 requests
6 for a new enforcement case each year. We probably close about
7 almost that many, but there is always 3 or 4 hundred ongoing
8 because it takes so long to get thru these. Most of our, I am
9 sorry, I am talking complaints, never mind, complaints - we get
10 about 900 to 1000 complaints a year, we close a lot of them,
11 some of them turn into long on-going problems. They pretty much
12 fall out as a quarter related to water, a quarter related to
13 air, a quarter related to waste and the rest are miscellaneous.
14 and this is very true, we can only do so much, we try to help
15 people, we are customer service oriented but if it's a Fish,
16 Wildlife and Parks thing, we can't do anything for them, all we
17 can say is call these folks, they might be able to help. The
18 other half of our work is formal enforcement, and the goals of
19 formal enforcement are to return a violator to compliance. And
20 to provide a detourant against future violations from the
21 responsible party and for other people out there doing the same
22 thing. If they know that might get a penalty for this, they
23 might not be inclined to not do it. Some people we believe
24 penalties are a cost of doing business and they factor that in,
25 who knows. We also have to insure equitable treatment one of the

1 common defenses is they will come in and look at all of our
2 files for say an air case, and they'll say you want 5000 out of
3 me, you only fined them 2000. That's not fair, and we have to be
4 able to answer that question why and we want to have consistent
5 process of penalties so that we can't be accused arbitrary and
6 caprecious. Informal enforcement is what the programs do, the
7 regulatory programs, they provide compliance assistance, they do
8 inspections, put on training, they send letters, formal
9 enforcement is after we determined it's a significant violation
10 and we issue orders and seek penalties and file actions in
11 district court. We can get to a formal enforcement either
12 through the complaint side if they don't fix the violations, or
13 most of them come from the permit folks who do a compliance
14 inspection or review self-monitoring reports and document of
15 violation. Which violations go to formal enforcement and deserve
16 a penalty? There are some federal rules and criteria which
17 describe significant violations and the expectation from EPA is
18 that those significant violations will be addressed with the
19 formal enforcement action. That typically includes a penalty.
20 For water supply and Water Quality Act, they refer to them as
21 SMCs or snicks haz waste air, they refer to them as HBPs and
22 some significant violations can be corrected, but still deserve
23 a penalty. An example is a spill of gasoline into a stream, it
24 causes pollution, they clean up the truck wreck, they do what
25 they can to recover the fuel, but that violation happened. They

1 caused pollution, and they deserve a penalty for that, even
2 though they did all they could to fix it, they should have done
3 more to prevent it if possible. The programs have enforcement
4 response guides or escalation criteria if you get this violation
5 or that violation, what you do is do you send a letter, do you
6 send them to enforcement? And all these criteria and guides help
7 maintain consistency and fairness. Jenny may have someone who is
8 a real tiger out there and wants to fine everybody and they may
9 have another employee who is like "oh, it's okay, a little bit
10 of dirt, no problem." To avoid it, bias, the Water Protection
11 Bureau follows under these criteria and sites that have
12 significant violations, they send to enforcement, kind of a no
13 brainer. We have a policy and like I said, some rules require
14 that we send a violation letter for all violations and those
15 simply explain the violation and they ask for a response and the
16 one thing that we have had to hammer to peoples' heads is that a
17 letter is not an enforceable document. You can't violate a
18 letter, a letter can't order anything, and only orders can do
19 that. But the letter is a good way of informing them of what we
20 know and what we want them to do and give them an opportunity to
21 challenge it. We have this enforcement request that the programs
22 fill out to request enforcement, it's ultimately signed by the
23 director. We have administrative enforcement I would say about
24 98% of our cases are administrative. That's where the Department
25 issues a notice of violation and administrative compliance or

