

**Water Quality Standards Advisory Committee
Meeting Minutes
NH Department of Environmental Services
September 23, 2009**

Members Present:

Robert Ball	NH Association of Conservation Commissions
Malcolm Butler	NH Water Council
John Hodsdon	NH Farm Bureau
Tracy LaChance	BIA
Eileen Miller	NH Association of Conservation Districts
Allan Palmer	PSNH
William Schroeder	NH Lakes Association
Ellen Weitzler	USEPA

Others Present:

Mark Hutchins	Normandeau Associates
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DES Staff Present:

Paul Currier	NHDES Watershed Management Bureau, Administrator
Bob Estabrook	NHDES Watershed Management Bureau
Lisa Fortier	NHDES Watershed Management Bureau
Brandon Kernan	NHDES Drinking Water and Groundwater Bureau
Phil Trowbridge	NHDES Watershed Management Bureau

1:30 – 1:35 Introductions/Selection of New Chairperson

Peter Rice

Phil Trowbridge substituted for **Peter Rice**. Introductions were made around the room. Phil asked for a motion nomination of a chair. **Allan Palmer** suggested we nominate **Peter Rice**.

- **John Hodsdon** motioned to nominate **Peter Rice** to serve as chair and **William Schroeder** seconded. All were in favor.
- **Allan Palmer** motioned to nominate **Bill Schroeder** as vice-chair, **John Hodsdon** seconded. All were in favor

1:35 – 1:45 Approval of 03/18/2009 Meeting Minutes

Phil Trowbridge

Last meeting's minutes were abbreviated because the recorder failed.

- **Malcolm Butler** motioned to accept, **William Schroeder** seconded. All voted to approve.

1:45 – 1:55 Brief recap of Terms of Reference for WQSAC

Paul Currier

The Water Quality Standards Advisory Committee has been in existence since 2000 and has been very useful in shaping a number of things. The idea is for DES and the Committee to choose water quality issues that need work, publish guidance and clarification to existing rules, and revamp rules. The role of the Committee is advisory and the process is a well documented process. Working groups can be formed under the umbrella of the Advisory Committee. There have been three working groups: estuary nutrient criteria, lakes nutrient criteria and the incorporation of WQ Standards antidegradation provisions into the AoT rules, which is ongoing. The antidegradation workgroup was formed as a result of an antidegradation / AoT rule proposal put forward by DES, which resulted in substantial comments at the rulemaking hearing. As a result, DES pulled the antidegradation section of the rules out of approval process for further work. The working group is comprised of mostly consultants who are involved in the design of AoT projects.

DES sent an e-mail soliciting comments for the 2010 CALM, which is reviewed and revised every two years and the guidance document that is basis of the assessment of all surface waters in the state. The deadline for comments is October 2, 2009.

Brandon Kernen - At the last meeting there was a brief presentation and handout regarding the instream flow policy. I think that is still out there, unless I missed the meeting?

Phil Trowbridge – We were planning on discussing instream flow in January.

Brandon Kernen – Could you add the draft guidance document for the pilot studies?

Paul Currier – Yes, if we can add it there. We have a guidance document for protecting instream flows for aquatic habitat. I believe that is on the Web. It has been published and we would be happy to take feedback on it. The best time to do that would be when we update the Committees on the pilot projects that are going on in the Souhegan and the Lamprey Rivers.

1:55 – 2:10 New Water Quality Standards Program Manager and Draft Phil Trowbridge
WQSAC¹ topics and schedule for 2009-2010²

Phil Trowbridge has taken a new position as the new WQ Standards Program Manager Coordinator while still filling his role with estuaries. His new position will allow him to help with the development of water quality standards. We have developed a plan for this committee for the year with the subjects that we will be covering. It contains things that are topics of interest to the Department and stakeholders as well as areas that focus attention on policies or numeric standards. We are treating it like an academic calendar and will meet through the spring and will take the summer off. We can add topics that you would like us to. In November the 2010 305(b)/303(d) assessments will be in full swing with the Consolidated Assessment Listing Methodology (CALM) as the driving force. We are looking to present some of those methodologies so people can see how we are assessing impairments. It is a very detailed document so presenting it is very helpful. In November, we will also be discussing legislation to add designated uses to the state statutes. Currently, the language is only present in federal statutes. We are also thinking of adding a designated use relating to geomorphology of river systems. We should have draft language to present at that meeting. In January we can discuss the milestones in the Souhegan and Lamprey Pilot Study Program, the instream flow draft guidance policies and the water level fluctuation in impoundments.

