

MINUTES

WATER COUNCIL MEETING

Wednesday, June 14, 2023

8:30 am – 10:26 am

The Water Council met on Wednesday, June 14, 2023 at 8:30 a.m., in Rooms 112, 113, 114 at the NH Department of Environmental Services (NHDES), 29 Hazen Drive, Concord, NH.

ATTENDEES:

Chairman John Gilbert, Councilors John Boisvert, Kenneth Conaty, Richard Geisser, Michael Dionne, Daniel Flores, Larry Maznek, Michele Tremblay, Bill Gegas; R. Jessie Webb, Council Secretary; Ted Diers, Assistant Director, Water Division, Erin Holmes, Administrator Watershed Management Bureau; Conrad Vandlik, Legal Unit intern; Mark W. Dell'Orfano, Civil Law Bureau; Judy Sears Houston, Sanitation Engineer III, Watershed Management Bureau, Ken Edwardson, Senior Scientist, Watershed Management Bureau.

ABSENTEES:

Councilors Christopher Rawnsley, Chip Hardy, Charles DeCurtis, Phil Croasdale, Gary Spaulding.

The regular Water Council meeting was called to order at 8:34 a.m. by Chairperson Gilbert. A roll call was taken. Quorum present.

1. APPROVAL OF MINUTES: Motion made by Councilor Tremblay to approve the May 10, 2023, meeting minutes. Seconded by Councilor Boisvert. Motion was passed without dissent.

2. STATUS OF APPEALS:

- See attached status report on pending appeals. Presentation given by Conrad Vandlik, DES legal intern. Discussion that the information was not officially given to the Water Council in hard copy for the council to move to accept the dockets therefore, per Chairperson Gilbert, there was nothing to move forward on.

3. NEW BUSINESS:

- Ken Edwardson, Senior Scientist, NHDES Watershed Management Bureau, Discussion of the Rule changes for "Env-Wq 1700 SURFACE WATER QUALITY REGULATIONS"

A one-page briefing was given to all members. This summer, DES will file an impact summary to JLCAR so hopefully changes in the Rule by this winter.

- Env-Wq 1700:
 - Councilor Tremblay questioned if there are different versions of the draft since the title states "Water Council DRAFT" or is this draft specifically for the Water Council with another version for another entity?
 - Mr. Edwardson answered that this is the most up-to-date version and there will only be one final version.
- Env-Wq 1703.16:
 - Councilor Tremblay questioned the effect of this new standard for children who are of a smaller body mass, yet the councilor feels they drink as much water as an adult, and therefore the measurement stated is not comforting or wise.

- Mr. Edwardson stated that smaller people, including children, would consume less fish and drink less water therefore there is less risk, and this is looking at lifetime risks.
 - Chairman Gilbert added that there are significant levels of safety measures considered when setting the standard such animal studies.
- Env-Wq 1700:
 - Councilor Geiss asked if the information in this draft was generally accepted from the public who gave input or were there areas of compromise?
 - Mr. Edwardson stated every change has been discussed with the Water Quality Standards Information Exchange (WQSIE), (formally the Water Quality Standards Advisory Committee, or WQSAC). There was general acceptance with some discussions for the Env-Wq 1705 PERMITTING RELATED STANDARDS, which was reworked several times with an outside consultant. EPA is trying to decide how this will be implemented for permitting.
- Env-Wq 1703.20 Table 1703-01:
 - Councilor Conaty asked how PFAS will be removed from wastewater via the treatment plants as there currently is no EPA approved testing or treatment method?
 - Mr. Edwardson stated that the criteria shown would be applicable to facilities within 20-miles upstream of an active public water supply surface water intake. The timeline to permit limits is still fairly long and would not begin until the next permit reissuance after the EPA approved the new standard. Practically speaking that could be 5 years off. Further, a facility would only get a PFAS permit limit if the reasonable potential analysis demonstrated the criteria could be exceeded in-stream after dilution.
- Env-Wq 1705.02:
 - Councilor Conaty asked if the permitting guide will use a daily average or the maximum TMDL?
 - Mr. Edwardson stated generally it is based on design flow and concentrations.
- Env-Wq 1700:
 - Councilor Boisvert asked if it is a true statement that water quality standards are focused on EPA permitting processes yet there is not regulations on surface water quality conditions that can be can be clearly defined from a point source, POTW, or municipality, therefore are there any discussion about DES trying to regulate these other sources such as over fertilized lawns, farms, septic systems, etc. that gets into the water?
 - Mr. Edwardson stated that some towns are implementing ordinances based on the size lots, for example, in tax rolls.
 - Mr. Diers added that DES has a defined goal, in numbers, to attain for water quality standards and relies on other regulations to get there as DES doesn't have the authority to act on polluters other than to investigate them or site them if there is a permit violation. DES would need statutory changes to alter the process to look at the polluters. Other organizations and volunteers gather a lot of data which DES relies on due to budget constraints. DES does not have the resources to do more than what is happening and relies heavily on citizen science.
- Env-Wq 1700:
 - Chairperson Gilbert asked how to manage PFAS?

