

**Water Pollution Control Advisory Council
Report to Water Policy Interim Committee
July 17, 2018**

PURPOSE: The Water Pollution Control Advisory Council (WPCAC or the Council) is an advisory council authorized by statute (§ 2-15-2107, MCA). WPCAC represents a diverse array of Montana interests and plays an important role in formulating Montana's water quality policy. Council members serve in an advisory capacity to the Department of Environmental Quality (DEQ or the Department) by furnishing advice, gathering information, and making recommendations. The Council also reviews and advises the Department on draft administrative rules prior to their consideration by the Board of Environmental Review (BER).

WPCAC's duties are defined in two places in statute: (1) the Montana Water Quality Act (§ 75-5-307(1), MCA) directs the Council to be given at least 30 days prior to the first publication of proposed administrative rules to comment on the proposed rulemaking; and (2) § 75-5-221. MCA makes clear that the Council "shall act only in an advisory capacity to the department on matters relating to water pollution."

DEQ consults with the Council for review throughout the process of regulation development, starting with the early stages through ensuring opportunity for WPCAC review and comment on proposed rules that are ready to go to the BER for rulemaking. WPCAC and the public often provide feedback that help DEQ fine tune regulation prior to formal rulemaking. There have been times when the Department has delayed rulemaking and conducted additional stakeholder work in response to Council direction. WPCAC can also request briefing items from DEQ concerning ongoing water quality work. Furthermore, the discussions that occur at regularly-scheduled Council meetings improve public understanding and involvement by providing a venue for the public to engage in.

MEMBERSHIP: WPCAC consists of eleven members who are appointed by the Governor and include:

- (a) a representative of industry concerned with the disposal of inorganic waste;
- (b) a representative of industry concerned with the disposal of organic waste;
- (c) a supervisor of a soil and water conservation district;
- (d) an irrigated agriculture representative;
- (e) a production agriculture representative;
- (f) a person serving as public works director, director of public utilities, wastewater or public works superintendent, plant manager, or operator in charge of a publicly owned treatment works;
- (g) a conservation organization representative;
- (h) a realtor or developer representative;
- (i) a licensed professional engineer with experience in sanitary engineering;
- (j) a fisheries biologist; and
- (k) a member of the public.

Applications are currently being processed to fill conservation organization and realtor representative positions, and irrigated agriculture and organic waste disposal industry representative positions are vacant.

RECENT ISSUES: A few examples of items the Council advised on since last reporting to WPIC in July 2016 includes:

- Rulemaking to address the two parts of SB325 (codified as MCA § 75-5-222). Part 1 specifies that DEQ cannot apply a standard more stringent than the non-human caused condition of the waterbody. Part 2 allows variances from standards if (1) pollution upstream of a discharger is due to long term, historic anthropogenic sources such as historic mining, or (2) the discharge to which the variance applies would not materially contribute to impairment condition.
 - For Part 1 of the statute, WPCAC has been briefed on the status of the Department and Stakeholder Workgroup progress. For Part 2 of the statute, WPCAC participated in review of the initial draft rule and subsequent revisions requested by the Board of Environmental Review. The rule is now codified into rule as 17.30.661 Variance from Standard for Water Body Conditions.
- Rulemaking and revisions for Nutrient Variances (Circular DEQ 12-B) which must be done a triennial basis. The updated circular brought it into alignment with federal regulations for variances and provides options for permittees to receive variances from the numeric nutrient standards, established by Circular DEQ 12-A, based on economic hardship for treatment or limits of technology. WPCAC supported revisions to:
 - Update general variance treatment requirements to more stringent levels for mechanical facilities, based on affordability.
 - Simplify redundancies in methods the Department uses to develop individual variances.
 - Clarify options for determining the highest attainable condition of an individual variance.
 - Include the City of Whitefish's individual nutrient variance request. This request is now adopted into rule and can be found in Circular DEQ 12B.
- Amendments to Montana's water quality standards 2017 triennial review.
- Review of permit reissuances and revisions including but not limited to the industrial stormwater (MPDES permit MTR000000) and the Concentrated Animal Feeding Operation (MPDES permit MTG010000) general permits.
- Educational briefings provided by the Department in substantive areas including but not limited to an algae monitoring application for Smith River recreationalists and updates on the Upper Blackfoot River Mining Complex.

HISTORY: This Council has been in existence since the early 1970s, and its focus and composition have been modified several times since then. The latest change in composition was enacted by the 2003 Legislature.

STATUS: Active, the Council adopts a meeting calendar each year. Meetings are held in Helena, and are scheduled to occur approximately 1 month prior to each regularly scheduled meeting of the BER, which occur approximately every other month. In practice, the council has met 3 to 5 times a year, since meetings are cancelled when the agenda is light. Some meetings are held via conference call as deemed practical to minimize time and travel expense. Meeting materials are transmitted to members via email and are maintained on a DEQ-hosted web site, which is also available to the public.

WPCAC's webpage is found at: deq.mt.gov/Water/WQINFO/wpcac, and past agendas, minutes, and presentations are posted under the "Agendas, Minutes and Presentations" tab.

Next meeting: September 7, 2018

**Water Pollution Control Advisory Council
Relevant Statutes**

2-15-2107. Water pollution control advisory council.

- (1) There is a water pollution control advisory council.
- (2) The council consists of 11 members. The members are appointed by the governor and include:
 - (a) a representative of industry concerned with the disposal of inorganic waste;
 - (b) a representative of industry concerned with the disposal of organic waste;
 - (c) a supervisor of a soil and water conservation district;
 - (d) an irrigated agriculture representative;
 - (e) a production agriculture representative;
 - (f) a person serving as public works director, director of public utilities, wastewater or public works superintendent, plant manager, or operator in charge of a publicly owned treatment works;
 - (g) a conservation organization representative;
 - (h) a realtor or developer representative;
 - (i) a licensed professional engineer with experience in sanitary engineering;
 - (j) a fisheries biologist; and
 - (k) a member of the public.
- (3) The appointed council members serve at the pleasure of the governor.
- (4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

2-15-122. Creation of advisory councils

- (5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. The maximum daily pay rate must be adjusted for inflation annually by multiplying the base income of \$50 by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding the product to the nearest whole dollar amount.
 - (b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.
- (6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.
- (7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.
- (8) A majority of the membership of an advisory council constitutes a quorum to do business.

75-5-221. Water pollution control advisory council -- general.

(1) The council provided for in 2-15-2107 shall select a presiding officer from among its members. The director of the department of environmental quality shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) Meetings must be held at the call of the presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council.

75-5-307. Hearings required for classification, formulation of standards, and rulemaking.

(1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. ***The council shall be given not less than 30 days prior to first publication to comment on the proposed action.***