Paul Currier – The water level fluctuation policy should be available by January. The scenario that is developing for potential instream flows is manipulating storage in the watershed in order to provide usable water and maintain a hydrograph that is as close to natural as possible. If you are going to use impoundment storage then you are going to have fluctuating impoundment levels and that will affect the biota in an impoundment. If the desired state of the impoundment is not to fluctuate then you cannot use that impoundment to maintain the hydrograph for the river. There is a lot of material for the January meeting and we may have to split it into two meetings. In March we will switch to nutrient criteria for rivers. We have developed numeric criteria for the estuaries, lakes and now we will try to work on rivers. We will revise our turbidity criteria and establish baseline values. We will be looking at different additions to the turbidity criteria to make it useful for spot measurements. At the last meeting of the year we will look at temperature criteria for small streams as they relate to fish habitat. We have been working with Fish & Game and there is a vast amount of data that is out there from temperature loggers that have been installed for years. The existing data and information about what other states are doing with this topic will be compiled and try to come up with interim temperature criteria while we work on final criteria. In June we will be at the tail end of our 305(b)/303(d) assessments and we can present the results.

Phil asked for topics that people feel should be on the list.

William Schroeder – Is this a new position?

Phil Trowbridge – It is an upgrade of an old position that was vacant to cover the 401 Water Quality Certificate Program and the Estuaries Coastal Scientist Program.

William Schroeder – What is the idea behind this?

Phil Trowbridge – We have spent a lot of effort in the past couple of years doing the nutrient criteria development and saw the benefit of focused attention on standards development and how you can get from the recognized need to the number or policy with one person’s attention focused on it. We are trying to translate that experience from the coast to the rest of the state and expand it beyond nutrients and take the experience we have had with the Estuaries Partnership, or Indicators, and watershed-wide studies, and apply it to other watersheds across the state.

Bob Ball – The comment period ends next week. What is the overall schedule? Will you take the comments at the next meeting?

Paul Currier – By November, we will have the assessment list and the CALM finalized. We have to finalize it and the cutoff for receiving data is December. We have a deadline to report to EPA by April 1, 2009. We will be briefing the Committee on the contents of the final CALM at the next meeting. If you want to influence what is in the final CALM, the time is now.

William Schroeder – The lakes that are drawn down in the late summer in order to allow people to protect docks from ice damage and to remove weeds from swimming areas, would these concerns imply to impoundments like that?

Paul Currier – Yes. A specific issue which will come up in terms of protected instream flows on the Lamprey is Pawtuckaway Lake, which is a fairly large impoundment. We expect that manipulation of the impoundment, in order to protect instream flows, will be part of the Water Management Plan. In fact, it won’t work unless we plan on manipulating the storage levels.

Malcolm Butler – Is the Army Corps of Engineers onboard with this?

Paul Currier – They are and we have spoken with them recently about fluctuating recreational pools at dams, such as Blackwater. They have the latitude to do that. On the Ashuelot, The Nature Conservancy is working with the Corps of Engineers to modify how the Corp operates those for aquatic life. The issue on the Ashuelot is that the Corp controls the flooding so well that the over banks never flood and that isn’t good for aquatic life.

Brandon Kernen – I know that the policy has fluctuation as the desired use of the pool but will we also look at the instream flow policies right down stream of the dam? What are you looking at for fluctuations? Whether you maintain it or not you also have minimum flow needs that you are striving to maintain per other policies?

Paul Currier – This guidance just concerns the impoundment assessment unit that is above the dam but the maintenance of flows just below the dam is also of concern.

Brandon Kernen – And the bypass reach?

Paul Currier – For instance, full flows with leakage in the summertime. That is a substantial change from that hydrograph just downstream from there, which we don’t deal with. A good example is Lake Massabesic, which is Manchester’s water supply. They don’t release water during low water periods and there has been substantial effect on Pine Island Pond.

