

Water Quality Division: Wastewater Disposal Advisory Group (WDAG)

Meeting: #2

Date: July 28, 2020

Time: 10am-12pm

Location: Zoom

Member Attendance:

<input checked="" type="checkbox"/>	Mark Basic	Basic Drilling Company
<input checked="" type="checkbox"/>	Colin Bishop	Anua
<input checked="" type="checkbox"/>	Suzanne Ehrlich	Yavapai County Development Services
<input type="checkbox"/>	Jake Garrett	Gila County
<input checked="" type="checkbox"/>	Thomas Hanson	Maricopa County Environmental Services
<input checked="" type="checkbox"/>	Maher Hazine	REI Development Services, LLC
<input checked="" type="checkbox"/>	Kathryn Mills	Mills Engineering, LLC
<input checked="" type="checkbox"/>	David Monihan	Coconino Co Community Development
<input checked="" type="checkbox"/>	Michael Stidham	EZ Treat, Inc.
<input checked="" type="checkbox"/>	Edwin Swanson	Arizona Onsite Engineering
<input checked="" type="checkbox"/>	Jennifer Thies	Terracon
<input checked="" type="checkbox"/>	Jenny Vitale	Civil Engineer
<input checked="" type="checkbox"/>	Joelle Wirth	AZOWRA, President

ADEQ Staff and Consultants

<input type="checkbox"/>	Trevor Baggiore	ADEQ, Water Quality Division Director
<input checked="" type="checkbox"/>	Naveen Savarirayan	ADEQ, Groundwater Protection Value Stream Manager
<input type="checkbox"/>	Karthik Kumarasamy	Engineer III, PhD.
<input checked="" type="checkbox"/>	Linneth Lopez	Environmental Engineering Specialist III
<input checked="" type="checkbox"/>	Raymond Morgan	Trainer, Groundwater Protection, Groundwater Permits & Reuse Unit
<input checked="" type="checkbox"/>	Luke Peterson	Environmental Engineer Specialist 3, Groundwater Protection
<input checked="" type="checkbox"/>	Theresa Gunn	GCI, Facilitator
<input checked="" type="checkbox"/>	Heidi Welborn	Legal Support, subcontractor

MEETING PURPOSE: *To gain input for the rulemaking exemption memo and discuss the initial draft plan.*

WELCOME AND REVIEW OF ROLES

Theresa Gunn, facilitator, welcomed the members and provided the following update on project status.

- Steve Heaton, the project manager, sadly passed. Theresa will serve as project manager from this point.
- Regular meetings with leadership have been scheduled to provide updates on the project.
- An ADEQ-internal technical team has been established to work on this project and will meet on a weekly basis.
- Heidi will be involved in the project as legal support for ADEQ, and will work on future rulemaking, should that take place.

ADEQ RULEMAKING PROCESS OVERVIEW

Heidi Welborn, legal support, presented an overview of the formal and informal rulemaking process. Highlights of the presentation are listed below.

- Informal rule exploration process - ADEQ developed and dictated
- Formal rulemaking process - dictated by law
- Trevor is double-checking what “modification” of a rule means to verify it does not implicate the 3:1 rule elimination requirement
- Exemption memo will likely propose a phased approach to the rules

INPUT FOR RULEMAKING EXEMPTION MEMO

The group was asked the following questions. Answers will be used to help draft the rulemaking exemption memo.

- What is the public health, environment or economic problem(s) caused by the outdate rules?
- What is the broader economic problem?
- What is going on in the industry that is being caused by the outdating of the rules?
- What data is available to support named/observed problems?

