

# **Clean Water Services**

## **Clean Water Advisory Commission**

### **Meeting Minutes**

September 19, 2012

#### **Attendance**

The meeting was attended by Commission Chair Tony Weller and Commission members Molly Brown, Alan DeHarpport, Lori Hennings, John Kuiper, Victoria Lowe, Mike McKillip, Stephanie Shanley, David Waffle, Jerry Ward, and Clean Water Services District General Counsel Jerry Linder for General Manager Bill Gaffi.

Commission members Deanna Mueller-Crispin, Judy Olsen, and Sandy Webb were absent.

John Driscoll of North Plains also attended the meeting.

Also present were Clean Water Services staff members Bob Baumgartner (Regulatory Affairs Division Manager), Clayton Brown (Source Control Manager), Vince Chavez (Source Control Investigator), Peter Corduan (Source Control Investigator), Mark Jockers (Government and Public Affairs Manager), Peter Ruffier (Regulatory Affairs Department Director), and Sheri Wantland (Public Involvement Coordinator).

#### **1. Call to Order**

Chairman Tony Weller called the meeting to order at 6:37 PM in the conference room at the Clean Water Services Administration Building.

#### **2. Approval of August 18, 2012 Minutes**

Ms. Hennings moved to approve the minutes of the August 18, 2012 meeting as distributed. Ms. Lowe seconded. Motion passed.

#### **3. FOG Control Program Update**

Mr. Baumgartner reported on state building codes, geographic information systems (GIS) work at Clean Water Services, and a recent FOG-related sanitary sewer overflow (SSO).

The draft proposal for updated state building codes includes the hoped-for provision that all drains in a food preparation area, including dishwashers and garbage grinders must be connected to a grease removal device (GRD) before discharging into the sanitary sewer system. This requirement will influence sizing of GRDs used in future construction of food service establishments (FSEs). However, the building codes division is still struggling with how best to address retrofits. Clean Water Services has provided comments on the proposed update, and the public comment period will begin soon.

Mr. Baumgartner next shared maps of the District service area, with overlays of SSO locations and causes, FSE locations, levels of FOG production at various points, and location of sewer lines and

cleaning frequencies. Using this GIS data, staff can track patterns and relationships between SSOs, FSEs, and FOG production. The GIS data can help predict results of different strategies for addressing FOG.

Mr. Baumgartner explained that FSEs have been categorized as very high, high, moderate, or low producers of FOG. Very high production is about 100 pounds of FOG per day; high production 10-100 pounds; moderate 2-10 pounds; and low production just 1-2 pounds per day. About a third of FSEs fall into the very high or high production category. Categorization is based on the number of meals and type of food served. For example, Chinese-style cooking is usually associated with large quantities of oils and grease, as are cafeterias at large establishments such as hospitals, while bakeries tend to be moderate producers and coffee shops generally are low producers. Mr. Baumgartner said the study included verifying FOG production estimates by cleaning out certain lines and monitoring how quickly they re-clogged. However, he believes the study data is biased toward the low side because a number of sites were already re-clogged by the time they were checked.

Mr. Baumgartner noted that while FOG blockages can cause SSOs, the SSO does not always occur at the point of the blockage, such as the recent SSO where 2,000 gallons of sewage ran into an open ditch which flows past several apartment buildings, trails and through a park before emptying into Rock Creek. He added that the blockage was in a line that is not on a frequent cleaning schedule. All this information can be entered as GIS data and analyzed to help guide FOG Program activities. Mr. Weller suggested that the GIS data combined with practical knowledge of the sewer system could be used to more efficiently schedule cleaning and video inspections of lines.

Ms. Lowe asked about follow-up or consequences related to the recent SSO. Mr. Baumgartner said Clean Water Services must report the overflow to the Oregon Emergency Response System and DEQ within 24 hours and send a written report to DEQ within five days, which has been done. DEQ has discretion to take formal enforcement action such as fines, civil penalties, or administrative orders. Clean Water Services is responsible for preventing SSOs and could be fined because an overflow is a violation of the NPDES permit. A city or some other entity could be fined if DEQ determined their action or inaction had contributed to the SSO. Fines are typically about \$1,000 per day per violation. Much larger civil penalties can be imposed if the prevention program is deemed inadequate. If DEQ believes that Clean Water Services has an adequate program in place to prevent SSOs, DEQ could also consider the measures taken or not taken by an FSE. Mr. Baumgartner added that any decisions on this incident may take awhile, as DEQ finishes evaluating last year's SSO enforcement actions.

Ms. Lowe wondered how a new FSE in an area with old infrastructure, such as Prime Time in Forest Grove which is rebuilding after a fire, would be affected with FOG requirements in flux. Mr. Baumgartner said staff tries to reach out to new construction in anticipation of the new requirements, but success depends partly on cooperation from building officials. Mr. Chavez noted that the property which feeds into the line where the most recent SSO occurred already has two restaurants and the owner is planning additional buildings on the site, which is an example of an opportunity for talking to property owners before construction begins.