Bob Ball – Is the Connecticut River included in this jurisdiction for this policy?

Paul Currier – Yes, NH actually owns the river to the pre-impoundment water level on the Vermont side. There is a little sliver that Vermont owns where there is a dam.

John Hodsdon – We haven’t talked about cyanobacteria and it is something that I would like to know more about. I don’t know to what extent you can regulate it. Maybe you could give a presentation or could send me off to someone that is knowledgeable about it.

Paul Currier – That is a good idea and we assess beaches for supporting swimming uses for cyanobacteria and we have a procedure and protocol. Jim Haney from UNH has done a substantial amount of work on cyanobacteria. He is also the chair of the NH Lakes Advisory Committee.

Bob Estabrook – We have had some workshops on cyanobacteria and if you go on to our website under beaches and bacteria you can see some information. If the Committee is interested we can do a presentation.

Allan Palmer – Is DES looking to upgrade standards?

Paul Currier – No, not to change the rules. We have changed how we assess waterbodies to support swimming use and that now includes a cyanobacteria assessment, which is a cell count of the percentage of cyanobacteria.

Allan Palmer – We may have a handle on how to assess and fix the problems but the issue is more how to fix the problems.

William Schroeder – It sounds like there might be a connection to standards, if cyanobacteria are related to swimming use. You have given us some pointers on general information. Could we ask you to think about if there is a standards question, or if there is anything we should discuss in this group? If you think there is then we can try to put it in.

John Hodsdon – With the cyanobacteria alert for Waukegan, there was some concern and people tended to associate that with containing phosphorus. To what extent do phosphorus and cyanobacteria track, or whether they fluctuate differently? What is the control on cyanobacteria? Is it the zooplankton and filter feeders that consume it? What keeps the population down and what makes it go up? Is it effective to lower the phosphorus level, assuming you can?

Paul Currier – We have said that in general, minimizing phosphorus inputs to lakes is good. We have said there is a connection between nutrient levels and cyanobacteria. I don't know how strong that connection is.

Phil Trowbridge – We will take Bill's advice and see if there is a standards question associated with this topic and if there is, we can work it into one of the later meetings.

Bob Ball – Aquatic fish passage at culverts is a hot issue now. I don't know if it is related to instream flow or not. What standards exist for this?

Phil Trowbridge – There is new guidance that DOT has put out for culvert sizing and that is probably the closest thing to standards.

Paul Currier – The Wetlands Bureau is in the process of putting out stream crossing rules and Vermont has a fairly well established protocol for measuring the characteristics of stream crossings relative to aquatic passage and for the ability to pass flood flows and maintain geomorphic integrity.

Bob Ball – The White Mountain National Forest does too and I don't know if they are along the same lines. I wonder if there is any connection between what the states are doing.

Paul Currier – There is and that would be a good one to put on the list. We can talk about that when we talk about changes to RSA 485, the designated use. In addition to formally identifying the designated uses that we have been using in the CALM, we are proposing to add a geomorphic integrity designated use. The idea is to identify stream crossings and stream reaches that are insufficient for either aquatic passage or for maintaining the natural stream characteristics. The NH Geology Bureau is doing most of the work on that and are taking, with Vermont's knowledge and consent, everything Vermont has developed. We expect to establish standards based on the Vermont protocols for geomorphology and for culverts for aquatic passage.

Allan Palmer – These are new items coming to the table. Does that indicate that everything we were working on is wrapped up?

Phil Trowbridge – I wouldn't say that. The instream flow guidance is still open.

Paul Currier – We were working on antidegradation and we think the draft rules, which the Committee has seen for the first time today, are done.

Allan Palmer – The nutrient criteria, "as naturally occurring" and economic and social justification, and water transfers are close to being completed?

Paul Currier – Yes.

