



ENVIRONMENTAL QUALITY COUNCIL

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HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES

Approved January 11, 2012

September 15, 2011

Room 172
State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. DUANE ANKNEY, Vice Chair
SEN. JOHN BRENDEN
SEN. BRADLEY MAXON HAMLETT
SEN. RICK RIPLEY
SEN. CHAS VINCENT
SEN. GENE VUCKOVICH

REP. JERRY BENNETT
REP. BILL MCCHESENEY
REP. MICHELE REINHART
REP. CARY SMITH
REP. KATHLEEN WILLIAMS

MR. DEXTER BUSBY
MS. DIANE CONRADI

MS. MARY FITZPATRICK
MR. MIKE VOLESKY
MR. JOHN YOUNGBERG

STAFF PRESENT

JOE KOLMAN, Legislative Environmental Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary

AGENDA AND VISITORS' LIST

Agenda, [Attachment 1](#)
Visitors' list, [Attachment 2](#)

COMMITTEE ACTION

- The EQC asked that the DEQ continue to provide reports with regard to the development of nutrient standards.
- The EQC kept the FWP Maintenance Account Report open for discussion.

CALL TO ORDER AND ROLL CALL

00:00:58 Meeting was called to order and roll was noted ([Attachment 3](#)).

AGENDA

HB 142 -- REVIEW OF STATUTORILY-REQUIRED AGENCY REPORTS -- CONTINUED

Numeric nutrient standards report (75-5-313, MCA)

George Mathieus, DEQ

00:01:05 George Mathieus, Planning Prevention and Assistance Administrator, Department of Environmental Quality (DEQ), provided a history of the development of nutrient standards for nitrogen and phosphorus. Mr. Mathieus described the nutrient work group, which addresses the implementation aspects of the variance process, and explained SB 367 (2011), which resulted from the nutrient work group.

Public Comment

00:07:44 Dave Galt, Executive Director, Montana Petroleum Association (MPA), spoke about his organization's involvement with the discussion of nutrient standards, reminded the committee of the broad support of SB 367, and expressed his approval of the bill's mechanism for achieving these standards.

00:10:27 Don Allen, Western Environmental Trade Association (WETA), reiterated WETA's support for SB 367. He expressed concern about the possibility of rising utility costs.

EQC questions and discussion

00:13:17 Sen. Keane asked Mr. Mathieus about the impact on taxpayers of the implementation of the nutrient standard. Mr. Mathieus said that nutrient standards do indeed impact communities significantly and that the Montana League of Cities and Towns (MLCT) had taken an active role.

00:14:56 Rep. Williams reminded Mr. Mathieus of 10 issues the U.S. Environmental Protection Agency (EPA) had raised and narrowed to two, one being widespread demonstration applied to the entire state. Rep. Williams asked for information about the other issue. Mr. Mathieus said the EPA objected to SB 367's option for an alternative variance in which a discharger providing an insignificant amount of nutrient load is excluded, which the EPA refers to as "de minimus." Rep. Williams asked for the EPA's projected time line for deciding these two remaining issues. Mr. Mathieus said that the EPA had not stated a clear time line but was aware of the nutrient work group's agenda, which intends a spring 2012 resolution.

00:17:53 Rep. Reinhart asked what would happen should the EPA reject SB 367. Mr. Mathieus said that one course could see the EPA rejecting portions of the rule package, in which case the state would have to write permits to meet the standard. Another course of action would see the EPA rejecting individual permits as they arose, in which case there are various appeals processes. Rep. Reinhart asked what the EPA's major disagreements were. Mr. Mathieus said that while the EPA supports the concept of allowing the variance, it takes issue with a small portion of permits.

00:21:52 Sen. Keane asked for a motion that the EQC continue to be given reports by the DEQ with regard to nutrient standards and progress made with the EPA.