Discussion points from group on above questions:

- We’re dealing with a general permit rule, but where the program has difficulties is where the program gets into minutia about things that aren’t that consequential, resulting in disputes that run into things that are really more applicable to individual permits.
- Lack of innovation in the industry. It is hard to say what the time or cost savings are, we do not know what innovations exist because we cannot look at them due to the limitations in rule. Manufacturers and designers are held back from moving forward to reduce costs and be more efficient.
- As for proprietary product reviews, these products are difficult to approve because every product approved has to be linked to a particular permit, and the products don’t always fit a particular permit, we only have a certain number of options to make it fit.
- All the general permits have performance standards. One of the standards (fecal contamination) is outmoded. No other agency tests for fecal contamination as Arizona does, which makes it difficult for new products because that data point does not exist. Products do not provide supporting information in terms of total coliform, so this makes it difficult for regulatory agencies to analyze effectiveness in terms of meeting the rule standard.
- There are several issues in the rule that together cause waste, increased costs, and increased review times, and require design engineers to jump through hoops unnecessarily. It is not just one thing in the rule that is causing the problem. From a design standpoint, sometimes the rule does not allow someone to put in the right system for the site. This can lead to increased costs on the site, and less efficiency and environmental benefit from the system.
- There is a need to keep the costs of alternative systems down. The more review that a reviewer requires, and the more back and forth within the review, the higher the hours needed to evaluate

and work on the permit application (and review), and the greater the costs to all. This is really burdening rural communities. Some counties are more difficult than others on this point. It was said that a couple of projects lost bank loans because of some of the back and forth and lengthened time to get a permit approval. It was not known if subdivisions were prevented from constructing. It was said that commercial projects often have some of the most trouble, though (e.g. gas stations).

- There was an open question posed as to what level of flexibility do people want to have? And how much regulatory oversight at a county level is appropriate? It was thought that some oversight is necessary. Those few bad actors might charge less and bottom-out the market by providing something that has a negative impact to the environment.
- ADEQ should be looking at ways to charge forward with water reuse, but onsite rules prohibit use of reuse. Another member indicated that gray water is important, but the main thing needed to do with gray water is to take it out of the septic design and allow the septic tank to be smaller.
- There was a discussion about grandfathered and aging systems, and whether data existed to back up the claim that these facilities pose a danger to the environment. When these systems fail, often surfacing erupts, creating a nuisance. There is no clear way to deal with these nuisances or with aging systems. There is not a lot of formal information collected on aging systems, at least in Arizona. Impact to the environment (or otherwise) of aging systems is not known because impact is not being appropriately measured or tracked.
- Members of the group stated there is past and present known environmental damage from failed onsite systems. We do see research, especially back East, mostly of nitrogen pollution of surface water sources given the higher water table, but because table is so deep here, there are not as many known impacts to the groundwater.
 - Historically, the following areas have had known issues in public wells and surface water, likely caused by onsite systems: Lake Havasu City, Bullhead City, and Quartzite.
 - There have been specific hot spots in the Bullhead City area, where the background nitrogen was not high enough to cause the high nitrogen levels in the wells, especially with little farming in the area. This was no surprise given the level of density of structures using onsite systems.
 - In Coolidge, in an old RV park in an area with shallow groundwater, with trench disposal, the nitrogen levels were above 10. They maintained trench with treatment, and the problem subsided.
 - At Camp Lo Mia, in the Strawberry-Pine area, girls ended up in the hospital from contamination in the wells, ameliorated by a different system type.
 - At another site, more recently, an Air BNB had an issue in the Oak Creek area, and it turned out that it was a restaurant onsite system that was increasing the nitrogen loading.
 - It may be helpful to look at drinking water well monitoring results to see trends in public water systems that may correlate with a high density of onsite systems.
- Members to send Heidi and data and information to back up asserted problems.

Justification for Rulemaking

The Governor's Executive Order lists 12 justifications for rulemaking. The group reviewed the list and identified which of the 12 they felt applied.

- To fulfill an objective related to job creation, economic development or economic expansion in this State.
- To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
- To prevent a significant threat to public health, peace or safety
- To address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent or abusive activities perpetuated against an agency
- To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.

