

WATER RESOURCES ADVISORY COMMITTEE (WRAC) Meeting

September 21, 2023 9:30 a.m.

Susquehanna Room
PA Fish & Boat Commission
1601 Elmerton Avenue, Harrisburg, PA 17110

and

Microsoft Teams

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzUzZDkxY2EtMTdmZS00ZWlwLThjY2EtMGQ2NzJhZDljYjU0%40thread.v2/0?context=%7b%22id%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22oid%22%3a%22b24d8ba1-e645-4ccd-bbf7-14bcd3de0b76%22%7d

Join by phone

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Agenda

Call to Order, Introductions and Attendance – Jenifer Christman, Chair

The meeting was called to order by Jenifer Christman at 9:35 a.m. A roll call was conducted, and of the 15-member committee, 10 were present and 5 were not present. A quorum was established.

The following committee members were present:

Harry Campbell – Chesapeake Bay Foundation
Alexandra Chiaruttini – The York Water Company
Jenifer Christman – Western Pennsylvania Conservancy
Shirley Clark, Ph.D., P.E. – Pennsylvania State University
Kent Crawford, Ph.D. – USGS (Retired)
Andrew Dehoff – Susquehanna River Basin Commission
Matthew Genchur – White Township
John Jackson, Ph.D. – Stroud Water Research Center
Stephen Rhoads – Shell (Retired)
Steven Tambini – Delaware River Basin Commission

The following committee members were not present:

Myron Arnowitt – Clean Water Action
Theo Light, Ph.D. – Shippensburg University
Cory Miller – University Area Joint Authority
Dean Miller – Pennsylvania Water Environment Association
Charles Wunz, P.E. – Wunz Associates

Review and Approval of Minutes from July 20, 2023 Meeting – Jenifer Christman, Chair

No additions or edits were proposed. John Jackson motioned to approve the minutes seconded by Shirley Clark. Steve Tambini abstained, remaining members approved, none opposed. Motion carried.

Aquatic Life Criteria for Copper Proposed Rulemaking (Action) – Kristen Schlauderaff, Bureau of Clean Water

Ms. Schlauderaff presented proposed revisions to the aquatic life criteria for copper. Ms. Schlauderaff informed the Committee that the Bureau of Clean Water has developed a draft proposed rulemaking that would revise the statewide water quality criterion for copper. The recommendation would replace the current hardness-based aquatic life criteria for copper with the biotic ligand model (BLM), which is a metals bioavailability model for determining copper criteria. Ms. Schlauderaff explained that the recommendation is consistent with the current United States Environmental Protection Agency (EPA) Section 304(a) aquatic life ambient freshwater quality criteria recommendation and provided additional background information on the model. Ms. Schlauderaff reviewed the specific proposed deletions and additions to the regulation language. Ms. Schlauderaff advised the Committee that the proposed rulemaking is tentatively scheduled to be presented to the Environmental Quality Board this fall and informed the Committee that DEP is requesting concurrence from the body on the draft proposed rulemaking. Ms. Schlauderaff offered to address any questions or comments from the Committee.

Kent Crawford asked Ms. Schlauderaff to summarize how the DEP recommendation is different from what EPA recommends. Ms. Schlauderaff replied that the DEP recommendation is consistent with EPA's recommendation except for the duration period of 24 hours. Ms. Schlauderaff further explained that EPA has since reevaluated the duration period of 24 hours to 1 hour, which is consistent with the DEP recommended duration.

John Jackson questioned the difference in significant figures of the CCC (Criteria Continuous Concentration) number of Table 6 compared to Table 5. Ms. Schlauderaff stated that she is not aware why the difference exists but explained that this is existing language that is proposed to be replaced with BLM.

Mr. Jackson further commented that by relying entirely on the BLM and what seems to be a significant list of co-variants that go into the model and if you are missing any of those in your preliminary analysis you basically have to go back to square one by which there is no way to get around having a complete ion survey as a back-up to what might be a reasonable copper standard for your waterway. Ms. Schlauderaff responded in agreement and added that when the recommendation was published back in 2007, DEP started collecting parameter data at various water quality network stations with the understanding that the data would be needed for criteria development in the future. Ms. Schlauderaff added that from an implementation standpoint, her group is working with the Bureau's NPDES section and has reviewed statewide water quality data, and in anticipation, have developed draft look-up tables using background water quality data. Ms. Schlauderaff continued that DEP has realized that pH and DOC are significant in the outcome of that model so DEP did not feel comfortable developing a single statewide value for pH and DOC and came up with tables based on varying pH and DOC levels that incorporate the eight background parameters. Ms. Schlauderaff added that, regarding implementation, the other option is a permittee can do site-specific data collection where they can collect all ten parameters of the model.

