



Meeting Summary

**ADEQ WATER QUALITY DIVISION
TRIENNIAL REVIEW
2018 STAKEHOLDER SESSION #1 SUMMARY**

DATE: May 10, 2018
TIME: 9 a.m. – noon (Session #1)
LOCATION: ADOA North Building, Room 444. 400 W. Congress, Tucson

STAKEHOLDER ATTENDEES (Attached)

Sam Rector

ADEQ STAFF

Krista Osterberg
Rik Gay
Patti Spindler

ADDITIONAL ATTENDEES

Theresa Gunn, GCI
Kelly Cairo, GCI
Afag Abbasova

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. Approximately 16 stakeholders participated in the meeting. Seven stakeholders attended in person and 9 stakeholders participated via conference call or WebEx. Some attendees may not have identified themselves.

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 the opportunity to offer input on rulemaking before words are put on paper.

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 (CWA) 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 consist of designated uses involved and quality criteria for the water, and an antidegradation policy.
- Standards shall protect at least public water supplies, fish and wildlife, recreation, agriculture, industry, and navigation.
- 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.
- Arizona must address EPA recommended criteria including CWA priority pollutants and 304(a) criteria. Many domestic water sources are protected to drinking water maximum contaminant levels (MCLs).
- Under the CWA all Waters of the US have a set of what are considered “de facto” uses that must be protected. ADEQ has established specific designated uses to address Arizona conditions.
- Triennial Review Timeline
 - May – Stakeholder comments/suggestions
 - May 18th – Begin drafting standards package
 - Mid-July – Draft Standards available for review
 - August – Stakeholder Meetings
 - September – GRRC, Draft to EPA

(Question): Do you intend to have one public hearing in Phoenix? (Response): We haven't scheduled the public hearing, but based on interest in the Tucson-area, I believe we should conduct a public hearing in Tucson as well.

(Question): Who is a stakeholder? (Response): A stakeholder is anyone.

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.

Osterberg explained that ADEQ conducted a pre-Triennial Review meeting to understand the range of topics. Charters, members and topics addressed by each workgroup appear on the website.

- Topic #1: How can ADEQ improve stream reach descriptions, lake categories, or designated uses to be more accurate? Workgroup consensus: The structure and scope of Appendix B does not warrant revisions.
- Topic #2: Should ADEQ add “impaired” waters or AZPDES receiving waters?
 - The workgroup recommended “impaired” waters do not need to be listed in Appendix B unless there is a designated use besides those provided by tributary rule.

(Comment): The recommendation appears to not track any further by not including it in Appendix B. (Response): The tributary rule is more of a blanket rule. The purpose of Appendix B is to address waters that have additional designated uses not included in the tributary rule.

- An AZPDES permit is for point source discharges.
 - The workgroup recommended that waters with AZPDES individual permits should be listed in Appendix B for clarity as to what are the applicable designated uses.
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- Topic #3: Should ADEQ add federally promulgated fish consumption designated uses to be consistent 40 CFR 131.31(b)? The workgroup recommended that fish consumption use has already been added to Appendix B waters where applicable and the EPA regulation is obsolete, and that ADEQ should request that EPA initiate action to rescind that rule.
 - Topic #4: How can ADEQ clarify the Tributary Rule?
 - The workgroup recommended that waterbodies should be listed when there are designated uses not covered by Tributary rule, and that tributary rule language does not need modification at this time.
 - Spindler read the tributary rule, R18-11-105, to the group.

(Question): Do the agricultural practices cited have to do with water coming off agricultural practices or water coming in? (Response): The intent has to do with water conveyances.

(Question): In Cochise County there are a lot of washes that connect to the San Pedro. They aren't necessarily JDs. Where do they fall? (Response): JDs are not prepared for all waters. If a water is unlisted, the tributary rule would apply unless the water does not meet the Waters of the U.S. (WOTUS) rule. Can ADEQ make a request to the Corps of Engineers? Response: Typically, ADEQ does not make this type of request to the COE. Stakeholders can make this request.

(Question): Which definition of WOTUS do you use? (Response): ADEQ is not proposing any changes to the definition. We are using WOTUS as defined in the current federal rule.

Enforcement

Osterberg reviewed enforcement issues. She explained that ADEQ is looking for input on whether stakeholders see value in this rule or have thoughts about how it could be changed.