Following Mr. Baumgartner's presentation, Ms. Wantland surveyed Commission members on the FOG Program Elements Matrix (*attached*) included in the pre-meeting mailing. She used an electronic system to collect responses and share results immediately. Commission members

evaluated about 30 potential program elements in 10 categories, indicating for each whether they thought it should be implemented now, should not be implemented, perhaps could be implemented later, or that they needed more information about it to respond. Ms. Wantland said the FACT group meets next week and will go through a similar exercise. She added that this is one way to assess trends in thinking but it is not the only time or avenue for Commission members to express their opinions.

Comments from the group about the electronic survey system included difficulty in understanding exactly what would be required to implement some elements, not knowing the implications of some elements, not knowing how many people “voted” on each element, need for an “abstain” or other option besides “more info” to express uncertainty and avoid being forced into a response. Commission members felt this was a useful tool and were interested in its continued use.

Commission members also shared comments about the potential program elements:

1. The survey showed many “yes, now” votes—can’t do everything so may need a cutoff percentage for deciding which of those elements to do. (Ward)
  - a. If the most popular elements are not also projected to be highly effective, they might not be the best ones to implement. (Weller)
  - b. Some of the potential program elements are connected or related—if you choose to do one, a couple others will fall naturally into place. (Lowe)
2. It would be more economical overall to address stormwater issues with FOG issues in some construction or retrofit projects but stormwater funds, not FOG funds, should be used to do so. (Hennings)
3. Let’s lay it all out and publicize it, including the things we aren’t implementing yet, so people know what to expect. (McKillip)
4. Develop an “elevator pitch” to explain why we are doing this now after years of not addressing it (“Because of DEQ” is not a satisfactory explanation). (McKillip)
  - a. Explain that it is cheaper to change practices and get more life and capacity from existing infrastructure than to dig it all up and upsize to accommodate those who won’t comply (Lowe)
  - b. Question is not so much why are we doing it now, as why didn’t we do it before (Hennings)
  - c. Not done earlier because when you started looking at SSOs, inflow and infiltration (I/I) issues were the #1 problem so you tackled them first; now that has been addressed so it’s time to look at FOG as the next priority. (Weller)
5. Clarify terms and their relative meanings—how much does this “high” cost item actually

cost? Is it rated as “high” cost because it exceeds some dollar amount criteria or because it just costs more than other alternatives within that category? (DeHarpport)

- a. What is the practical or business impact of a high-cost item and how does that relate to the issue of equity? (Weller)
6. None of the potential program elements address a way to recognize or encourage those establishments that are doing a good job. (Weller)
7. Commission member responses are colored by their particular experiences and backgrounds; would be interesting to know if or how these comments align or diverge from those of staff or other groups. (Waffle, Hennings)

#### **4. NPDES Permit Renewal Update**

Mr. Ruffier shared a handout (*attached*) on progress toward the major objectives in renewing the NPDES (National Pollutant Discharge Elimination System) permit held by Clean Water Services. The objectives and the permit renewal process were discussed in greater detail during several previous Commission meetings. As Mr. Ruffier reviewed, the permit is watershed-based, so it covers discharges from the four wastewater treatment plants, the municipal storm sewer system, and the industrial stormwater treatment facilities at the Rock Creek treatment plant. Permits are issued according to national requirements by Oregon DEQ (Department of Environmental Quality). The current permit expired in 2009 but has been administratively extended by DEQ as it works to resolve various regulatory issues and legal challenges. Clean Water Services has received a written commitment from DEQ to devote staff time and resources to renewing the permit. Oregon has put a hold on all other permit renewals which include temperature-related components, due to pending litigation. However, the litigation is aimed at temperature standards more recently established than those in the existing permit, so Clean Water Services should be able to move forward with the non-temperature aspects of its renewal until it is clear how or if the legal action will affect its requirements for temperature.

Mr. Ruffier reported that the TMDL (Total Maximum Daily Load) for the Tualatin River has been updated (except for temperature) to accommodate discharge from planned Natural Treatment Systems (NTS) facilities at Forest Grove and Hillsboro, and submitted to EPA (US Environmental Protection Agency) for approval. The mass load increase requested by Clean Water Services to address future growth has been approved by the Environmental Quality Commission (EQC).

Another key objective in the permit renewal is continuation of the thermal load (temperature) trading program and expansion of that concept to other parameters. The updated TMDL includes a “bubbled load” for phosphorus and ammonia, which would allow Clean Water Services to respond to stream conditions by adjusting discharges from each treatment plant to meet an overall requirement rather than specific allowances for each plant. A bubbled load is proposed for TSS (total suspended solids).

Mr. Ruffier said that the NTS facility for Forest Grove is well along in the design phase and some earthwork has begun. Technical reports have been submitted and the permit renewal application has been updated accordingly.

The SWMP (Stormwater Management Plan), a major component of the NPDES permit, is being updated to reflect new provisions based on those in permits issued recently to other municipalities.

