



Meeting Summary

ADEQ WATER QUALITY DIVISION TRIENNIAL REVIEW 2018 STAKEHOLDER MEETING #1 SUMMARY

DATE: April 30, 2018
TIME: 1-4 p.m.
LOCATION: ADEQ, Room 3175, 1110 West Washington Street, Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Krista Osterberg
Rik Gay
Sam Rector
Jason Sutter
Heidi Welborn
Matt Ivers
Andy Koester

Andy Koester
Susan Fitch
Afag Abbasova

ADDITIONAL ATTENDEES

Theresa Gunn, GCI
Kelly Cairo, GCI

AGENDA

The complete agenda is available online and includes:

- Review Agenda and Introductions
- Welcome
- Overview
- Triennial Review Group Topics
- Stakeholder Input/Additional Topics
- Next Steps
- Evaluation

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn greeted attendees and facilitated introductions. Twenty-three (23) stakeholders attended in person. Additional stakeholders listened in via conference call. Due to technical difficulties, conference callers were not able to interact and the WebEx presentation was not available.

WELCOME

Krista Osterberg welcomed the group. She explained the purpose of the Triennial Review meetings is to capture as much information as possible from the stakeholders.

Gunn explained the meeting format and noted that there would be opportunities to bring up additional topics not appearing on the agenda.

OVERVIEW

Sam Rector provided an overview of the Triennial Review process. Presentation highlights and questions included:

- Surface water standards are to be reviewed every three years.
- Section 303 of the Clean Water Act requires ADEQ to conduct a triennial review of surface water quality standards and, as appropriate, adopt or modify the standards through a rulemaking process, taking into consideration:
 - public concerns,
 - EPA guidance, and
 - New scientific and technical information.
- Standards shall consist of designated uses, criteria to protect those uses, and an antidegradation policy.
- Standards shall protect at least public water supplies, fish and wildlife, recreation, agriculture, industry, and navigation
- Under the CWA all Waters of the US have a set of what are considered “de facto” uses that must be protected.
- There are two basic categories of water quality standards: narrative and numeric.
- Numeric standards include those for human health, aquatic and wildlife, and agriculture designated uses.
- Triennial Review Timeline
 - May – Stakeholder comments/suggestions
 - Mid May – Begin drafting standards package
 - Mid July – Draft Standards and rules available for review
 - August – Stakeholder Meetings
 - September – File NPRM with Secretary of State
 - November – Public Hearing
 - April 2019 – Rules Effective

(Question): Will there be public meetings? Meetings should occur in the evening when the public can attend. (Response): The stakeholder meeting held today and scheduled for Phoenix and Tucson locations are public meetings. These meetings are not scheduled for the evening.

(Question): Will the slides be available? (Response): Yes, ADEQ will provide the presentation on the [Triennial Review webpage](#).

TRIENNIAL REVIEW GROUP TOPICS

ADEQ staff members presented Triennial Review Group Topics as noted below. Highlights of the presentation and comments and questions follow.

Appendix B

Patti Spindler presented information on Appendix B including the four topic questions and recommendations that the stakeholder workgroup addressed.

- Topic #1: How can ADEQ improve stream reach descriptions, lake categories, or designated uses to be more accurate?
Workgroup Consensus: Structure & scope of Appendix B does not warrant revisions.
- Topic #2: Should ADEQ add “impaired” waters or AZPDES receiving waters?
Workgroup Recommendations:
 - Add waterbodies with AZPDES Individual Permits for clarity.
 - “Impaired” waters do not need to be listed in Appendix B unless there’s a designated use besides those provided by Tributary rule.
- Topic #3: Should ADEQ add federally promulgated Fish Consumption designated uses to be consistent 40 CFR 131.31(b)?
Workgroup Recommendations:
 - Fish Consumption use has already been added to Appendix B waters where applicable & EPA regulation is obsolete.
 - ADEQ should request that EPA initiate action to rescind that rule.
- Topic #4: How can ADEQ clarify the Tributary Rule?
Workgroup Recommendations:
 - Waterbodies should be listed when there are designated uses not covered by Tributary rule.
 - Tributary Rule language does not need modification at this time.

(Comment): I think the numbers related to fish consumption will need to be explained to the public so that they don’t think that something is being taken away from them. (Response): The full document is available on the website for a complete explanation of this information.

Enforcement

Heidi Welborn reviewed enforcement issues. She explained that there is an enforcement team and noted that it is unclear how, when, or whether this rule applies to facilities given the applicability of other programs, and the department is moving in the direction of this section only applying to non-permitted dischargers.

(Comment): In Section C there is a discussion of how to determine violations, but unpermitted sources often rely on TMDL. (Response): Our opinion is that it should be used for determining all violations, permitted or non-permitted. This issue has come up in the past when there is more than one violation. This is an issue we need to reconcile. (Comment): This issue seems to be more of an impaired water comment.

(Question): What if a water company dumps sludge in water, are we saying this would not be throwing away use of narrative standards? (Response): We are only looking to limit the scope of applicability to non-permitted dischargers and believe this change would make for a clearer message.