2:10 – 2:50 Proposed Rule Changes

Paul Currier

We revisited the "as naturally occurs" question internally, which this Committee worked on. We started discussing it with this Committee in 2004. It was apparent that we didn't have a consensus from the Committee or internally in DES. We need a translator or quantitative way to apply the words "as naturally occurs" in order to use the standards. The approach that we were comfortable with, where we did not know how to apply the language, was to remove the "as naturally occurs" requirement for Class A and to put into place a provision that states any proposed degradation for Class A waters would be significant. We eliminated the "as naturally occurs" provision for benthic deposits, oil and grease, color, turbidity, temperature, nitrogen, phosphorus and pH. That isn't all of them because there are some that we have a methodology for. In response to the internal review, we

proposed to delete the EPA guidance on social and economic justification from 1995, which was somewhat dated and didn't work very well in the context of antidegradation. Our Legal Unit said you have to have criteria for social and economic development. You can't just delete reference to the EPA document and leave nothing there, which is what we proposed to do, and develop guidance on it. What is in the rules now is a process that was taken from the state of Pennsylvania, which has a fairly substantial document, on how to do antidegradation rules and provides general procedure and criteria for evaluating the social and economic justification. According to the draft rules, the applicant will have to do alternatives analyses first and determine that there is no feasible alternative to the degradation. Then they can proceed with the social and economic justification. The benefits of the proposed activity must outweigh the environmental harm. If we receive the analysis and we allow the degradation there would be a public hearing and opportunity for public input on the proposed decision. The information provided to DES would be provided to the public in the evaluation of social and economic justification.

William Schroeder – I have a question on 3 & 4. We haven't actually done a full antidegradation review in NH and we don't know how we would apply social and economic benefit. We are following the lead of Pennsylvania. Have you looked at how it works for them?

Paul Currier – No, that is a good question. They got sued and that is why they have substantial guidance. I haven't talked to them to ask them that question.

William Schroeder – It seems like that would be a really good thing to do. When we make rules we do our best to guess how they would apply and if they would work well or not. We may find out that despite our best intentions it didn't work well. If someone has implemented this EPA guidance somewhere and there is a body of evidence as to what works and what doesn't it would help us a lot.

Allan Palmer – Is it safe to say that no one has ever gone through the process because when you look at the prior regulations of the EPA document it is probably the last choice you are going to make trying to get a permit for your discharge because there are always going to be better alternatives than going through this process. Do you think that these regulations will create a better process where it can be accomplished versus what was in the 1995 EPA document?

Paul Currier – The 1995 document was geared to point source municipal and industrial discharges, where you could compute, with confidence, how much it was going to cost the owner of the discharge to install treatment processes that would meet the requirement of either the water quality standard or the antidegradation requirement. Compare that to the number of jobs lost if the industry went out of business, or the increase in sewer rates, etc. that would be necessary to build the required treatment works and the sewer rate compared to the median income. I am not sure how we would have applied that in an antidegradation situation such as the proposed transfer of Canobie Lake or, for example, a case of major development where the proposed landscape changes would be the cause of degradation. These criteria are substantially different from that and they are not nearly as prescriptive but they are broader in scope. The intent, as I understand it, is to make it difficult to degrade existing high quality waters. That intent should be translated into the state rules and degradation should be the last resort.

Allan Palmer – This follows that mindset but makes it more manageable to work through than what we had previously.

Paul Currier – There has always been the 20% window in the antidegradation rules. The degradation is up to 20% of the remaining assimilative capacity for any parameter and virtually all projects reviewed have been mostly municipal point source discharges. None of them have ever come close to using up the 20% remaining assimilative capacity. We have never really used this process because the de minimis remaining capacity has always applied. We are proposing, in rule, to close that window for Class A waters and any proposed degradation would be significant the way this current draft is written for Class A waterbodies. It includes things like the entire Blackwater River Watershed as well as other watersheds. There are places where that provision is going to come into effect. We are also creating the provision that any proposed degradation is significant for water transfers. We are creating a situation where we will have occasion to actually have to use these rules in the future.

Ellen Weitzler – It says, "The social and economic justification of the proposed project or activity outweigh the environmental harm that could be caused by the lower water quality". I know the

federal guidance is imperfect, especially in regards to stormwater runoff. Is there going to be an additional effort to interpret that and quantify the costs of the environmental degradation?

Paul Currier – Yes, that is how we have set ourselves up for it but we haven't specified how we are going to do it.

Ellen Weitzler - In taking out the naturally occurring, instead, you are saying that there shall be no new or increased discharges of sewage or waste containing phosphorus or nitrogen, or both. Is this part of the same change? Does that include stormwater?