Mr. Crawford asked how H was calculated in the Hardness equation in Table 6. Ms. Schlauderaff reminded Mr. Crawford that language bracketed in red is language proposed to be deleted as it is related to the Hardness equation and DEP is proposing the BLM for the aquatic life criteria for copper.

Mr. Crawford asked how the copper concentration, according to the BLM, can be monitored for the recommended 1-hour duration. Josh Lookenbill responded that from a monitoring and assessment perspective, DEP looks at various parameters and considers each parameter's representativeness through time. For Copper, a single sample collected at a point in time could be considered representative of the 1-hour duration period. Mr. Lookenbill added that copper is not a parameter affected by the diel cycle like pH or dissolved oxygen.

Jenifer Christman questioned that if pH is a parameter that has an impact on the model, and it can fluctuate, doesn't that cause a problem with the model? Ms. Schlauderaff responded that as part of the recommendations for the model it is important to consider spatial and temporal variability in water body to run the model. Ms.

Schlauderaff added that it is not recommended to rely on one grab sample to run the model but rather a collection of data over a period of time.

Mr. Jackson asked that given all of the data that DEP has collected, hundreds of sites with grab sample data with complete ion surveys, are there certain conditions outside of a permitted point source, like in urban streams, where copper shows up as a red flag? Mr. Lookenbill replied that generally what was observed was higher concentrations in surface water that were impaired or received a greater influence of anthropogenic influences. Mr. Jackson agreed that that is what he observes but wanted to know if numbers were fed through the model, given elevated ion concentrations, would it say that copper is an active toxin? Mr. Lookenbill replied that he does not believe DEP has assessed surface water for copper in that regard using the BLM. Ms. Schlauderaff added that DEP looked at different data that was available for chlorides and sulfides, which are in the model, but did not have a dramatic impact on the result. Ms. Schlauderaff added that moderate increases or decreases in DOC and pH values will have a significant outcome on the result.

Mr. Crawford asked who would oppose this proposed regulation. Ms. Schlauderaff responded that most likely NPDES (National Pollutant Discharge Elimination System) permitted facilities may potentially oppose this proposed regulation as it may make effluent limits more stringent. Ms. Schlauderaff added that this may not be the case for all permitted facilities as it depends on the water body that is being discharged to. Mr. Crawford further inquired as to whose limits are more restrictive, EPA with a recommended 24-hour duration or DEP with a 1-hour duration? Ms. Schlauderaff responded that DEP's limits would be more restrictive with a 1-hour duration. Mr. Jackson clarified that EPA's revised interpretation considers that short-term (1-hour duration) copper exposures can be toxic to a water body.

Steve Tambini asked if there is more time to consider this topic or does DEP need a decision from WRAC at today's meeting. Mr. Lookenbill responded that DEP is presenting this proposed rulemaking to advisory committees now to be ready for a potential EQB (Environmental Quality Board) meeting in January. Mr. Tambini asked if there was another WRAC meeting between now and January. Mr. Lookenbill relayed that the WRAC liaison said there is a November meeting. Michelle Moses interjected that if WRAC waits for the November meeting to decide to support the draft proposed rulemaking that DEP won't be able to make the January EQB meeting as it will cut short the process of getting the regulation in place for the EQB.

Mr. Crawford proposed a motion from the WRAC to support DEP and concur with the draft proposed rulemaking for copper. Alex Chiaruttini seconded the motion. A roll call vote was conducted, and all members voted in favor of supporting DEP and concurring with the draft proposed rulemaking for copper. No members opposed or abstained.

Proposed Rulemaking Chapter 91.33 – Incidents Causing/Threatening Pollution (Action) – Brian Chalfant, DEP Policy Office

Mr. Chalfant informed the Committee of the draft proposed rulemaking for notification requirements for Chapter 91.33-Incidents Causing or Threatening Pollution. Mr. Chalfant reviewed DEP's goals of the draft proposed rulemaking, its history, existing regulation, statutory basis, and draft proposed amendments. Mr. Chalfant provided some examples of pollution situations where notification may or may not be required and discussed the technical guidance document. Mr. Chalfant explained that the Policy Office, Bureau of Regulatory Counsel, and Bureau of Clean Water collaborated in development of this rulemaking, which adapts the guidance document that DEP developed on this topic into a rulemaking. Mr. Chalfant informed the Committee that DEP is requesting concurrence from the WRAC on the draft proposed rulemaking.