- Mr. Diers answered: data. DES never makes decisions on one data point (8 years in to learning about PFAS and we still don't know a lot about it, hence called "an emerging containment").
 - Mr. Edwardson added that different state entities are now looking at PFAS levels in drinking water, septage, soil, air, and the effects on human health.
- U.S. Supreme Court decision on federal jurisdiction under the Clean Water Act, Sackett v. EPA:
 - Councilor Boisvert asked if the recent SCOTUS decision influences water quality.
 - Mr. Diers answered that we don't know how it will affect DES or New Hampshire but need to wait to see the laws that will come from it so right now it has no affect but could in the future.
- 1703.17:
 - Councilor Gegas asked if this section regarding cyanotoxins, is new? How does it apply to testing and advisories?
 - Mr. Edwardson explained this section now occupied by the cyanotoxins changed because some regulations were so old that they don't exist anymore and are not following EPA standards while EPA put new cyanotoxin guidance out in 2019. Those are just two of many toxins that cyanobacteria can produce and the new section in the standards still allows for cell counts.
 - Ms. Holmes added that the advisory won't change and will still be based on cell counts as that is the best warning and advisory (beach advisory map in place now, public can also tell DES with new app and sign-up for weekly updates).
- Env-Wq 1708.11
 - Councilor Gegas stated that on page 44, section e, Inter Government Cooperation, subsections 1 and 4, these offices no longer exist.
 - Councilor Tremblay added that subsection 5 is called Local River Management Advisory Committees per RSA 483 and should be updated to reflect that.

4. OLD BUSINESS:

- Chairperson Gilbert: HB2 update:
 - Letters drafted by council had an impact. Senate Finance Committee was surprised. The language has been revised regarding the tracking stayed, minimum of 3 members for quorum stayed, but the responsibility for findings of fact did not change.
 - Councilor Tremblay stated the study committee planned with their findings by November 2023, the four chairs of the councils should be consulted.
- 9:24 AM, on a motion by Michelle Tremblay, seconded by Ken Conaty, the Water Council voted to enter a non-public session.
- Nonpublic session per RSA 91-A:3, II(I) for considering legal advice from the New Hampshire Department of Justice, Office of the Attorney General.

Guest: Mark W. Dell'Orfano, Civil Law Bureau.

Councilor Tremblay made a motion, seconded by Conaty, motion passed to end the public session at 10:26.

- At 10:26 AM, on a motion by Councilor Tremblay, seconded by John Boisvert, the Water Council votes to exit the non- public session.

5. **NEXT MEETING:** Wednesday, July 12, 2023, at 8:30 a.m. to be determined based on appeals.

6. **ADJOURNMENT:** Motion made by Councilor Tremblay to adjourn. Seconded by Councilor Conaty. Motion passed without dissent. Meeting adjourned at 10:26 a.m.

To: Water Council

From: Pamela Monroe, Legal Unit Administrator (*Acting Appeals Clerk*)

Re: Status Report on Pending Appeals

Date: February 3, 2023

I. New Appeals:

NONE

II. Decisions that need to be written/finalized and issued.

NONE

III. Hearings or PHCs Pending

Docket No. 20-04 WC – Biological Recycling Co., LLC et al. Appeal

Subject: 2/7/20 Administrative Order No. 20-004 WD

Hearing Officer: Zachary Towle (appointed by AG 08/31/21)

Recusals: J. Gilbert

7/26/22 - Order Granting Parties' Joint Motion for Stay of Appeal- *Joint Status update received on December 12, 2022. The parties agree that the appeal should remain stayed and will submit a further status update in July 2023 unless either party moves to lift the stay.*

IV. Misc.

Docket No. 20-06 WC – Matthew and Laura Graves, et al. Appeal

Subject: 4/2/20 Approval of AoT-1780 permit, issued to Dale White

Hearing Officer:

08-03-22 - The certified record was provided to the NH Supreme Court. Oral argument is scheduled for February 14, 2023