Paul Currier – We don't know. We are trying to write this so we don't have to answer that. That is the advice of our attorney. I expect that sooner or later that will be answered but right now we do not know. We have a situation where discharges of sewage or waste into Class A waters are prohibited by statute. If stormwater is sewage, you can't do it and we have lots of people who are in violation.

Ellen Weitzler – It really changes the criteria a lot. Now you are saying “as naturally occurring” with urban stormwater discharges, unless you include that. That is a big change unless you put a quantity to a particular pollutant. Instead of no man-made influence you have “naturally occurring” plus man-made influences and stormwater runoff.

Paul Currier - The sentence that you were referring to, “no new or increased discharge of sewage or waste containing phosphorus or nitrogen” is redundant with the statutory prohibition on discharges of sewage and waste. We have removed the provision for “not unless naturally occurring” for the specified waste parameters and substituted the provision that any proposed degradation shall be considered significant and will have to go through a rigorous antidegradation review. The idea is that process will be at least as protective, and maybe more, as the “as naturally occurring” phrase because we have never been able to figure out how to apply “as naturally occurring”.

William Schroeder – What you are trying to accomplish with the rule change is to maintain a high standard for Class A waters, but in a more manageable way?

Paul Currier – Yes, precisely, and we are using the antidegradation provision to do that. Everything that would be degradation in Class A would be significant and would create a great disincentive to degrade Class A waters.

Malcolm Butler – “As naturally occurring” is in most NPDES permits, how would that affect that language?

Paul Currier – It shouldn't. There are two ways that naturally occurring is used and the way that the Class A language was “not unless naturally occurring”. If you went out and did an analysis and found something you would have to do a separate analysis to determine if it is naturally occurring. The other way it is used is that we say that the bacterial standard shall be this amount unless it is naturally occurring. That flips it around. If a bacteria sample doesn't meet the standard and there is no human activity in the tributary or watershed, it is naturally occurring. It violates the number but not the standards. Color is another area where this can occur. We can't design a test to check if it is naturally occurring or not.

Mark Hutchins – The first determination is whether there is degradation or not?

Paul Currier – Right.

Mark Hutchins – Degradation would be defined based on the criteria that you have for Class A waters.

Paul Currier – Degradation is defined as going from the more desirable level to the less desirable level in whatever you are measuring.

Mark Hutchins – Can you make an argument that there can be some activities that will not result in a decline in certain standards? The premise is that anything that you do in the watershed has an impact, so how could you ever allow any activity in a Class A watershed?

Paul Currier – We have been applying the “no additional degradation” standard to impaired waterbodies for a while now, maybe three years. We know the waterbody is impaired. Whatever the parameter is has to improve. We just did that for Great Bay. If you have a dissolved oxygen violation, the dissolved oxygen has to get better and someone has to take action. We developed a method for non-point sources and BMP controls that we think works fairly well and at least estimates reductions and is workable. The best recent example is the Bretton Woods Dartmouth Brook Development. The Mt. Washington Hotel, ski area, golf course and adjacent land has a strategic plan that goes on for fifty years for developing the holdings into a high-end resort and the first phase they proposed was on Dartmouth Brook. It was a high-end residential/recreational use. The Ammonoosuc

River flows through Twin Mountain, Carroll and then back into the National Forest and is outstanding resource water. You cannot have degradation on outstanding resource water. We held them to that and we think it was successful. Their consultant did several iterations, multiple configurations and got a development design they were happy with and would serve their clientele. We are satisfied that there isn't going to be any degradation from stormwater coming off of the development. There were major BMPs and they pulled the development back from streams.

Allan Palmer – They did modeling with what the loading before and after would be?

Paul Currier – Yes, and based on that we think it works.

Allan Palmer – For Class A waters we would be asked to hold the loads?

Paul Currier – Yes, with the safety valve that if you really can't do that and you have to have a project for economic development in the area, a process is available.

Allan Palmer – What about water transfers? Are you are saying that if you are proposing a water transfer that it doesn't matter what it is going to be, whether it is going to be 1% or 4%, that is going to be considered significant and you can have no increase in loading?

Paul Currier – You would still have to determine if there is degradation. If the answer is no, then the project can proceed.