Adam Duh, requested that Mr. Chalfant review the draft proposed annex for the Committee.

Alex Chiaruttini shared her concern that the proposed amendment for Chapter 91.33(a)(1) notification requirement was unrealistic and may cause an influx of unnecessary incident reporting after providing examples of

possible situations that would require reporting a spill. Ms. Chiaruttini further commented that Section 401 of the Clean Streams Law is strong and will provide the same protection.

Mr. Duh, in addressing Ms. Chiaruttini's concern, clarified that the proposed regulation provides a structure of evaluation of what is and is not posing a risk to water of the Commonwealth. Mr. Duh continued that 91.33(a)(1) provides the safest option to report if the risk to the waters of the Commonwealth is unknown, whereas 91.33(a)(2) provides a more robust analysis to determine if the incident that occurred would pose a risk to water of the Commonwealth requiring a need to report or not.

Mr. Chalfant in addressing the point that was made about DEP being overwhelmed with unnecessary incident reporting due to the amendments to the regulation, stated that to his knowledge DEP has not been overwhelmed under the current regulation. Manyi Liu, Bureau of Clean Water Director, confirmed Mr. Chalfant's claim and Victor Landis, Data Management/Operation Manager, added that the proposed regulation could possibly reduce the number of incident reporting under 91.33(a)(2).

Stephen Rhoads commented that he had a concern about the proposed language in 91.33(a)(2)(i)(D)(II) regarding the comprehensive evaluation to determine if the properties of the spilled substance could cause pollution, in that the language is very broad and open-ended and does not specify how and when the analysis should be made and where it is to be maintained. Mr. Rhoads asked what DEP's intent is with this language.

Mr. Chalfant responded by recalling Mr. Duh's earlier point in that the proposed regulation provides individuals options for reporting, in that if an individual is unsure if pollution will occur as a result of a discharge then they can notify DEP, which satisfies the notification requirement under the proposed regulation. However, if an individual wants to do the comprehensive evaluation in lieu of reporting that option is available under the proposed regulation. Mr. Rhoads countered that in 91.33(a)(2)(i)(D)(II) it states that a comprehensive evaluation MUST be performed. Mr. Chalfant replied that he disagreed with Mr. Rhoads reading of the proposed regulation and stated that that language only applies if 91.33(a)(1) is not met. Mr. Duh added that the regulation, if approved, will not be sent out in a vacuum and it is planned to provide a guidance document to help with implementation.

Ms. Chiaruttini asked what problem DEP is trying to solve by amending the regulation in this fashion when the Clean Streams Law is very clear and broad. Ms. Chiaruttini stated that she feels DEP is setting itself up for the reporting of many non-issues. Mr. Chalfant replied by stating that he does not feel DEP is looking for people to report things that are not going to create pollution but rather DEP is trying to provide clarity on the factors that go into determining a pollution event and a structure of decision making on when to notify DEP.

Mr. Rhoads suggested that DEP clarify the language of the proposed amendment and added that the way it reads now is that the burden of responsibility to determine if a pollution event has occurred is on the person that made the discharge and not on DEP. Mr. Rhoads recommended that DEP should be clear about what the obligations are of the regulated and unregulated community as well as DEP obligations. Mr. Chalfant stated that DEP would welcome any language from the Committee on ways to be clearer with the proposed regulation. Mr. Rhoads dismissed Mr. Chalfant's offer.

Andrew Dehoff commented on the language about notifying downstream users and suggested that DEP clarify how far down stream should users be notified. Mr. Dehoff also suggested that in light of some members of the general assembly that have an interest in clarifying spill requirements, DEP may want to consider changing language from "must report..." to "report when appropriate or when there is a potential for pollution" to help satisfy whatever is motivating the legislation. Mr. Chalfant responded that what DEP is trying to do with the proposed rulemaking is to address some of the issues in the legislation. Mr. Chalfant added that one iteration of the legislation wanted to use water quality standards as a threshold for spill notification, which DEP did not think was a workable solution which is why the proposed rulemaking does not contain language regarding water quality standards.

Mr. Crawford suggested adding a list of activities that would not require reporting may be helpful in clarifying things. Mr. Crawford referenced a table from the presentation of high risk and low risk assessment and wanted to know if something similar could be added to the proposed rulemaking to add clarity. Mr. Chalfant responded that providing specific examples in the regulation may not be appropriate but could be added to the technical guidance document that is planned to be developed.