Group Discussion:

- The group indicated there is abuse in the evaluation process in that some stakeholders' projects are interpreted or evaluated differently or more harshly versus others'
- There is waste in that there is too much detail in the approval process; regulators are looking at things that really do not matter to the permit
- For example, if the drilled well is in a different spot from the ADWR drill card, even though the county already evaluated the location of the well, the onsite permit was held back, even though that particular issue was unrelated to the onsite permit
- As another example, a county rejected an application because the dimensions from the house to the septic tank were not on the spec drawings, even though they don't believe this requirement would apply because the house wasn't built yet and they don't think this relates to the rule
- In this discussion, there was a question how much the rule needed to change versus work to ensure that the counties are on the same page as the state. Some said at this point the fix needs to be rulemaking because they have tried other avenue regarding solidifying interpretations and clarifications and the problem continues to persist. A lot of needed clarifications means a policy and rule changes are needed. Some of the problems experienced relate to how a local agency integrates other requirements with onsite waste disposal permit processing (e.g. zoning requirements). An example persistent issue is counties trying to merge requirements of building requirements and the onsite rules; there is a lot of focus on the detail about the placement of a future building, which this member thought is not pertinent to the treatment of the facility.
- O&M changes are important. The way the rules are set up, they do not promote tank pumping or maintenance or compliance, ensure compliance to prevent things like surfacing. Counties indicated that for those known events, they are required by delegation agreements to track failing septic systems and solutions that they deal with. However, it was noted that for every problem reported, there are likely others that go unreported.
- For those systems that have issues, sometimes they are fixed by the "pumpers," those who pump the system, who are often hired to fix a system. Sometimes those persons hired are "cowboy servicers," meaning they don't have enough training to know how to adequately address the core

problem in a system, and instead of fixing it, they're just alleviating the symptoms temporarily (e.g. digging up a disposal field and adding more soil).

What one thing would you change in the rule?

- Review counties and see if they are using the rules as they are meant to be used (e.g. Alternative Design - A312G). Maybe modify A312(G) rule.
- Give examples or explain how to use the Alternative Design- A312(G) rule.
- Clear up the permitting process, which is currently a logjam. Address items in the rule to simplify the permitting process and review. Roadmap the administrative review, streamline that to make it to faster, if possible.
- Streamline through providing a requirement for more credentialing. You could streamline things much easier from a regulatory standpoint if you do so.
- Notices of Transfer (NOTs) rule and process needs work. People are not following the rules and doing what is required. Should be tied to house sales. Requirement for maintenance of systems, and the messes caused by that, are caught only in the transaction arena. (It was discussed if it would be possible to obtain data around this...NAWT, an inspector training program, might be a resource. Virginia also had limited O&M and pursued a more robust program -- they did a survey of counties, and found that 88% were mechanically functioning, even in absence of O&M.)
- Allow more flexibility for professional judgment. (Note: this comment was juxtaposed with another member questioning how much flexibility for professional judgment should be allowed in the rule. If an applicant has increased professional judgment and flexibility, then so does the reviewing agency. With flexibility, there may be additional consequences.
- Rule needs increased O&M requirements, and the expiration and renewal periods also need work. A facility existing for 30-50 years without renewal or expiration is too much.
- Counties should only be allowed to use state forms and should only make requirements for those things delegated to them. It was suggested to establish this in rule so other requirements cannot "piggy-back" onto the program. There is a need for delegation oversight, a lot of oversight, as there is a lot of mayhem going on outside the purview of the regulatory agency that has the authority. Guidance, consistency, and oversight from the agency with the authority is needed.
- SAR table needs modification and updating.
- Minimum vertical separation table needs modification.
- Need to update the total coliform concentration requirement to align with current science.

OVERVIEW OF THE INITIAL 5-YEAR PLAN

Theresa provided an overview of a discussion draft plan. The purpose of the draft was for the WDAG to begin discussions of what they wanted in the final plan. ADEQ staff needs a more holistic view of everything that stakeholders are working on, so they appreciate the importance that this group brings help to aggregate, consolidate, and prioritize their issues. Theresa walked members through the discussion draft list of issues and discussed various pathways through which issues could be resolved.

Two subgroups were formed. One to create a master list of issues with brief description includes Colin and Jenny. The other group consisting of Ed and Suzanne will develop criteria to help prioritize issues.

