

**WATER POLICY SUBCOMMITTEE  
ENVIRONMENTAL QUALITY COUNCIL**

May 4, 2000

Draft: June 29, 2000

Approved: July 26,2000

**COMMITTEE MEMBERS PRESENT**

Sen. Bea McCarthy, Chair  
Rep. Bill Tash  
Sen. Jon Tester

**STAFF MEMBERS PRESENT**

Mary Vandebosch  
Judy Keintz, Secretary

Agenda ([Attachment 3](#))

Visitors' list ([Attachment 1](#))

**I INTRODUCTION AND ROLL CALL**

The meeting was called to order at 8:00 a.m. by Chair MCCARTHY. Roll call was noted; all members were present, [Attachment 2](#).

**II UPDATE ON WATER POLICY ISSUES**

▶ ***Litigation Update***

MS. VANDENBOSCH stated that there are two current lawsuits in Montana that address the Total Maximum Daily Load (TMDL) issue. The Friends of the Wild Swan - I case is pending a ruling from Judge Molloy. Judge Molloy had decided that Montana was not completing its TMDLs in a timely manner. The Friends of the Wild Swan - II case challenged the approval by the U.S. Environmental Protection Agency (EPA) of Montana's TMDLs and the State's list of impaired and threatened waters due to the fact that the EPA did not formally consult with the U.S. Fish and Wildlife Service. There is a draft settlement in the case and a consent decree may be issued in a few weeks. The settlement would involve the EPA consulting with the U. S. Fish and Wildlife Service on the both the 303(d) list and approval of TMDLs.

**John Youngberg, Mt. Farm Bureau**, added that the settlement is not to be precedent-setting. It is narrow in scope and will not be used for any other species.

MS. VANDENBOSCH stated that in a California case (Pronsolino v. Marcus), the plaintiffs challenged EPA's authority to require states to list waters that are impaired only by non-point sources on the Section 303(d) list of impaired waters. The federal district court judge upheld the EPA's authority to list or require listing of waters impaired only by nonpoint sources.

**Mr. Youngberg** noted that the EPA did admit that listing of non-point source waters can be required, but the state has the authority to determine the TMDLs.

MS. VANDENBOSCH added that it was her understanding that the EPA has the authority to adopt a TMDL if the state fails to do so, but the judge stated that the EPA did not have the authority to require states to implement specific land use regulations to achieve the TMDL.

▶ ***Public Comment on List of Impaired and Threatened Waters (303(d) list***

MS. VANDENBOSCH stated that the draft Year 2000 List of Impaired and Threatened Water Bodies is available for public comment until June 19". The Department of Environmental Quality (DEQ) is holding 17 public meetings.

She further noted that the National Wildlife Federation prepared a report that ranked TMDL Programs in different states. Montana received a mediocre rating, but this was much better than most states.

SEN. TESTER questioned the impact involved when a river was declared impaired. MS. VANDENBOSCH explained when a water body is declared impaired, the states needs to develop a TMDL for the same. The DEQ describes a TMDL as a watershed restoration plan. The DEQ is seeking comment on the highest priority water bodies for TMDL development.

SEN. TESTER questioned whether an impaired river would have an impact on the granting of a permit. **Bonnie Lovelace**, DEQ, remarked that if a discharge permit were involved, this would impact the granting of a permit. If the TMDL is not complete, the Department will not allow the impaired water to become worse. Once the TMDL is developed, the plan would be used for distribution and allocation of pollutant load. She noted that Sen. Tester's question related to water taken out of the stream rather than discharged to the stream, however.

▶ ***Legislative Council on River Governance***

Chair MCCARTHY reported that the Legislative Council on River Governance met in Whitefish in April. Most of the meeting addressed control of the Bonneville Power Administration (BPA). The information was not pertinent to the salmon issue.

REP. TASH added that even though there has been approximately \$3 billion spend on salmon recovery, this project has not been successful. Future meetings will address salmon mitigation efforts.

Chair MCCARTHY maintained that for the Montana delegation to continue to participate in the Council, discussions and agenda topics need to be pertinent to the State of Montana. The group has tentative plans to meet in Washington in August.

SEN. TESTER stated that it is important to participate in the meetings if the state's power and water are being addressed.

▶ ***Status of State Strategy for Concentrated Animal Feeding Operations (CAFOs)***

MS. VANDENBOSCH explained that the general permit for CAFOs has been revised and is being reviewed at the DEQ.

▶ ***Status of EPA Review of State Water Quality Standards***

MS. VANDENBOSCH noted that there has been a decision in the American Wildlands v. Browner case. On April 27, 2000, the judge ruled in favor of the EPA on all counts. This lawsuit provided the impetus for the EPA to review the state's water quality standards. The EPA disapproved a number of the State's water quality standards in December of 1998, after the lawsuit was filed. The Legislature passed SB 499, which addressed some of the issues. The Board of Environmental Review also revised its rules. The EPA identified three other outstanding issues. The EPA has not pursued these issues. Mr. Simonich, Director, DEQ, will notify the Subcommittee if there is any further action on this issue.

▶ ***Proposed EPA TMDL Regulations***

Ms. Vandenbosch noted that there had been several Congressional hearings in regards to the proposed rules. She provided a copy of a letter from **Chuck Fox**, EPA, [Exhibit 1](#) that indicates that the EPA is planning to back off on a number of items in the proposed rules. The EPA intends to have the rules completed by June 30.