1 comply order, they are appealable to the Board of Environmental
2 Review, they, may reject, modify or uphold our order, if a case
3 is appealed. We often have concurrent settlement negotiations
4 and will settle it with an order on consent, where both parties
5 agree to certain conditions. Sometimes, we will offer an order
6 on consent as the initial opening and we will negotiate it, a
7 settlement agreement without issuing an order. Some of you have
8 probably seen these, but an order contains an order of
9 violation, findings and facts, an order part, which tells them
10 what they have to do, penalty assessment and a 30 day right to
11 appeal. Civil actions, where we go to court, complaints filed in
12 district courts, by one of our attorneys, you go through
13 discovery depositions, motions and hearings and the judge
14 decides. Again, we often have concurrent settlement negotiations
15 and if it goes to a trial or a hearing, there's a court order,
16 but we may agree upfront to consent decree or stipulation. And
17 we do go to court, we do have hearings, but most things settle
18 out before then. What we do in enforcement in case development
19 is we draft the order and calculate the penalty, there all civil
20 penalties. Civil administrative penalties and civil judicial
21 penalties, but we call them administrative and judicial.
22 Administrative penalties, DEQ assesses. Judicial the court
23 assesses. We have a system of calculation, one thing we have, we
24 have a two year of statute of limitations for penalty
25 assessments. We cannot seek penalty for violations that are more

1 than two years old. EPA goes back 5 years. Sometimes we refer
2 them to EPA. Each statute has its own penalty authority. Clean
3 air is 10,000 per violation, per day, that's suppose to say with
4 an 80,000 max. Judicial is the same 10,000 per day, per
5 violation, no max. Water quality administrative penalty is
6 100,000 per day, 10,000 per day, 100,000 max, 25,000 in court
7 and then solid waste is less and opencut is even less, because
8 those are kind of viewed as less. Violations are less
9 threatening to you then human health and the environment. That's
10 the authority that's in there, also clean air and water quality
11 are kind of statutes handed down by EPA, and they expect us to
12 have comparable penalty authority. We have criminal penalties in
13 these laws but DEQ in not a criminal enforcement agency, we have
14 to refer it to the Attorney General or the county attorney, if
15 we believe there is a criminal violation. EPA also has a
16 criminal investigation division, and then the laws also describe
17 where the penalties go. Clean air act, they go to this
18 alternative energy revolving loan account, where people can,
19 individuals and small businesses can get low interest loans of
20 up to 40,000 I think it is now to put on some sort of
21 alternative energy source. Water quality, they go into the
22 general fund. Solid waste, they go into a special solid waste
23 account, that the Department gets to spend. The environmental
24 rehab account there is a fund that we can use to reclaim mines
25 or clean up waste. It's kind of nice to have. Penalty

1 calculation factors, this is what standardized nature extend
2 gravity, etc. the big multiplier is the days of violation, we
3 calculate a base penalty for one day, and then if it occurs for
4 a month, that's 30 times that. The days are a big multiplier,
5 and though we have this mechanical quantifiable method of
6 calculating penalties, it is extremely subjective. Lot of
7 discretion, we try to exercise that discretion consistently. We
8 look at the economic benefit of the violation. Did they gain by
9 not investing in some pollution control equipment or did they
10 gain by not paying something that they were suppose to do. And
11 we try to estimate that. We also count history of violations,
12 but that only adds a little bit to the penalty and then there is
13 a big thing that we call the kitchen sink. Other matters as
14 justice may require and what that means is, if there's a
15 equitability issue. Ya here's a spill, it caused pollution and
16 the typical penalty is X thousand dollars. Well, in this case,
17 It killed a bunch of fish and contaminated the city's drinking
18 water. We need to assess a larger penalty in that situation to
19 provide a deterrent, or we may decide that 30 days of violation,
20 results in a penalty that's way too high, even in our minds. So
21 we will adjust it downward in other matters, as justice may
22 require. That's where the heart comes in. As far as formal
23 enforcement cases, our workload has been increasing, and again,
24 the active cases go on from year to year, because there's
25 usually compliance requirements, some of these have worked with