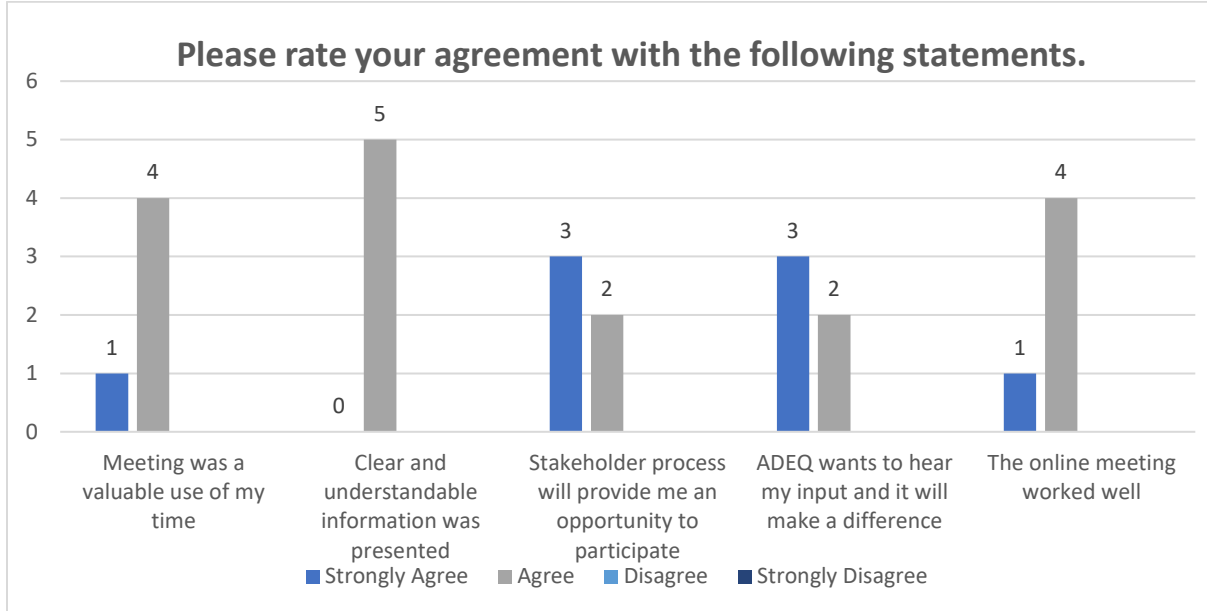
ACTION ITEMS

Task	Person Responsible	Deadline	Status
Substantive Policies: Provide draft substantive policies to WDAG members when complete	Theresa		Ongoing
Group to send data and information to support rulemaking memo	All Members		
Mark to send Brian Bishop's information	Mark Basic		Complete
Complete online evaluation	All Members	8/4/2020	Complete
Rulemaking Exemption memo	Heidi	8/31/2020	
Issue List with Brief Explanation	Colin and Jenny	8/14/2020	Complete
Prioritization Criteria	Ed and Suzanne	8/14/2020	Complete
Issues and Criteria to all members	Theresa	8/18/2020	Complete
Send Theresa an email about maybe holding external meetings (unrelated to and not sponsored by ADEQ) to gather issues from other stakeholders not present	Jenny		

Next Meeting: August 25, 2020

Agenda Topics: Approve master list of topics and evaluation criteria, update on rulemaking exemption memo

MEETING EVALUATION



What was the best thing about today's meeting?

- Various stakeholders shared some good information and some stakeholders agreed to complete some important tasks.
- I think we have some direction & are starting to move forward.
- Moving the conversation forward
- The opening comments shared from Trevor, acknowledging that there needs to be some attention spent towards modernizing the business model separate from specific rule revision. A very good job by the facilitator allowing people to vent a bit while trying to get us back to the task.
- Clarity about what it will take to get a rule revision moving forward. Input from attendees on the one thing they would change.

What should be changed for future meetings?

- Nothing.
- Need to add Brian Bishop to the committee. I think he will be a valuable asset to the group.
- In person meetings when that is possible.
- Appears to be a lot of special interest in the group, remind the participants to stay on tasks with solutions versus complaints, stop comments that seem to be aimed at specific project submittals. Separate out the process pieces from rule sections that need updating but understanding that these process items are embedded in our rules, and that this will not address professional judgement issues. R18-9-a301-a309 and a312g; are the sections in rule that we should suggest changes be made to if we are seeking a business-friendly approach. Keep conversations directed on the task and suggestions made to modify or replace these sections. This will remind us that other sections in the turtle need to be addressed.
- Not sure