Allan Palmer – How do you determine degradation if you do not have the windows to run the calculations on? If you are taking water from one source and bringing it to another, how do you determine if there is degradation or not in the waterbody?

Paul Currier – In the new waterbody, we would have physical and chemical parameters and would do an estimation. You are taking the receiving water's characteristics and mixing it with the transferred water. What is the result?

Allan Palmer – You don't have the 20% window to play with if you are increasing it at all. Isn't that considered degradation? If you are doing a water transfer you can't increase any pollutants without it being considered degradation and going through this.

Paul Currier – That is roughly equivalent to what the old rules say. The old rules only applied to transfers for public water supply and they said that they source water should be at least as good a quality as the receiving water.

Allan Palmer – Is that for all pollutants, or is that just for impaired pollutants?

Paul Currier – All pollutants.

Allan Palmer – If you were discharging into Class B water and the only pollutant that comes into play is arsenic and you can't be within the 20% buffer, you are degrading. Are you going through this process strictly for arsenic or are you are going through it for everything?

Paul Currier – States can do it by designated use but in New Hampshire it is pollutant by pollutant, as most states are.

Ellen Weitzler – If you have to do a social and economic impact evaluation, your trigger is arsenic but when you evaluate the impact, do you also have to consider the economic impact of other degradation, even though it didn't meet the 20% threshold?

Paul Currier – I don't know. I think that the answer is that the analysis is not going to be concise enough so we can narrow it down to arsenic.

Allan Palmer – There are methodologies to evaluate the environmental harm that can be caused by the lower water quality.

Paul Currier – I think that arsenic or any of the toxics are easy. The answer is that more organisms are going to get sick or die because of high concentrations.

Allan Palmer – Then you have to weigh that impact versus the social and economic benefits. Is there a procedure to calculate what the environmental harm is and change that to a dollar figure? At that point you are not looking at individual pollutants but the general picture.

Paul Currier – The rules as written don't require us to translate everything into dollars. That would be a good one to ask Pennsylvania about.

William Schroeder – Who decides that? It says that the Department defines and decides. It is clear that you have tried very hard to be as rational as possible and objective for the standards. It seems that, ultimately, if you ask what is feasible there is judgment about if the social and economic benefits of the proposed project outweigh the environmental harm. You have a lot of criteria to look at for that and there seems to be pros and cons in judgment. What Delphic presence determines that decision?

Paul Currier – Much of the input that either the applicant will be able to gather in support of their request, or that the agency receives when we ask for public comment will be social opinions on the merit of the project or the harm the project is likely to cause. They will be strongly expressed but they won't be particularly quantitative. Those will be the things on which we make our decision. It will depend strongly on the social attitudes towards the project and the perceived benefits.

William Schroeder – In our town there is the impaired Cobbetts Pond and undeveloped land in the watershed and there are people that would like to develop it. I am sure that they will argue that it would be beneficial to the town economically and socially to do it and there will be others that will see that the benefit will not be all that great and there will be concern that the development will cause some impairment. Each individual can decide where they are on that. That is what happened on a vote on rezoning. If zoning isn't the issue and it is up to someone in the Department or Panel to decide, how will you constitute such a panel?

Paul Currier – I am not sure but if there would be a panel, a hearings officer would be the primary point of contact with both the applicant and the public.

Ellen Weitzler – My feeling, given all the technologies now around stormwater management in the region and elsewhere, is that things like subdivisions and resort designs, where the discharge you are worried about is stormwater runoff, can be designed with no degradation. It is not going to be something that can't be designed to allow it. It may change the size, location and scope of these things slightly but if you have a 300 acre parcel somewhere that you want to develop, this will not stop you from doing that. It will come into play somewhere where you have an industrial discharge and you are talking about job creation and potentially high social benefit for a community. That is the kind of project that would come under this scrutiny but I can't see anything involving stormwater runoff even getting to this point.

Paul Currier – That is exactly where we started when we wrote the antidegradation rules. A developer can design something for no degradation and that is what we want them to do. There are provisions that say you don't have to but we want to move through the whole thought process before the developer selects a piece of land for development. Can this be developed without invoking antidegradation policy? We want to attach a high level of scrutiny to projects that do perform degradation, even given the 20% window. AoT rules had simplified methods to estimate impacts.