1 Dick on Phillipsburg, they are under an order to make
2 improvements to their waste water systems. It's going to take a
3 couple of years, but we track that progress all along. And then
4 in the past couple of years, we have done a bunch of drinking
5 water cases, you'll see that. This is just for 09. More than
6 half of our work was in public water supply. That's just a
7 number of cases, not hours spent. What we do in water tanks,
8 air, this, I have a handout that I will set in the back. It just
9 shows the penalties we've collected since 05 for the different
10 statutes and the top part, those all go to general fund. The
11 bottom part, they go into a variety of accounts. Special revenue
12 accounts. We also have this thing called supplemental
13 environmental projects and that's where a violator pays for an
14 environmentally beneficial project instead of paying for cash,
15 instead of paying a cash penalty, we have a policy, which
16 describes the parameters where those can be used. In the past,
17 we have done things, you have maybe heard about the glass
18 pulverizer, the head waters recycling, which is Jefferson,
19 Broadwater, Lewis and Clark County, they have a glass
20 pulverizer, that was paid for by a water violator, which is kind
21 of a stretch, but they recycle glass now. We have had stream
22 restoration projects, we have had paving for dust control, for
23 air violations, city of Great Falls had some waste water
24 violations, instead of paying all of the penalty, they bought a
25 florescent bulb crusher, that recovers the mercury from the

1 land. Lots of training and education, I think Exxon bought some
2 low emission buses for Billings and sometimes they will, the
3 company will go above and beyond and put on additional pollution
4 controls who change their process to reduce or eliminate sources
5 of pollution. As a set, we will give them credit for that.
6 Criminal actions, like I said, we usually refer them to EPA. We
7 don't refer too many to the Attorney Generals' office. Maybe two
8 cases in the past fifteen years have we worked with a county
9 attorney on that, we just don't do much of that. And I would
10 like to refer you to our webpage, there's a lot of good
11 information there, there's our complaint form, a spill reporting
12 guide, penalty types and amounts, penalties collected, and I
13 will give you that and then the statistical report on complaints
14 and cases, some of the slides I have shown you today. And you
15 just go to the DEQ webpage and go under Divisions, Enforcement,
16 click on there, and then all these links go to different reports
17 and things, which are very informative. And one of the major
18 accomplishments, that we are kind of proud of, is our public
19 water supply program had a back log of significant non-
20 compliances. There's over 2000 public water supplies, if you
21 fail to monitor you monthly bacteria, twice in six months, it's
22 significant. But, we got on them and we issued 286 orders in
23 three years, which is a lot, for us. And then I want to talk
24 about a new initiative because you guys are WPCAC. We are doing
25 what we call expedited Water Quality Act Enforcement, and a

1 little bit of background, the Water Protection Bureau had to
2 convert their national database, the permit compliance system to
3 a new one, integrated compliance information systems, ICIS. It's
4 an EPA database that we feed information into and EPA takes
5 stuff out and says "how come you're not doing this?" The
6 conversion to ICIS took 3-4 years, to ensure that the data
7 transfer was accurate, there was a lot of problems moving this
8 data around. Kari Smith and some of her staff worked a hard,
9 long time trying to fix it so you can use it. This garbage den.
10 After they got the data to a place that was a little better,
11 they did kind of a compliance review, and they discovered 60-70
12 cases with significant MPDES permit or discharge monitoring
13 report violations. DMR and affluent limit violations, and it's
14 like geez it's like we've got this workload now, significant
15 violations that we have to address. So we came up with this
16 approach and Water Protection Bureau prioritized the cases,
17 based upon some statistics, number of violations, severity of
18 the exceedence, where they ten percent over the limit, or a
19 thousand percent over the limit, were they a major facility or
20 non-major and they kind of prioritized them and then we got
21 together and developed this expedited approach and they started
22 sending us enforcement requests. The basic approach is that we
23 will offer a consent order with a reduced penalty, or no penalty
24 if the entities submits a compliance plan and schedule to return
25 to compliance. For the majors, we are seeking 10 percent of the

