

Clean Water Services

Clean Water Advisory Commission

Meeting Minutes

January 16, 2013

Attendance

The meeting was attended by Commission Chair Tony Weller (Builder/Developer) and Commission members Molly Brown (District 2), Alan DeHarport (Builder/Developer), Lori Hennings (District 1 -Schouten), John Kuiper (Business), Mike McKillip (District 3 - Rogers), Deanna Mueller-Crispin (Environmental), Judy Olsen (Agriculture), Stephanie Shanley (Business), David Waffle (Cities), Jerry Ward (Agriculture), Sandy Webb (Environmental), and Clean Water Services District Deputy General Manager Diane Taniguchi-Dennis attending for General Manager Bill Gaffi.

Commission members Art Larrance (At-large) and Richard Vial (District 4) were unable to attend.

Attending from Clean Water Services were Bob Baumgartner (Regulatory Affairs Division Manager), Clayton Brown (Source Control Manager), Vince Chavez (Source Control Investigator), Roger Dilts (Water Resources Analyst), Jeanna Hall (Public Involvement Coordinator), Jerry Linder (General Counsel), Carrie Pak (Engineering Division Manager), Damon Reische (Development Services Supervisor), and Sheri Wantland (Public Involvement Coordinator).

1. Call to Order

Chairman Tony Weller called the meeting to order at 6:34 PM in the conference room at the Clean Water Services Administration Building.

2. Approval of November 14, 2012 Minutes

Ms. Hennings moved to approve the minutes of the November 14, 2012 meeting as distributed. Mr. Waffle seconded. Motion passed.

3. Design and Construction Standards Update

Mr. Reische reviewed the purpose and progress of the Design and Construction Standards (D&Cs) update process (*presentation attached*). He shared the main comments from the seven stakeholder outreach meetings held in October, November, and December. Based largely on these comments, a series of single-topic, discussion-based technical meetings will be held in February and March. All stakeholder groups will be included in each meeting. The first technical meeting will be February 12 and will address water quality treatment requirements. The schedule is still being finalized for meetings on treatment and vegetated corridor requirements for trails and parks, vegetated corridor mitigation strategies, and construction site management. Mr. Reische will email the final technical meeting schedule to Commission members and about 300 others. There will also be a

final meeting with all stakeholders in late May or early June to share the draft update before it is released for general public comment. Mr. Reische stressed that there is still plenty of time to provide input, either by attending one of the upcoming technical meetings or submitting comments via the website.

Mr. Reische commented that the stakeholder outreach meetings, particularly the one with the Tualatin River Watershed Council (TRWC), brought up several issues that staff had not anticipated, such as putting trails in buffer zones. There are many trail development projects going on as parks districts take advantage of funds from recent bond measures to purchase land and improve existing facilities. In their efforts to develop the land to get the most possible use, they often want to place trails in buffer areas, and in already-developed areas, the buffer may be the only area left to add a trail. This triggers the mitigation requirement for trails wider than the current 3-foot allowance. They would like to see the allowance increased. As mentioned earlier, this will be a technical meeting topic. Mr. Reische noted that changes in this area of the D&Cs would broaden the scope of the update as originally approved by the Board.

Mr. Reische explained the original intent of the 3-foot allowance was to provide for a narrow soft path (bark chips or other pervious surface material) without mitigation requirements, but over the years the interpretation has evolved into the first 3 feet of width on any path, regardless of materials or total width. In an effort to safely accommodate bicyclists, pedestrians, active children, and other users, regional standards call for a minimum 12-foot usable trail width plus 2-foot gravel shoulders and a non-vegetated area safety zone beyond the shoulders. This leaves a large area still subject to mitigation after the 3-foot allowance.

Mr. DeHarpport asked if other jurisdictions require mitigation for the buffer for trails, and later in the meeting added that Matt Wellner had asked him to share concerns about Clean Water Services being the only jurisdiction that requires mitigation for buffers. Mr. Reische said Water Environment Services in Clackamas County borrowed from the Clean Water Services D&Cs but was unsure how they ultimately addressed trails and buffers. Ms. Pak mentioned checking with the City of Portland. Both said they would be happy to talk with Mr. Wellner and suggested he might also like to come to the trails and parks technical meeting, as buffers will certainly be discussed there.

Mr. Reische added that the TRWC meeting included a very diverse group, similar to the Commission. Much of the discussion focused on the Clean Water Services NPDES (National Pollutant Discharge Elimination System) permit renewal, especially the upcoming requirements related to hydromodification, which Mr. Dilts will discuss in a separate agenda item tonight. Mr. Reische clarified this D&Cs update will not address hydromodification because the new regulations are still pending, but staff will have two or three years to add a section. Ms. Pak added that staff will make additional presentations to TRWC about how Clean Water Services approaches stormwater management.