EQC action, if any, & directions to staff

00:22:01 Rep. Reinhart moved that the DEQ continue to report on nutrient variances. The motion passed unanimously by voice vote.

00:22:28 Rep. Williams asked that the EPA be present for future discussion of this issue. Sen. Keane asked that Mr. Mathieus relay this request.

Maintenance account report (87-1-230, MCA)

Art Noonan, FWP

00:23:46 Art Noonan, Deputy Director, Department of Fish, Wildlife and Parks (FWP), presented the Council with the FWP maintenance account report ([EXHIBIT 1](#)) and invited questions from the EQC. Mr. Noonan brought to the Council's attention that the money being used on the Spotted Dog acquisition was not

present in the report because it comes from the Natural Resource Damage program (NRD) funds. Mr. Noonan said the fish and wildlife portion of the report included the work done with the "good neighbor" fund.

Public Comment

None.

EQC questions and discussion

- 00:27:18 Sen. Ripley inquired about maintenance of fences on the Spotted Dog property and asked if an Environmental Assessment (EA) was available. Mr. Noonan replied that the EA would be made available after noon that day and that he would provide it to the Council. Sen. Ripley expressed concern that the Council would not be able to comment on the EA and requested that a conference call meeting be arranged in order that the EQC be able to weigh in on it.
- 00:31:54 Sen. Keane clarified details of the potential meeting and asked if FWP had any objections.
- 00:32:48 Sen. Brenden said that he thought the EQC needed to take a stance on the issue of bison relocation and proposed a vote following the proposed conference call meeting.
- 00:33:25 Sen. Ripley agreed that the EQC ought to address the issue and said that public hearings should be held in communities that would be affected. Sen. Keane reiterated the Council's significant interest in the issue and said that the Council may need to create a subcommittee to further investigate the issue.
- 00:35:53 Sen. Vuckovich asked Mr. Noonan about the FWP management plan for Spotted Dog and the omission of bison and questioned the legality of the management plan. Mr. Noonan said that the management plan on display at FWP's website differs from the EA in that the NRD program was charged with finding replacement lands for those lost in the Deer Lodge Valley under the Superfund site. Mr. Noonan said that this separate entity had made the decisions to purchase the land and that FWP should manage it. Mr. Noonan said FWP was sued during this process and that one aspect of the lawsuit was that FWP had not adequately considered the movement of bison onto Wildlife Management Areas (WMAs). In order to address this matter, FWP engaged in a set of analyses of its WMAs that could conceivably carry bison (including Spotted Dog). He said the EA process was not predetermined and invited public input.
- 00:44:28 Sen. Vuckovich asked how FWP became responsible for management of the federally-owned bison in Yellowstone Park. Mr. Noonan said that FWP assumed no responsibility for bison in Yellowstone Park, only those that wander outside the Park. Sen. Vuckovich asked if it was possible for the federal government to make bison FWP's responsibility simply by pushing them outside the park. Mr. Noonan said that they could but were not hazing bison outside the park and that the responsibility for bison depends on different sets of circumstances.

- 00:48:47 Sen. Ripley said that he did not think the EA would address the potential damage to watersheds, which would require an Environmental Impact Statement (EIS). Sen. Ripley said he thought hearings should be held in the affected communities.
- 00:50:22 Sen. Keane said that the request for the conference call would be honored.
- 00:50:40 Mr. Volesky observed that the dispute centered on about 40 bison despite the fact that Montana is home to thousands of bison.
- 00:51:36 Sen. Brenden pointed to the angst that is felt in Ft. Belknap and Ft. Peck when bison escape their pens.
- 00:52:11 Sen. Hamlett commented that he thought the problem with the Yellowstone herd was overstocking.
- 00:52:57 Sen. Keane summarized the committee's proposed action, including the proposed conference call meeting.

EQC action, if any, & directions to staff

- 00:53:41 Rep. Ankney made a motion to keep the FWP's maintenance report open for review. The motion passed unanimously by voice vote.