1 calculated penalty. Since the administrative penalty cap is
2 100,000, we are not seeking anymore than 10,000 from any
3 facility. If it's a non-major, we are saying no penalty, but you
4 have to agree to a compliance schedule, and stipulated penalties
5 for future DMR and effluent limit violations. And we asked the
6 non-majors to submit a compliance plan that will get them into
7 compliance and to date, I think this is even out of date, we
8 have 18 cases to date, and 9 are under order, see the printout.
9 And I will hand out a color copy. I did tell you about this
10 cause he had gone through it. What this shows is the yellow
11 cases are waste water cases that we dealt with on kind of a case
12 by case at adhock basis. And the green means they are under
13 order, we signed an order on consent and our approach in a lot
14 of these was that we talked to the facility and offer a consent
15 order to address the violation. Some of them, we got penalties
16 from. You can see that on the right. Glasgow, for example, we
17 assessed a 4800 dollar penalty but if they agreed to do certain
18 things, they only had to pay us 2400 hundred. Same approach with
19 Sheridan, Brady we assessed a penalty but we said if you do, if
20 you keep on compliance, we won't seek any cash penalty. So,
21 about the end of that run there, December 09, we started talking
22 to the Water Protection Bureau about these numerous cases that
23 they have coming and we figured we kinda of been half hazard,
24 lets figure out a standard approach. So the green one's are the
25 cases that we are addressing under this expedited approach. I am

1 sorry, the blue ones, the green ones are under order. So we have
2 a lot of them there that we are working on. And you may think oh
3 God no penalty, that's not fair, but when you use the penalty
4 calculations, it's 10,000 per day, per violation, 100,000 max,
5 if they screw up one month, they've probably violated their
6 weekly BOD four times, their monthly BOD, their weekly TSF,
7 their monthly TSF, probably did a few others things. There's 8,
8 10 violations for one month. There's a hundred thousand. These
9 penalties would be extremely high and we would rather see money
10 go to the system for upgrades, rather than collect a lot money
11 in penalties. And so we ask them to submit a compliance plan,
12 that then we incorporate into the order and they say they are
13 going to submit and engineering design by May 2011, that's an
14 enforceable date, and if they don't submit it by that date, then
15 they accruing daily penalty. And they agree to this upfront, and
16 we kind of, we are very generous, no penalty but you have got to
17 perform, so give them a chance. And that's were we are heading
18 with MPDES enforcement. And that is the conclusion of my
19 presentation. Any questions, I would be happy to try and answer
20 them.

21 DUDE TYLER: John, what was the town that needed a variance
22 from the discharge into a stream up in central Montana? It came
23 before us two years ago.

24 BOB BUKANTIS: Conrad?

1 DUDE TYLER: Was it Conrad? Are they in here, was it a
2 permit?

3 JENNY CHAMBERS: It wasn't a variance, they changed
4 classifications stream and they came, used the capability
5 analysis in standards and changed the classification of the
6 stream and it was common act.

7 DUDE TYLER: Did they, they are not on here?

8 JENNY CHAMBERS: It wasn't because they weren't meeting
9 permit limits, they are complying with the permit conditions,
10 but depending on what the stream classified as, certain water
11 qualities applied and if that use isn't being protected for
12 whatever benefit, so it's suppose to say the streams of B1 and
13 it is suppose to support all of the aquatic usage, the water
14 uses and all those things, then there are other standards that
15 apply that there could be more stringent permit limits or there
16 could be different permit limits, depending on stream
17 classification. Conrad did that to lessen the classification of
18 the stream but they would still have permit limits, it just may
19 not have raised it to a certain level and they were still were
20 complying with those, so is it a different process, but....

21 DUDE TYLER: I am not sure the question I am trying to get
22 out of here, but I am just trying to figure out how the two
23 dovetail, you know, trying to work with the town to....

24 JOHN ARRIGO: Permits work with standards to figure out the
25 appropriate permit effluent limits.

1 DUDE TYLER: Effluent, ya.

2 JOHN ARRIGO: And if they violate those, then they are
3 potential enforcement candidates and we work with the Water
4 Protection Bureau to develop this approach.

5 KATHLEEN WILLIAMS: Are they still working on (inaudible)?

6 DUDE TYLER: I am still chewing on this, I don't know.

7 JOHN ARRIGO: I can give you some more to chew on, ask Dick,
8 I mean they ...

9 DUDE TYLER: That's what I was going to say, Dick what's
10 your story?

11 RICHARD HOEHNE: Our sewage up will and we were in violation
12 for a number of secondary standards, often and we ended up
13 meeting John and I got to admit, everything went well. You know,
14 after we knew we were in trouble and working with these guys
15 with an administrative order. We negotiated sometimes, I got
16 some things in there that I thought we needed, I agreed to it.
17 As far as enforcement went or the administrative order on
18 consent, it was almost endless. Basically.