(Question): So if there was a permitted discharger, would this apply? (Response): If you have a permit, this enforcement rule would be applied differently. A discharge without a permit violation would also exceed the water quality standard.

(Comment): It would be helpful to know about how the enforcement rule was applied in the past. (Response): It appears to never been applied in the past.

(Comment): In the 1995 sludge case, the unlawful discharger tried to get a permit from ADEQ, which was denied. Limiting this to non-permitted discharges makes sense. This rule has backed up a lot of cases, but not as civil enforcement cases.

(Comment): In enforcement situations, ADEQ has alleged cases of water quality violations. We have seen cases where this is settled in a civil situation.

(Question): Can you clarify how Section C language was developed? (Response): This information may appear in the wrong section and may be better served in the context of “when is there a violation.”

Mixing Zones

Jason Sutter reviewed mixing zones.

- Stakeholders have requested a review of R18-11-114(H) Mixing Zone Requirements
 - Length of the mixing zone should be determined on site-specific conditions, not prescribed in rule.
 - Examine use of zone of passage and zone of initial dilution- “rapid and complete” vs “incomplete mixing.”
- ADEQ contractor is reviewing the mixing zone rule, other states rules and EPA guidance.
- (Question): Is the contractor looking at whether the application of mixing zones in other ways will affect the permit holders? (Response): No, the contractor is researching how mixing zones are used by other agencies.
- (Question): Will ADEQ look at whether mixing zones are appropriate? (Response): This is in the CWA language, so this will be addressed. We will look at how this applies to Arizona.
- (Question): When the contractor document is complete, will it be posted? (Response): We expect to provide this information on the website at the end of May.

Site Specific Standards

Sutter presented information on site specific standards.

- A stakeholder proposed adding adaptive process language as Section R18-11-115(B)(5). This moved through at the state level; however, EPA did not approve this addition, as it was not scientifically defensible or consistent with 40CFR. ADEQ is working with the stakeholder for additional justification to provide to EPA. The department is currently not allowed to use R18-11-115(B)(5) since EPA did not approve it.

- EPA also disapproved Appendix C, due to issues with the fundamental design of the studies and other issues.
- (Question): On the Appendix C disapprovals, is there anything EPA provided that could be useful to explain pitfalls to avoid? (Response): The issues included source water, and following the process for impacts to the wash and the canyon, as well as following the exact EPA process.

Variations

Heidi Welborn presented information on variations.

- In 2015 EPA took a different approach:
 - Variations must now be issued as a water quality standard under 40 CFR part 131 and include public involvement and EPA approval.
 - States must submit supporting documentation regarding why a variation is needed, that it represents the highest attainable condition, and must justify term and requirements.
 - The variation may not lower the quality of currently attaining waters.
- ADEQ does not currently have anything on paper. Welborn asked for suggestions on how to draft this rule, noting it could be a blend of federal and state approach. She asked for input on what the rule should do and how it should accomplish the requirements.
- (Question): Must a variation be issued as a water quality standard? (Response): Yes, the shift from EPA is that if a variation is in place, it is effectively modifying the standard itself.
- (Question): Are the established variations going to be put into this rulemaking session? (Response): At this point, we don't believe we have a permit that has a variation. In the future, this would have to be adopted by rule for EPA approval.
- (Question): What if we need technology change? (Response): ADEQ would work with permittee on a schedule to come into compliance and would not be considered a variation. This only applies if there is a change to a water quality standard.

STAKEHOLDER INPUT/ADDITIONAL TOPICS

Theresa Gunn posed the questions:

- What are the **values**, the overarching benefit that you want to see reflected in this rulemaking?
- What **criteria** do you suggest to implement and realize those values?

Responses and additional comments included:

- Rule should meet the requirements of the CWA regarding fishable, swimmable waters.
- Rule should be compliant with 2015 EPA changes.
- What resources does ADEQ need to fully implement the rule?
- Will ADEQ respond to nomination of Upper Verde? It is insulting that they have had to wait. (Response): Yes.

Welborn suggested aligning the surface water definition with the currently applicable waters of the US definition.

- The term surface water was brought about to avoid the confusion of a body where a boat might be.
- Currently, the term surface waters might cause confusion because it is not mentioned federally.
- It will be important to make sure there is no gap in the waters that are addressed or in responsibilities.
- Should the source water definition be aligned with the waters of the state definition? Should the term source water be replaced by navigable waters?

NEXT STEPS

- Krista Osterberg encouraged stakeholders to consider additional comments to these issues.
- Timeline
 - Provide comments to waterqualitystandards@azdeq.gov by May 17.
 - Beginning May 18, ADEQ will begin drafting the rule.
 - In mid-July draft standards will be available for review.
 - August: additional stakeholder meetings.
 - September: GRRC, draft to EPA.

ACTION ITEMS

- ADEQ to post presentation, meeting notes and comment matrix to the website.
- ADEQ to post contractor mixing zone report to website.