(BREAK)

RULE REVIEW & AGENCY LITIGATION STATUS REPORT

General overview - Ms. Thigpen

- 01:14:04 Ms. Thigpen, Staff Attorney, spoke on agency rulemaking and litigation reports. Ms. Thigpen displayed LEPO's new rules website and touched on some specific rules related to the Council ([EXHIBIT 2](#)). Ms. Thigpen spoke about rules proposed by the DEQ, including SB 9 (2011), which authorizes petroleum mixing zones to be used in a corrective action plan to correct a release that may have occurred from a petroleum storage tank and would amend DEQ's rules for underground storage tanks. Ms. Thigpen also touched on implementation of HB 28 (2011), which requires mixing zones be located wholly within the boundaries of a proposed subdivision where the drain field is located, as well as SB 89 (2011), which reduces the time for review of subdivision applications. Ms. Thigpen spoke of section 17-3-25, MCA, dealing with operating tags for underground storage tanks. Ms. Thigpen then spoke on rules released by the Board of Land Commissioners and the Department of Natural Resources and Conservation (DNRC) in which land banking rules were amended, grazing lease rates on state lands were increased, the Water Use Act was amended and hydraulic fracturing rules were adopted.

Public Comment

- 01:23:21 None.

EQC questions and discussion

- 01:23:30 Sen. Keane informed the Council that they could ask Ms. Thigpen for information on rulemaking related to bills they have sponsored.
- 01:24:22 Sen. Keane asked the DNRC if there had been an increased amount of litigation against the department. Tom Schultz, Trust Land Management Division Administrator, DNRC, said that it was a common amount of litigation.
- 01:24:48 Mr. Youngberg spoke about studies on grazing lease fees. Mr. Youngberg said that some leases might be abandoned if fees are increased.
- 01:26:40 Sen. Ripley asked Mr. Schultz if there was a study that compares state, federal, and private grazing lease rates. Mr. Schultz pointed to a table in the report that illustrated how federal rates are higher than state rates. Sen. Ripley said he thought a more helpful comparison would be between state leases and federal leases. Mr. Schultz agreed and said that private rates and costs for operators have increased and that competitively bid leases more closely approximated costs of private leases. Mr. Schultz reported the results of meetings in Dillon, Great Falls, and Glasgow about grazing lease rates, which yielded some concern over a possible doubling of lease rates. Sen. Ripley asked when the comment period closed. Mr. Schultz said that comments must be received by Dec. 30.
- 01:32:01 Mr. Volesky commented from the perspective of Land Board, which he said had not decided the issue but would use the best possible available information to make its decision.
- 01:32:46 Sen. Hamlett reported his statement before the Land Board, where he pointed to inaccurate stocking rates.
- 01:34:04 Sen. Keane reminded the EQC of their right to object to a change in lease rates.
- 01:34:35 Sen. Keane bid farewell to Mr. Schultz and wished him success at his new position in Idaho.
- 01:35:35 Rep. Williams thanked Ms. Thigpen for the new web page and helpful memos. Rep. Williams praised the FWP and DEQ litigation reports and requested that the DNRC summary emulate the summary style of FWP's and DEQ's reports.

EQC action, if any, & directions to staff

- 01:39:00 None.

STORM WATER DISCHARGE PERMIT FEES AND ENFORCEMENT

Program Overview - Jenny Chambers, DEQ

- 01:39:09 Jenny Chambers, Bureau Chief, Water Protection Bureau (WPB), DEQ, explained the role of the WPB.

Permittee perspective - Louie Bouma, Bouma Post Yards

01:44:41 Louie Bouma, Bouma Post Yards of Lincoln, pointed to a 400% storm water discharge permit fee increase for certain applicants. Mr. Bouma said that fee structure changes were imbalanced and decried the inequity in the system.

Public Comment

01:50:19 None.