Mr. Reische said another unexpected topic came up in the outreach meeting with the development community representatives. There was a request to evaluate the two methods used for classifying a stream as intermittent or perennial, as a smaller buffer is required for an intermittent stream. A guide on this topic put out by the federal EPA (United States Environmental Protection Agency) and state DSL (Division of State Lands) might be incorporated into the D&Cs as a third method of determination.

Mr. Weller asked whether the probable new 1000-square-foot-of-impervious-area threshold for triggering water quality treatment requirements would apply only to new development areas or also to those areas which are just disturbed. Mr. Reische said it would apply to new development but it is unclear whether disturbing an area would trigger the requirement. The goal of the new requirement is to capture and treat runoff from at least a portion of those impervious areas that were developed prior to any regulations. Ms. Pak added that this is just the sort of issue that should come to light and be resolved through the update process.

Ms. Hennings asked about the current treatment threshold. Mr. Reische said it varies with the situation. In a commercial development, any disturbance at all would trigger treatment requirements, while there is no treatment requirement for a single-family residence being built on a lot of record not part of a subdivision, up to three lot partitions. He added that those partitions were excluded from the current treatment requirement because the traditional 100-foot treatment swales would wipe out one of the three lots. With Low Impact Development Approaches (LIDA) more common now, smaller treatment facilities are allowed and one can be placed on each lot. Ms. Pak said that Clean Water Services will be working on “pre-locating” facilities for treating runoff so they will be able to address future and existing infill opportunities.

Mr. DeHarpport asked if fee-in-lieu would still be an option for projects of three lots or less. Mr. Reische said it is still included in the D&Cs and might be the best way to deal with certain situations. Ms. Pak added she thinks it will need some modification to be more effective.

Mr. Weller mentioned commercial property owners as part of the development stakeholder group that might need to be included.

Mr. Reische summarized the stakeholder outreach meeting with the Tualatin Riverkeepers as being focused on hydromodification and LIDA. They would like to see hydromodification requirements on a broader scale and would like to see LIDA requirements for public infrastructure projects. They would also like Clean Water Services to have a role in determining what areas are planned and developed based on how soil characteristics and other factors affect the ability to implement LIDA. Mr. Reische thinks it is outside the legal authority of Clean Water Services to determine whether an area “should” be developed rather than if it “could” be developed.

Ms. Webb asked about the D&Cs document. Mr. Reische said there are 10 chapters in a 1.5-inch binder, and the revisions will touch on all of them but mostly the first four. The

first chapter includes definitions, so any revisions to that one will affect all the others. It is available free online or a hard copy can be purchased at Clean Water Services.

Mr. McKillip asked if Clean Water Services becoming involved in decisions about where to develop, as suggested at the Riverkeepers meeting, would be a detour from its water quality mission. Mr. Reische said not really a detour as there could be water quality issues in places like West Bull Mountain where there is shallow bedrock and any new water added to the surface would be problematic so infiltration and LIDA cannot be used. However, the Riverkeepers group was suggesting that Clean Water Services go beyond just determining the feasibility of getting stormwater and sewer services into an area, and take a position on whether it is appropriate to allow development in that area from a water quality standpoint. That is the part that is outside the scope of a service provider.

In closing, Mr. Reische showed the group how to find the D&C Standards on the Clean Water Services website. He will be posting additional materials soon. Comments can be offered through an email address on the website, and staff is working on a form fill for comments. There was brief discussion about the inherent anonymity of form fill comments and several Commission members suggested that anonymous comments should not be considered as follow-up is impossible.

4. FOG Control Program Update

Mr. Baumgartner and Ms. Wantland shared details of recent state Plumbing Code changes addressing FOG (Fats, Oils, and Grease) Program and plans for reaching out to FSEs (Food Service Establishments) about the new requirements.

Mr. Baumgartner distributed a handout (*attached*) summarizing FOG-related changes to the Plumbing Code of the Oregon Building Codes Division, effective January 1, 2013:

1. Defined “FSE” and requires FOG control devices for FSEs
2. Specified that all plumbing fixtures in food/beverage preparation areas, including dishwashers and garbage disposals, must be connected to grease interceptors (except ice wells, condensate drains, and bathroom plumbing)
3. Further specified that if a garbage disposal is connected to a hydromechanical grease interceptor, a solids separator must also be installed between them
4. Removed maintenance-related provisions from the Code

Mr. Baumgartner noted that Oregon is the only state with requirements that are consistent throughout the state. Also unique to Oregon is that the requirements are both the minimum and the maximum. Local jurisdictions cannot impose stricter requirements on anything addressed in the Code, but can require actions that are not covered by the Code. For instance, because the updated Code has no reference to maintenance, local entities can draft their own requirements without running into conflicts with a state rule. Another example would be setting up requirements necessary for compliance with NPDES

permits.