Mr. Ruffier pointed out the Integrated Plan as an innovative component of the permit renewal application. The Integrated Plan is a comprehensive framework for addressing multiple regulatory obligations in a prioritized sequence over 10-20 years, taking into account the permit holder's capacity and resources. The concept is similar to the tiered priorities in the Healthy Streams Plan.

The Clean Water Services Integrated Plan will be the first in Oregon and if it is approved as part of the NPDES permit it will be the first such permit in the United States. It would span multiple permit terms and Clean Water Services would not have to wait for a permit renewal to move forward with regulatory compliance measures scheduled in the plan. Mr. Ruffier noted that although the current permit has been extended, no modifications are allowed so even routine or non-controversial updates cannot proceed. He anticipates much discussion with DEQ and EPA as there is no precedent for including an Integrated Plan in a permit. Clean Water Services is working with USGS (United States Geological Survey) to identify stressors on the water system and will use that and other data to determine priorities and activities for the Integrated Plan.

Ms. Lowe asked if a bubbled load is similar to a mixing zone. Mr. Ruffier said no, it is a number describing the total amount of a pollutant allowed from several individual discharge points; discharge amounts from those individual points may vary but the total amount is still the maximum allowed. Mr. Baumgartner added that the only mixing zone is at Forest Grove and no changes are proposed.

Mr. Waffle noted some of the objectives listed on the handout seem to have long term implications and asked what impact that would have on operational costs or capital needs. Mr. Ruffier said the NTS development will require capital investments and the municipal stormwater regulations addressing retrofits and hydromodification will have some as-yet-unknown effects on operations.

Ms. Hennings asked if "flow restoration strategies and trading" listed in the permit renewal objectives would adversely affect the planting program that has been done in the upper watershed. Mr. Ruffier said no, it is a different program. The plantings and riparian restoration are part of the water quality trading component for temperature. Flow restoration involves actually moving water into the tributaries. The results for temperature and water quality in pilot projects have been very good and Clean Water Services would like to formalize the program as part of the permit.

Mr. Ruffier said Clean Water Services plans to submit technical information to DEQ by November 1, and hopes to start the 60-day public comment period in March, followed by review and responses to comments, and have a permit issued in June, 2013. He will return to the Commission in October or November, as the Board has charged the group with assisting in the public involvement process for the permit renewal. There is already strong interest in the stormwater aspects of the permit renewal.

Several Commission members asked if the temperature litigation jeopardizes the past shade-planting related to temperature. Mr. Ruffier said perhaps the biggest implication is for the permit renewal, as DEQ may get pushback about working on a permit based on the old standards and may decide to leave the administrative extension in place until the litigation is resolved—which could take years. The water quality trading agreement, which is the basis for the planting/shading program, would

probably still hold but if there are changes to the standard or to the wasteload allocation for temperature, Clean Water Services might end up with a different target for shading that may or may not be reasonably achievable.

Mr. Linder explained some details of the litigation. The NEDC (National Environmental Defense Council) filed the suit against EPA. DEQ is not a defendant but is involved as an intervener. Clean Water Services and other interested parties are not involved in the litigation but are communicating with DEQ. This case is unusual because the result is not at all what the plaintiff intended. The judge's opinion was that a narrative standard, such as the one based on natural thermal potential, cannot supersede a numeric standard that is already in place. The parties agree that elimination of the narrative natural thermal potential standard was not the intended result, but nobody can see a way around it. Many observers think DEQ will ultimately have to develop a new temperature standard. The judge asked the parties to confer and provide guidance on what they want to do. Court briefs are due mid-October and it is unclear how long it will take the judge to respond, or how long the appeals process may take. As pointed out by Mr. DeHarpport and Mr. Ward, there is great concern about using the numerical standard for temperature because it does not take into account local or regional variations in natural stream temperature.

## **5. Announcements**

Referring to the copy of the Board of Directors Consent Agenda item included in the pre-meeting mailing, Mr. Jockers reported that the Board authorized Clean Water Services to proceed with the revision process for the Design & Construction Standards. The Board also charged the Commission to review proposed changes, be a sounding board to staff, and host a stakeholder forum. Mr. Jockers noted the revision process would take 12-24 months, and will appear periodically on Commission meeting agendas. Mr. Jockers will find out when the first draft is expected to be available.

Mr. Jockers said the Board also initiated recruitment for four Commission positions: District 1, District 4, the Environmental position held by Deanna Mueller-Crispin, and the At-Large position previously held by Bill Young. Recruitment is open through mid-October and appointments will be made in late October or early November.

Mr. Jockers also said he would send information about the "Birds and Beer" event October 6 at McMenamin's Grand Lodge in Forest Grove, celebrating the Fernhill wetland area with bird walks, wetland tours, and the "Voices of Fernhill" video in which Ms. Lowe and Mr. Gaffi appear.

Mr. Weller requested an update on NTS progress and construction at a meeting in the near future.

The next Commission meeting is October 7, 2012.

## **6. Adjournment**

The meeting was declared adjourned by Mr. Weller at 8:18 PM.

*(Meeting notes prepared by Sue Baumgartner)*