- This “enforcement” rule indicates how compliance will be shown for purposes of a compliance action.
- It has existed since before ADEQ had AZPDES primacy and was last amended in 2002 (see 8 A.A.R. 1264).
- The rule has not been used in a compliance action in recent history in the Water Quality Division.
- It’s unclear how, when, or whether this rule applies to facilities given the applicability of other programs to determine compliance with standards (e.g. AZPDES).

Mixing Zones

Rector reviewed mixing zones, which are areas where there might be a discharge above a water quality standard. If the discharge can mix with existing water and still meet the standard, it is generally allowed.

- 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): Aquatic standards incorporate the cool and warm water species, could this concept be incorporated here? (Response): In this context, gradient refers to the area where the waters mix.

(Comment): Some stakeholders have said that they were having trouble meeting the standards at the end of water. (Response): An example would be for a hatchery, which wants to produce fish, so we give them a little bit longer mixing zone.

Site Specific Standards

Spindler presented information on site specific standards.

- A stakeholder proposed adding adaptive process language as Section (B)(5) of R18-11-115. EPA did not approve this addition, as it was not scientifically defensible or consistent with 40CFR. EPA also disapproved Appendix C, due to issues with the fundamental design of the studies and other issues.

Variations

Osterberg presented information on variations. ADEQ rule language does not currently match EPA’s language and must be updated.

- In 2015 EPA took a different approach:
 - Variations must now be issued as a water quality standard under 40 CFR part 131.

- States must submit supporting documentation regarding why a variance is needed, that it represents the highest attainable condition, and must justify term and requirements.
- The variance may not lower the quality of currently attaining waters.

(Question): What is the public process for issuing a variance? (Response): With a change from ADEQ to mimic federal procedures, the public process could occur as part of a standard rule-making process with associated public outreach procedures.

STAKEHOLDER INPUT/ADDITIONAL TOPICS

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 included:

- Clean water
- Minimal pollutants
- Guaranteed clean water for future generations
- Standardized rules and more consistency
- Continue to recognize ephemeral and intermittent waters, regardless of changes to WOTUS
- Intermittent waters need to continue to be recognized and protected
- Maintaining and improving riparian areas
- Value of clean water – Whatever activity that might degrade the quality of the water should be the same activity that is responsible for returning it to the same standard.

Osterberg noted that the surface waters definition is related to the definition of WOTUS. ADEQ has the authority to enforce against pollutants to WOTUS. If there was a change to the definition of WOTUS at the federal level, the Arizona surface water definition would be impacted. However, changes to the definition of surface water can occur at the state level.

Gunn called for any additional discussion, including that on the comment matrix. She asked for suggestions for other topics that may not be covered on the agenda.

(Question): How does ADEQ deal with polluted ground water that becomes surface water?

(Response): The aquifer protection program is responsible for protecting ground water. If polluted ground water becomes surface water, it is dealt with on a case-by-case basis through permit. If it impacts drinking water sources it would be handled through the drinking water section and through the Water Quality Assurance Revolving Fund (WQARF).

Comment Cards

Comment cards received are provided verbatim as follows:

- Arizona surface waters definition should include all Arizona waters including intermittent and ephemeral waters.

- Given past budget cuts, and talk about allowing more flexibility and site specific standards, and new programs, ADEQ needs more capacity and quality assurance.

NEXT STEPS

- Gunn noted that the afternoon session topics would include Appendix A and nutrients from 1-3 p.m., and OAW, effluent dependent water and antidegradation from 3-5 p.m.

EVALUATION

The evaluation was available at the meeting and online through May 12. However, no responses were received.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

Melanie Alvarez	Pima Association of Governments
Kathy Arnold	Rosemont Copper Company
Gary Beverly	Sierra Club
Betsy Bowman	City of Yuma
Lauren Dempsey	U. S. Air Force
Leah Dennis	City of Yuma
Tricia Gerrodette	(did not provide)
Nicole Gillett	Tucson Audubon Society
Jason James	NACOG
Jonathan Lutz	Tucson Audubon Society
Kristie Mendoza	Tucson Water Department
Mead Mier	Pima Association of Governments
Susan Montgomery	(did not provide)
Scott Renfrow	City of Tucson
Mark Severson	Bison Engineering, Inc.
Natalia Smith	SRP