EVALUATION

Theresa Gunn encouraged stakeholders to complete meeting evaluations. The meeting evaluation was also available online through May 2. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

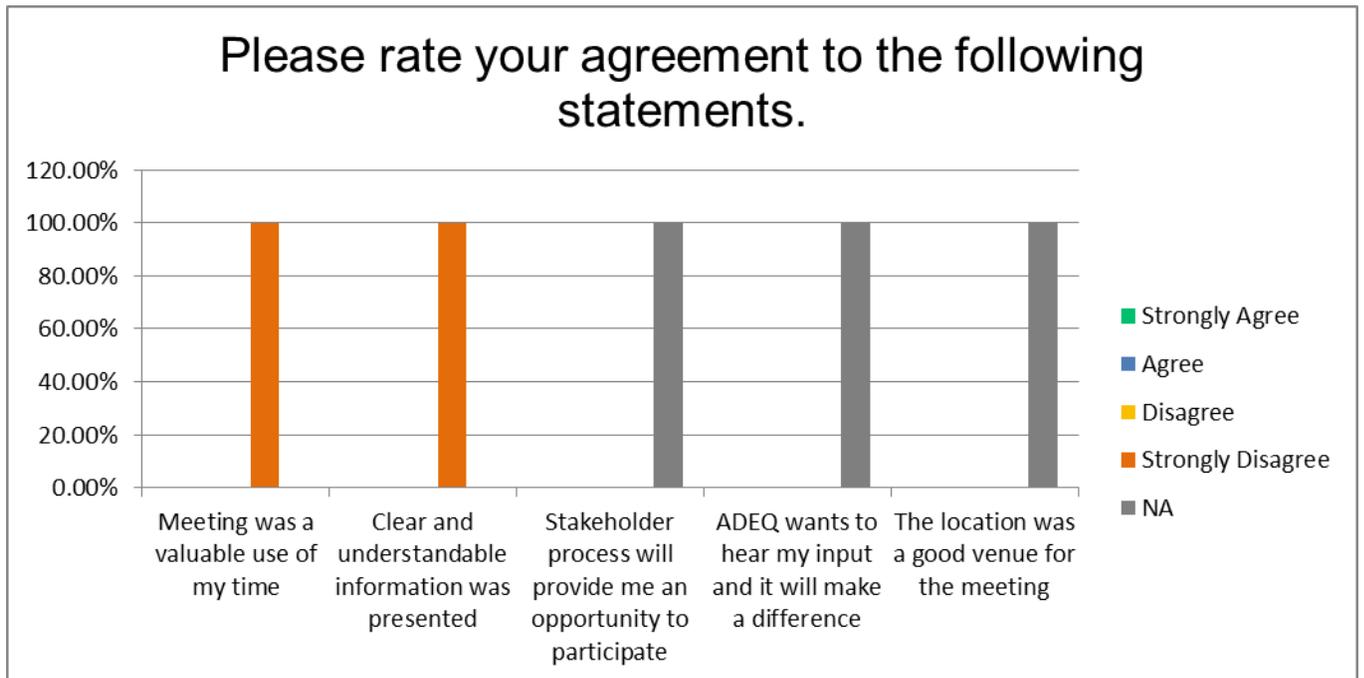
Sandy Bahr	Sierra Club - Grand Canyon Chapter
Joy Bell	City of Phoenix, Public Works
Justin Bern	City of Tempe
Mason Bolitho	Haley & Aldrich, Inc.
Joan Card	Culp & Kelly, LLP
Patrick Cunningham	HighGround Public Affairs
Marc Dahlberg	Arizona Game and Fish Department
Lee Decker	Gallagher & Kennedy
Michael Denby	APS
Tim Flood	ADHS
Melanie Ford	City of Phoenix, Water Services Department
Lonnie Frost	Pinal County
Hilary Hartline	City of Phoenix, Office of Environmental Programs
James Heaton	Wood
Julie Hoffman	MAG
Christina Hoppes	City of Tempe Water Utilities
Adam Kneeling	Haley & Aldrich
Jim Kudlinski	SRP
Carrie Marr	FWS
John Meyer	City of Mesa, Environmental & Sustainability Division
Michele Robertson	APS
Scott Thomas	Fennemore Craig
Van Wolf	Salmon, Lewis & Weldon, P.L.C

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

One stakeholder returned a meeting evaluation survey. The stakeholder did not answer all questions.

Attendees were asked to rate their agreement (Strongly Agree, Agree, Disagree, Strongly Disagree, Not Apply) with the following statements:

- Meeting was a valuable use of my time
- Clear and understandable information was presented
- Stakeholder process will provide me an opportunity to participate
- ADEQ wants to hear my input and it will make a difference
- The location was a good venue for the meeting



What was the best thing about today?

- (No response.)

What should be changed for future meetings?

- Meeting was listed as WebEx; however, unable to view or hear presentation during designated meeting time. Attempted several times to join by WebEx and dial in: dial in number 602-771-4777 had a busy tone; WebEx host Richard Gay was not presenting.