▶ ***Montana Drought Advisory Committee***

REP. TASH stated that there are concerns regarding a drought in Montana. The soil moisture conditions are very low. Forest fires are a major concern. Supplemental funding will be needed to address the issue. The moisture conditions in the fuels on the ground are from 10% to 16%. The current Forest Service budget is mostly directed towards roadless issues.

**Jack Stults, DNRC**, added that the Lieutenant Governor has sent out letters to 23 counties advising them of the drought alert status. Certain emergency programs will be activated. This includes emergency stock water programs.

### **III REGULATION OF HOG FARMS**

MS. VANDENBOSCH reviewed a memo prepared for the Subcommittee regarding regulation of large swine operations, [Exhibit 2](#).

SEN. TESTER noted that legislation may be needed to address the issues dealing with hog farm operations in Montana. Permits need to ensure that environmental disasters are kept to a

minimum. Bonding is also an important concept that should be addressed. He added that funding for oversight was very important.

**Ms. Lovelace** explained that they are currently not able to complete permit renewals before they expire. On site inspections are critical. She typically has approximately 45 citizen complaints on the books at any time. Resources are stressed.

▶ ***Individual Permit Requirements***

The Subcommittee discussed criteria for when an individual permits is required rather than a general permit.

MS. VANDENBOSCH pointed out that a general permit reduces the paperwork involved because the same permit covers a number of facilities. Many of the issues are covered up front. The fee for an individual permit is substantially higher than a general permit. Presumably, this would provide more funds to address some of the workload. However, the funds may not be adequate to cover the oversight costs.

MS. VANDENBOSCH added that the legislation could be specific to swine. It could also pinpoint large facilities.

REP. TASH stated that the legislation should be based on animal units.

MS. VANDENBOSCH noted that Montana has 17 concentrated animal feeding operations with swine. Of those, 15 swine operations have more than 1,000 animal units; 3 have more than 2,000 animal units; and one has more than 20,000 animal units.

The Subcommittee suggested using 1,000 animal units as a threshold for regulation.

**Ms. Lovelace** suggested using other factors. A large number of animal units spread out over a very large area may not have the impact of a smaller number of animal units confined in a smaller area closer to state waters. There are both water and air quality issues. She offered to work with MS. VANDENBOSCH on reviewing some criteria.

**Ms. Lovelace** remarked that some of issues could be addressed by rule and would not require legislation. If the board can adopt a rule, this may be an easier way to address the issues.

MS. VANDENBOSCH summarized that the Subcommittee could request public comment on whether or not the Board of Environmental Review should be encouraged or required to amend its rules to require individual permits for large swine operations. This would be an additional criterion that would be added to existing criteria in the rules for individual versus general permits.

SEN. TESTER recommended limiting the issue to swine and using 1,000 animal units.

► ***Financial Assurance***

SEN. TESTER further questioned how a bond could be required to pay for potential problems. MS. VANDENBOSCH explained that some other states require in state law that financial assurance requirements be imposed for certain facilities and then the regulatory agency is required to develop rules. The state usually does not specify the financial assurance instrument. Sometimes the permittee is required to submit a plan and a cost estimate for the plan. Other states have rules that include cost formulas.

MS. VANDENBOSCH stated that the department could be required to adopt rules and costs to be covered could be specified.

The Subcommittee agreed to seek public comment on whether or not there should be proposed legislation to require financial assurance for swine operations of 1,000 animal units or larger to cover the costs of closure, post closure, and corrective action. The Legislature could authorize or require the DEQ to develop rules.

MS. VANDENBOSCH explained that the last EQC meeting is September 15th. On July 28", the full EQC must decide whether or not legislation will be recommended.

► ***Siting***

MS. VANDENBOSCH further noted that page 8 of the memo included options for siting requirements. Currently the permittee is responsible for not polluting either ground water or surface water.

**Ms. Lovelace** remarked that bonding could be set based on the actual conditions at the site. This could be very site specific to the location and the impacts of failure.

The Subcommittee decided not to propose any new conditions for siting.

SEN. TESTER added the resources for oversight were an important element to this process

MS. VANDENBOSCH noted that the department executive budget requests were currently at the Governor's Budget Office. The Subcommittee would need to provide a benchmark for the department to provide information in regard to costs.

**Ms. Lovelace** explained that the proposed budget includes a request for one more permit writer. If the legislation moves forward, the fiscal note will reflect an additional FTE. The standard amount for this position would be approximately \$55,000 per year, plus travel and operations money. Financial assurance issues could result in an additional FTE.

#### **IV REPORT TO LEGISLATURE**

##### **▶ *Decision on Contents of Draft Report***

The Subcommittee decided that the draft report would include: information and recommendations related to regulation of swine facilities; information about lawsuits that have been decided; and the EQC's efforts related to its statutory water policy duties.

#### **V BUSINESS AND NEXT STEPS**

##### **▶ *Next Meeting***

The July meeting was set for the evening of July 26th at 7:00 p.m. The meeting will be held in Helena.

SEN. TESTER requested that a letter be sent to MACO and the counties explaining that air quality is an obligation that can be handled at the local level. MS. VANDENBOSCH noted that a letter could be sent to the county commissioners in August. This would allow more time for review and research of the issues involved. The county commissioners will be notified of the hearing to be held in July.

MS. VANDENBOSCH stated that the Subcommittee is required to analyze and comment on the water information at the Natural Resource Information System. This could be set for either the July or September meetings.

##### **▶ *Approval of Minutes***

**Motion/Vote: REP. TASH MOVED THAT THE MINUTES OF THE JANUARY 20, 2000, MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.**

#### **VI ADJOURNMENT**

There being no further business, the meeting adjourned at 9:50 a.m.