Mark Hutchins – There are some parameters that are a problematic, such as chloride. Are you going to start a chloride program in Andover to protect the Blackwater from any increase in chloride? Couldn't it get down to that?

Paul Currier – We are feeling our way along with chloride. We have learned a lot from implementing the TMDLs in Windham, Derry, Londonderry and Salem. We have to be flexible on chloride at the moment because the solution for chloride is to stop all development that involves winter maintenance of paved surfaces because there is no treatment for chloride. That doesn't work very well. We are requiring minimization of chloride application and BMPs and ways to further minimize chloride but not sure how we are going to handle that.

Brandon Kernon – I was going to suggest language for any new transfer, or increase of certain transfers, that there be some demonstration of water conservation because it is included in the alternatives analysis here but I think a lot of water systems that deferred maintenance on meters for 30 years, so building a pipe from one lake to another could get you through the alternatives analysis but you're citing what a new surface water withdrawal would require for conservation. Conservation regulations make sense for any new transfer approved under this section, or maybe an increase of a certain threshold.

Paul Currier – That is a good idea, we can refer them to the water conservation rules.

Phil Trowbridge – Are there any other comments on the proposed word changes?

William Schroeder – I had two that were minor word tweaks but to save time I will send them by email. When you are talking about determining the environmental impacts of lower water quality on the Draft Rules under (f) (6), "the reliability factors of proposed treatment technology, if any; and", you could say something like risk and risk mitigation strategies. In a proposal the developer will have some kind of system that will work a particular way and produce a particular result. Under nominal conditions that would be true but it seems like part of the criteria ought to be considering what risks are there that might make the nominal condition not pan out. As an example, if you had a detention

basin in a highway project and it was a certain size and was always going to filter run-off from the road you might want to ask what the chance is of a 50-year storm event overflowing the thing or some other breakdown that causes all your equations to go out the window. This is the risk. It may not happen but if it did it could be real bad.

Phil Trowbridge – Is that specific to the risks related to any kind of treatment technology, risks in general or some kind of outstanding situation?

William Schroeder – In general to a non-standard situation.

Brandon Kernen – Twice in the last few years a water system had to do an emergency transfer. I think New Hampton had to transfer water on an emergency basis. Are there any provisions for that?

Paul Currier – Yes.

Allan Palmer - This is listed as a draft initial proposal, what are the plans?

Paul Currier – The next step is to present it to the Water Council for their approval in October. That starts the process of submitting our initial proposal and requesting a fiscal impact statement from the legislative budget. By the time we do that we to have to have words finalized and dates set for the agency hearing on the rulemaking. We will respond to these comments and the Water Council's comments. The next thing will be an initial proposal that we will send out before Thanksgiving.

Eileen Miller – This sounds like a good procedure to go through. You have the process laid out but the environmental risks and the social and economic impacts but it sounds like it is open at this point.

Paul Currier - It is fairly general but there is a lot more definition than what was in the old rules.

That is thanks to our Legal Unit saying we couldn't put it forward without creating more definition.

We will takes Bill's advice and talk to Pennsylvania about their rules and the success they are having.

Eileen Miller – We don't want to turn this into a politically manipulative thing, not by the Department, but by the public being manipulated by the people involved, for, or against, or all things in between. There is a lot of work to do but it is a good start.

Paul Currier – We have been criticized for Canobie Lake and their desire to transfer water but theirs is a pretty good pilot case.

Allan Palmer – When will the rulemaking start?

Paul Currier – It should start sometime by Thanksgiving.

Allan Palmer – Can we have a more advanced review for the November meeting?

Paul Currier – By the November meeting we will have finalized the text.

2:50 – 3:00 Other Business and Confirm Next Meeting Date

New Chairperson

The next meeting date is Monday, November 23, 2009 at 9:30 a.m. It was previously scheduled for Wednesday, November 25th. The meeting dates for 2010 are as follows: January 27th, March 24th and June 23rd. The meetings have been changed from Tuesday to the fourth Wednesday of the month because of room unavailability on Tuesdays.

- **Malcolm Butler** motioned to adjourn and **William Schroeder** seconded. All were in favor.

Adjourned at 3:00