EQC questions and discussion

01:50:27 Rep. Williams asked Ms. Chambers if the 2400 Standard Industrial Classifications (SIC) code element of the program was a federal or state requirement. Ms. Chambers said the SIC was a federal requirement based on industrial classification that established effluent limit guidelines (ELGs). Rep. Williams asked whether or not the WPB had the authority not to require a permit for those entities that are not producing discharge and are classified as 2400. Ms. Chambers said that two features must be present (an industrial classification and discharge of storm water) for a storm water discharge permit to be required.

01:53:58 Sen. Ripley asked her to address the fee inequities in terms of which entities are assessed fees. Ms. Chambers said that of the 187 industrial entities who maintain a storm water permit, 13 were of the wood product-producing variety referred to by Mr. Bouma. Sen. Ripley asked if Ms. Chambers felt the WPB was missing any industries. Ms. Chambers said she was comfortable that it was not and that wet weather discharges had to be caught at the right time in order to document a discharge. Ms. Chambers said that resources were affixed according to a timetable and that although some discharges are missed, the WPB does its best with the resources it is given.

01:56:51 Mr. Youngberg asked how classifications were determined in terms of small, medium, and large operations. Ms. Chambers said industrial classifications were acre-based. Mr. Youngberg asked for the acreage requirements for small and medium operations. Ms. Chambers said she would provide the fee rules electronically.

01:58:45 Sen. Hamlett asked Ms. Chambers the size of the wood products facility in Bonner. Ms. Chambers said that she did not have specifics on the Stimson Bonner site, which does not have a permit under the general permit system.

01:59:50 Sen. Hamlett asked Mr. Bouma for specifics about his organization's history with the permits and what changes he would like to see to the fee structure for different sized operations. Mr. Bouma gave a history of his business and said that his operation had participated and complied since the beginning of the program. Sen. Hamlett asked if Mr. Bouma had entered into the permit structure because of the liability issue. Mr. Bouma said he had not and that the permit had not affected his operation's practices except to alert Mr. Bouma to the ability to

use grass to filter the storm water, which resulted in subsequent passing of inspections.

02:03:20 Sen. Keane thanked Mr. Bouma for bringing his concern before the Council and said that he saw this as a competitive issue and that more operations should participate in the program. Ms. Chambers agreed and said she would make an effort to provide increased permit coverage in the spring season and examine acreage evaluations based on volume.

02:05:45 Mr. Bouma thanked Ms. Chambers and the Council as well as Brian Heckenberger, Stormwater Coordinator, DEQ.

EQC action, if any, & directions to staff

None.

FIRE SEASON UPDATE

Bob Harrington, DNRC

02:07:02 Bob Harrington, Forestry Division Administrator, DNRC, gave an overview of the anomalous 2011 fire season ([EXHIBIT 3](#)).

Public Comment

02:16:38 None.

EQC questions and discussion

02:16:46 Rep. Bennett asked if rural fire departments had been called in before private companies at the Ariana fire. Mr. Harrington said that the DNRC had discussed the role of contract resources relative to local government and that the Northern Rockies Coordinating Group had devised a priority list that entails agency resources be used first, followed by local government and contract resources.

02:19:27 Sen. Hamlett asked Mr. Harrington how many fires were manmade and how many were due to lightning. Mr. Harrington said roughly half were caused by humans and half by lightning.

02:21:51 Sen. Keane recalled his time on the Fire Suppression Interim Committee and said that the contracting issue will always arise but that contractors will always cost more to suppress fires. Sen. Keane thanked the volunteer fire departments and Mr. Harrington for the value they provide the state. Sen. Ripley agreed and added that a suppression success rate of 95% was admirable.

02:24:57 Rep. Ankney praised the DNRC's involvement in fire prevention education on a local level.