Mr. Baumgartner commented that the strength of the Plumbing Code revisions is that they make sure new or remodeled FSEs will install what is needed to control FOG. The Code requirements do not apply to existing FSEs and the update does not address FSEs with existing but inadequate FOG control measures (retrofits), mobile restaurants with in-home food processing, or FOG control in private dwellings. This does leave open the possibility of local regulations for these issues (as well as for maintenance), which could possibly be coordinated for a consistent statewide approach. Mr. Baumgartner said maintenance and retrofits will be the biggest policy issues for Clean Water Services and its counterparts around the state. He also noted that language allowing “professionally engineered systems” in existing buildings was preserved in the Plumbing Code update, which was important to Clean Water Services and other entities which deal with industrial facilities.

Mr. McKillip asked if apartment complexes were subject to the Plumbing Code FOG provisions. Mr. Baumgartner said that was an unresolved question but a push from public works entities to include apartments might be successful.

Mr. Baumgartner noted that the Plumbing Code does not specify design information or provide selection guidance for FOG control devices, nor does it provide for early and effective plan review or for outreach to FSEs early in the construction process. In response to requests from several different groups, ACWA (Association of Clean Water Agencies) is stepping up to provide consistent and timely information to FSEs and jurisdictions around the state. Clean Water Services is a member of ACWA, and Ms. Wantland is leading the development of outreach materials for FSEs

Ms. Wantland thanked Mr. Brown and Mr. Chavez for the materials they have compiled and shared over the years, which puts Clean Water Services in good position to lead the ACWA outreach program. She reviewed a handout (*attached*) outlining a draft plan for FOG awareness activities with FSEs in Oregon. The information will be aimed at not only FSE owners and staff but also others who influence FSEs, such as architects and designers, plumbing suppliers and contractors, property managers, and ORLA (Oregon Restaurant and Lodging Association). Information will be drawn from a variety of resources besides Clean Water Services materials, including a FOG Control Tool Kit publication developed by the National Restaurant Association in 2006 when EPA began focusing on FOG. The training materials will be developed in February, training will be offered beginning in March, and materials will be distributed throughout the state in April. Training will be ongoing, including presentations at several FSE-related conferences. A key message will be that compliance with FOG-related requirements is cost-effective and environmentally responsible.

Ms. Wantland added that Clean Water Services has an internal goal of residential FOG outreach (bi-lingual) to 1,000 households in multi-family complexes by June 30. They will partner with other community organizations to spread the word.

Mr. Waffle commented that he recently spoke with City of Beaverton staff who deal with FOG and he feels they will be happy to see the materials and approach in Ms. Wantland's draft plan.

Mr. Weller suggested the outreach program could include letting FSEs know the cost of dealing with their FOG-associated problems, and pointing out that the possibility exists for offenders to be asked to cover those costs.

Ms. Olsen asked about including a unit on FOG in food handler training. Ms. Wantland said those training providers have so far not been interested in including FOG because they already have so much information in their training, and their emphasis must be on more immediate health and disease prevention...but she plans to stay in touch with them about the idea.

Mr. Weller again mentioned cost and suggested that FSE owners and managers be made aware that training and monitoring their staff on FOG issues and procedures can save them money.

5. NPDES Permit Renewal Update

Mr. Dilts reviewed the MS4 (Municipal Surface and Storm Sewer System) component of the Clean Water Services NPDES (National Pollutant Discharge Elimination System) permit renewal (*presentation attached*). The draft language recently provided by DEQ (Oregon Department of Environmental Quality) for the renewed MS4 permit is "substantially similar" to that of MS4 renewals issued recently for City of Portland, City of Gresham, and Clackamas County's Water Environment Services. Unlike the numeric limits in the discharge permit for sanitary sewer, MS4 permits require a written SWMP (Stormwater Management Plan) for reducing discharge "to the maximum extent practicable (MEP)." Mr. Dilts observed that every MS4 permit is more demanding than the previous one in describing what the SWMP must include.

Mr. Dilts said many of the requirements in the draft permit renewal duplicate or expand practices that Clean Water Services has already implemented just because they were "good business." However, now that they are required, Clean Water Services may have less flexibility in conducting these activities and will have specific documentation responsibilities. The draft permit also requires several activities that are completely new, such as regulating releases from fire-fighting training. Some requirements, such as those addressing hydromodification (effects on flow rates due to runoff from impervious developed areas), will greatly expand current activities. For instance, Clean Water Services already has regulations governing stormwater (runoff) quality, and now within three years must develop a program, including LIDA (Low Impact Development Approaches), for targeting "natural surface or predevelopment hydrologic functions" in new development and minimizing "hydrologic and water quality impacts" of runoff, as well as capturing and treating 80% of the annual average runoff volume. The permit will also require assessment of hydromodification impacts related to MS4 discharges, and development of a retrofit strategy to provide treatment in already-developed areas that lack stormwater controls.