19 JOHN ARRIGO: That doesn't count as the time that I had to
20 go down there and ...

21 RICHARD HOEHNE: Oh that was much less painless for you than
22 it was for me.

23 JOHN ARRIGO: But Philipsburg is in a tough way, because
24 they under this order, they have to design a new treatment
25 system that can handle their capacity. Their system is at

1 capacity for a variety of reasons. And they have to design the
2 plant, but they don't know nutrient number they are going to
3 have to meet, because the TMDL has not been done. So that's kind
4 of relative to Conrad, plus the citizens were insistent on land
5 application to get out of the whole permit. And the city went
6 through great pains to try and find a suitable, affordable land
7 application site and there were none, but the people didn't
8 believe it. So that was a big hassle. We are the nice guys, we
9 do friendly enforcement. Kathleen?

10 KATHLEEN WILLIAMS: What is the entry under status that says
11 demand, what does that mean?

12 JOHN ARRIGO: Okay, that is how we open the door, we send
13 them a letter, we call it a demand letter, where we say we are
14 initiating an enforcement action against you for permit
15 violations. Here's how we propose how to resolve them, you will
16 send them a draft order, which will lay out the penalty or no
17 penalty and the requirements for a compliance plan and
18 stipulated penalty, so we say will you sign this and most of
19 them say yes, sometimes they come in and talk to us about it,
20 they want to change the dates. We also, then after they are
21 signed, they submit this compliance plan, and that requires
22 another round of discussions often.

23 KATHLEEN WILLIAMS: And then case development, is that
24 developing a legal case or is that, where is that on?

1 JOHN ARRIGO: That's the permit program submits an
2 enforcement request, we get signed by the director, then the
3 Enforcement Division develops the case, drafts the order,
4 calculates the penalty, drafts the letters, the attorney's sign
5 off on all of it, then we issue it through a demand letter.

6 KATHLEEN WILLIAMS: Okay, so that comes later too?

7 JOHN ARRIGO: The ones under development are being written.
8 Well, thanks for your interest. If you have an enforcement
9 questions, please feel free to call me.

10 DUDE TYLER: Thank you John, any other questions?

11 JOHN ARRIGO: Just what else I have is this penalty table
12 and kind of a statistical report for the last fiscal year, I
13 will put them on the back table for you.

14 DUDE TYLER: Thank you for your presentation, John.

15 JOHN ARRIGO: The meeting has ended, okay

16 DUDE TYLER: Any questions over the telephone, anybody left
17 over there, in cyberspace?

18 COREY FISHER: No, no questions.

19 DUDE TYLER: Thanks Corey. Okay, thank you John. Okay, let's
20 see, we are at tail end of the meeting here. Are there, is there
21 anybody with public comments today? (no response) Do you know of
22 any? Any discussion about agenda items for our January meeting?
23 Well, Bob?

24 BOB BUKANTIS: We will need to have it for sure, to remind
25 you, we decided on January 5th, if for no other reason, to set

1 the calendar for next year and then I suspect we will at a
2 minimum, have some briefing items, and least coming up next
3 year. Excuse me. In addition to briefing items, I believe we
4 will be looking at purposed changes to DEQ-7 sometime next year,
5 probably not in January and we may have some other standards
6 rule making and I expect we will have some, I know there is an
7 extensive permitting rule making package in the works. And I
8 think subdivisions is working on something also. So there is
9 several packages, I am not sure we are going to have any action
10 items for January at this point other than approval of next
11 years calendar, so I suspect we will have a conference call.
12 But we, I'll revisit that with you Dude, as the time approaches.
13 And certainly provide opportunity and notice for Council members
14 to suggest items as well.

15 DUDE TYLER: Ya, obviously if someone has a presentation
16 that they would like us to see then it's a good venue for it.

17 KATHLEEN WILLIAMS: I think I would like a legislative
18 update we might do again.

19 BOB BUKANTIS: Ya, and that is typically something we do
20 during the session.

21 DUDE TYLER: Okay, any other business? (Silence) Okay, thank
22 you everyone. Meeting is adjourned. Thank you all. Thank you
23 Stevie, Corey, I think we lost Roger.

24

25