- 02:26:05 Mr. Harrington commented on the contractor issue and said that now there were good opportunities for contractors to be dispatched to fires.
- 02:27:11 Sen. Vincent said that private contractors felt possible inequity in regards to out of jurisdiction calls. Mr. Harrington thanked Sen. Vincent for his comment and said that private contractors would continue to be needed and that a dialogue would continue.
- 02:28:40 Rep. Reinhart acknowledged the success of the program and voiced her support of workers' compensation coverage for local and volunteer firefighters.

EQC action, if any, & directions to staff

None.

SB 409 (Cabin site leasing) Implementation Update

Mr. Kolman

- 02:29:38 Mr. Kolman gave an overview of SB 409 (2011) and the cabin site leasing issue.

Public Comment

- 02:33:44 Sen. Tutvedt said that concern regarding cabin site leasing was becoming increasingly apparent and that he thought SB 409 was a positive step in alleviating the angst among leaseholders.
- 02:35:34 Margaret Morgan, Montana Lease Holders Association, expressed concern that the rules would be released at the last minute.

EQC questions and discussion

- 02:37:53 Sen. Ripley asked Mr. Kolman where the DNRC is at in the rulemaking process. Mr. Kolman redirected the question to Mr. Schultz, who said it was DNRC's intent to go to the October land board meeting for approval to begin rulemaking and that he expected a draft in two weeks. Sen. Ripley asked if the comment period would be different from the study itself. Mr. Schultz said the study would be done before the rules went out in draft format.
- 02:40:23 Sen. Vincent asked if it were true that comments would have to be filed before January 1, 2012. Mr. Schultz said that they would. Sen. Vincent asked if there would be a collaborative discussion with leaseholders. Mr. Schultz replied that DNRC would work with leaseholders to implement the statute.
- 02:42:14 Rep. Williams asked Mr. Schultz whether abandonment of the leased parcels had increased, a question relayed by Rep. Reinhart. Mr. Schultz said that the vacancy rate on these parcels was higher than anticipated.

- 02:43:29 Sen. Vincent asked how many leases will be due in January in order to better inform the EQC on vacancy rates. Mr. Schultz said that about 20% of the leases would be renewed in 2012.
- 02:44:48 Sen. Ripley asked how much guidance had been given to Mr. Duffield's study by the DNRC. Mr. Schultz said that most of the work done by Mr. Duffield would be to update an existing study without much new research.
- 02:46:15 Rep. Bennett asked for a timeframe on bidding and reimbursement for abandoned leases. Mr. Schultz said reimbursement for improvements would only occur under certain circumstances. He said a timeframe for reimbursement was laid out in statute and was to be done in either 2 or 3 years. Rep. Bennett asked when auctioning of vacant leases would begin. Mr. Schultz said that this was still being reviewed.
- 02:49:43 Sen. Hamlett asked Sen. Tutvedt if the DNRC would receive more money now from the state treasury under SB 409. Sen. Tutvedt said that they would in the long term. Sen. Hamlett observed that the issue was analogous to a trailer house lot except the structures that leaseholders built are immobile.
- 02:51:42 Sen. Keane asked Sen. Tutvedt if he was happy with SB 409 and associated rulemaking. Sen. Tutvedt said he wished the that the process was further along.

EQC action, if any, & directions to staff

None.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE EQC

02:52:40 None.

OTHER BUSINESS

- 02:52:49 Sen. Ripley addressed future agenda items and suggested wolves be discussed at the next meeting. Sen. Keane agreed.
- 02:53:57 Mr. Youngberg asked that funding for wildlife services and predator control be included in the discussion of wolves.
- 02:54:35 Rep. Williams informed the Council that Mr. Van Genderen from FWP was available after the meeting to talk about parks.
- 02:55:40 Jim Brown, Montana Wool Growers Association, submitted documents for the Council to consider related to wolf management ([EXHIBIT 4](#)).
- 02:56:38 Ms. Conradi reported that a new building had been built in Whitefish made of cross-laminated timber and that further information could be found at smartwoods.com.

02:58:01 The meeting was adjourned.

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