Ms. Hennings noted the reference to IDDE (Illicit Discharge Detection and Elimination) and asked if that includes illicit discharges to streams. Mr. Dilts said it does not, because streams are not part of the MS4 system (IDDE applies only to the built stormwater system), but illicit discharges to streams are still illegal under DEQ regulations and state law as streams are waters of the State.

Mr. McKillip asked about the new responsibility for controlling pollutants from construction materials and wastes. Mr. Dilts said this means inspectors will need to check construction sites for things like diesel drips from equipment, rinse residue after pouring concrete, litter, portable toilet leaks, etc. It does not mean that Clean Water Services is held directly responsible if a contractor hauls pollutant materials away from the site and they create problems elsewhere. Mr. Baumgartner added Clean Water Services could become involved if such materials were disposed of improperly or illegally and caused water quality issues covered under other aspects of the permit.

Ms. Hennings asked about reflecting the new hydromodification requirements in the D&Cs update now instead of two or three years from now. Mr. Weller pointed out the hydromodification requirements are not yet final, and there will be numerous issues to work through before realistic standards for development can be set. Mr. Baumgartner added there will be lots of ways to address the hydromodification requirement—retention, detention, in-stream projects, on-site facilities, regional facilities—in the D&Cs but it is important to take the time to get it right. If it is not an impossible task, it is at least Herculean. Clean Water Services does not want to jump into something that ultimately does not serve the environment very well nor address stormwater effectively, as has happened in other communities. As an example, Mr. DeHarpport described discharging stormwater runoff from a series of pipes charging the ground with water to re-create “predevelopment hydrologic functions,” but which would cause slides between houses in some places. Mr. Baumgartner agreed there is huge discontinuity between developing small, high-density areas and achieving the hydromodification requirements.

Mr. Dilts mused about what “minimize” hydrologic and water quality impacts might mean—it’s probably not “zero.” Mr. DeHarpport was troubled by the reference to “pre-development hydrologic functions,” as in Washington it has been interpreted to mean “pre-mankind.”

Ms. Taniguchi-Dennis noted each of the creeks in the watershed have different characteristics and needs. They have different levels of urbanization, different soils, slopes, etc. She said there is a lot to think through in considering the holistic picture and Clean Water Services is not just going to leap...but there is that ticking clock.

Mr. Baumgartner said the language in this permit does include some items, such as the requirement to control pesticide use on municipal properties, that might otherwise apply exclusively to cities, as it is more common for individual cities to have their own MS4 permit rather than the Clean Water Services model where the District is the permit holder with several partner cities cooperating to implement the permit. The cities and Clean

Water Services will continue to forge agreements on who is actually doing what.

Mr. Dilts said that Clean Water Services worked with stormwater management consultants and the partner cities in drafting a SWMP to meet the MS4 permit requirements. The draft was submitted to DEQ last month. After DEQ completes its review and comments, the final Draft SWMP will be put out for public comment in late spring. The permit renewal is still expected by the end of this year.

Mr. Baumgartner added there has been some discussion with DEQ about integrating requirements for hydromodification assessment, retrofit strategy, and pre-development hydrologic functions into a single plan instead of three separate ones, as they are so closely related.

Mr. Weller asked if the City of Portland has the same language in its permit, as their response appears different than Clean Water Services plans. Mr. Baumgartner said it is very similar language, and Mr. Dilts said changes in language are highly unlikely at this point. The requirements are essentially the same but there may be differences in how each jurisdiction interprets the terms of the permit in developing its response plans and there may be differences in the plans DEQ accepts from each.

There were several comments from Commission members and staff about the definition of “natural” and whether that is the best target. Mr. Baumgartner echoed Ms. Taniguchi-Dennis’s comment that streams have different needs and those must be identified before addressing hydrology.

6. Announcements

Ms. Hall announced at the beginning of the meeting that two new members were appointed to the Commission by the Board of Directors, although neither was able to attend tonight: Richard Vial will represent District 4 and Art Larrance will serve as the at-large representative.

Ms. Hall also noted that Mr. Jockers will be back for the next meeting on February 20.

7. Adjournment

Mr. Weller declared the meeting adjourned by consensus at 8:22 PM.

(Meeting notes prepared by Sue Baumgartner)