Ms. Chiaruttini stated that the proposed rulemaking takes away the discretion and rational approach of the DEP and the regulated public to determine if a spill is pollution or a threat of pollution. Ms. Chiaruttini continued that DEP has applied what is proposed in 91.33(a)(2) in the implementation and administration of the Clean Streams Law. Ms. Chiaruttini warned that everything being discussed here is pollution or a threat of pollution and that is where DEP is getting hung up.

Mr. Jackson commented that he agrees that DEP and the public should know more about what is going on with spills or unpermitted releases in that many urban streams are impaired and we don't often know why and more than likely DEP is not getting reports of these spills. Mr. Jackson offered that this proposed rulemaking is a good opportunity educate the public and to help DEP get the information that is needed regarding spills.

Mr. Rhoads responded to Mr. Jackson's comment by stating that he is not sure DEP's approach with this proposed rulemaking is going to get them the information they need in an appropriate fashion. Mr. Rhoads reiterated that it unnecessarily expands the scope of what needs to be reported and puts the onus on the person making the report to determine if the spill is a pollution event or if it may endanger downstream users. Mr. Rhoads reiterated that DEP needs to do a better job educating members of the regulated and unregulated community on their obligation regarding reporting or what they need to provide if they don't report.

Jenifer Christman led a discussion regarding a motion of support for the proposed rulemaking from the Committee. It was determined that WRAC was not able to put forth a motion to support the proposed rulemaking in its current form. Ms. Christman asked what DEP would want from the WRAC if a motion of support is not achievable. Mr. Chalfant responded that DEP will consider the feedback from WRAC to determine its next steps regarding this issue. Michelle Moses added that DEP has heard the comments from WRAC and understands the Committee is not ready to provide a vote of support at this time. Ms. Moses added that DEP will proceed with presenting at the other advisory committees and as the process evolves may be coming back to WRAC in some way for further discussion.

Draft 2024 Integrated Report (Informational) – Dustin Shull, Bureau of Clean Water

Mr. Shull provided the Committee of an overview of the draft 2024 Integrated Report. The presentation included a review of the projected timeline for public participation and finalization, review of changes and enhancements to the Integrated Report Story Map, and a discussion of some of the assessment results for 2024.

Jenifer Christman complimented DEP on the use of a StoryMap to convey Integrated Report information to the general public. John Jackson seconded Ms. Christman's complement and added that Pennsylvania is ahead of surrounding states in conveying water quality information in an accessible way.

Harry Campbell asked what DEP plans to do with future enhancements to the Integrated Report. Mr. Shull replied that DEP plans to refine the existing assessments it has in that many of the assessments in the Integrated Report are old and span larger areas. Mr. Shull continued that with DEP's current, more robust, assessment methodology and higher resolution that DEP takes data on will result in more accurate assessments which will be communicated in future versions of the Integrated Report. Mr. Shull explained that DEP has work to do on assessments of some of the water uses, namely water contact sports. Mr. Shull continued that DEP plans to continue to make assessments on water contact sports and to have those decisions available to the public which will be relevant to human health and recreation. Mr. Shull further added that from a technology standpoint, DEP plans to make the Integrated Report more interactive as technology advances with a focus on "What's in my backyard".

Mr. Jackson asked, regarding the data used for decision-making on the de-listing or keeping a stream on the 303d impaired list, how does DEP handle a site with multiple data points. Mr. Shull responded that DEP typically looks at the most recent information especially when it comes to removing causes of impairment. Mr. Shull added that sites with large amounts of data points taken over a longer timeframe, like the Susquehanna river, DEP will look at trends as well to help inform decisions. John Jackson suggested that DEP spell that out to develop a strategy not just to de-list a water but to inform the communities that are working hard get their waters healthy. Mr. Shull agreed and informed the Committee that hopefully soon DEP will be able to present their new and refined assessment methodology to the WRAC that will address this concern.

WRAC Membership Discussion (Informational) – Brian Chalfant, DEP Policy Office

Due to time restraints, the Committee decided to table this discussion until the next WRAC meeting.

General Discussion/Agenda Topics Request – Jenifer Christman, Chair

Bob Haines informed that Committee that topics requested from WRAC members at last meeting are still being coordinated and have not been forgotten.

Public Comment Period – Jenifer Christman, Chair

Steven Hann commented on the proposed rulemaking for Aquatic Life Criteria for Copper specifically use of the Biotic Ligand Model. Mr. Hann expressed a concern about the implementation of the Biotic Ligand Model as it related to the wastewater industry and requested that DEP develop detailed documentation on the implementation of this model.

Adjourn – Jenifer Christman, Chair

John Jackson motioned to adjourn the meeting, seconded by Harry Campbell. All approved, none opposed. Motion carried.