

Water Quality Standards Advisory Committee

MEETING MINUTES

Thursday, April 14, 2011 1:30 pm – 3:30 pm

Department of Environmental Services

Rooms 112/113/114

29 Hazen Drive, Concord, NH

WQSAC Members Present

Name	Representing	Present	Alternate Present
Dan Blais	Home Builders and Remodelers' Association of NH		
Steve Clifton	Consulting Engineers of NH		
Sam Demeritt	NH Wildlife Federation	Y	
Steve Densberger	Water Council		
Diane Hanley	NH Association of Conservation Commissions and Lakes Management Advisory Committee		
Donna Hanscom	NH Water Pollution Control Association		
John Hodsdon	NH Farm Bureau Federation	Y	
Melissa Hoffer	Conservation Law Foundation		
Kenneth Kimball	Appalachian Mountain Club		
Tracy LaChance	Business and Industry Association	Y	
John Magee	NH Fish & Game Department	Y	
William McDowell	University of New Hampshire		
Mike Metcalf	NH Water Works Association	Y	
Eileen Miller	NH Association of Conservation Districts	Y	
Larry Morse	NH Association of Natural Resource Scientists		
Allan Palmer	Rivers Management Advisory Committee	Y	
Kenneth Rhodes	Associated General Contractors of NH	Y	
Peter Rice	NH Municipal Association		
Dari Sassan	Office of State Planning		
William Schroeder	NH Lakes Association	Y	
Jasen Stock	NH Timberland Owners Association		
Ken Toppin	US Geological Survey		
Michele Tremblay	NH Rivers Council		
John Warner	US Fish & Wildlife Service		
Ellen Weitzler	EPA Region I		

Additional Meeting Attendees

Jason Smith (NH Fish and Game)
Philip Trowbridge (DES)
Paul Currier (DES)
Lisa Fortier (DES)
Shane Csiki (NHGS)
Brandon Kernen (DES)
Gary Abbott (AGC)
Ted Walsh (DES)
Phil Bilodeau (City of Concord)
Steve DelDeo (NHWWA)

Don Ware (Pennichuck)
Derek Durbin (NH Lakes)
Peter Goodwin
Rick Russell (Town of Salem)
Rep. Judith Spang
Rep. Andrew Renzullo
Donald Ware (Town of Hanover)
Bill Arcieri (VHB)
Gregg Comstock (DES)

1) Introductions

The meeting began with a round of introductions.

2) Approval of the 2/10/2011 Meeting Minutes

Bill Schroeder asked for an approval of the minutes of the 2/10/11 meeting. A motion to approve the minutes was made by Sam Demeritt and seconded by John Magee. The motion passed without opposition.

3) Public Hearing on Proposed Changes to Env-Wq 1708.10 and 1708.12

The Public Hearing was opened at 1:45 pm by Philip Trowbridge, who read the following statement:

“This hearing is being held to receive public comment on rules proposed by the Department of Environmental Services regarding alternatives analysis for economic-social importance and water transfers. The Rulemaking Notice for these rules was published in the New Hampshire Rulemaking Register on February 18, 2011 as Notice Number 2011-22. This hearing is being held on the date and at the time and location indicated in that Notice.

Anyone wishing to make oral comments or to submit written comments on the rules for the Department’s consideration may do so during this hearing. Written comments on the rules submitted to the Department by the close of business (4:00 p.m.) on April 25, 2011 also will be considered.

After the close of the comment period, the Department will consider all comments received and will decide whether to revise the rules in response to such comments. The Department will file its final proposed rules for consideration by the Joint Legislative Committee on Administrative Rules. We anticipate that the rules will be on the JLCAR for review at its May 20, 2011 meeting at the earliest, although that date is subject to change.

Briefly, the rules (1) clarify the review process for proposed new or modified activities that are determined (under existing Env-Wq 1708.09) to result in significant lowering of water quality; and (2) replace the incorporation of the EPA’s “Interim Economic Guidance for Water Quality Standards” with state-specific requirements for demonstrating that the economic or social development benefits of a proposed project outweigh the detriment to the environment that will be caused by the project. Revisions to Env-Wq 1708.12 are proposed to clarify the criteria that must be met for approval of new water transfers.

If anyone has any comments, please state your name and affiliation and then proceed with your comments.”

Six people provided testimony at the hearing

<u>Name</u>	<u>Address</u>	<u>Representing</u>
Gary Abbott	Bow, NH	Associated General Contractors
Steve DelDeo	Concord, NH	NH Water Works Association
Philip H. Bilodeau	Concord, NH	City of Concord, NH
Donald Ware	Merrimack, NH	Pennichuck Water Works
Don Ware	Hanover, NH	Town of Hanover, NH
Judith Spang	Durham, NH	State Representative, Lamprey LAC

The testimony provided during the hearing is transcribed below. Note that text surrounded by square brackets was not stated but has been included for clarification.

Gary Abbott (Associated General Contractors)

My name is Gary Abbott and I am the Executive Vice President of the Associated General Contractors of NH. I want to thank Phil [Trowbridge] for discussing these proposed rule changes on the phone with me ahead of time as I had some questions and concerns. We do have our own association environment committee that has not fully vetted this but I am going to take a crack at it, the best that I can, based upon my review, I am bringing forward to other individuals or companies within our organization. We have been struggling with these rules for a long time when it comes to turbidity and other issues regarding degradation of water.

I went back to 1708.10(a)(1), “activity means”, which refers to 1708.02. I went to 1708.02 and it talks about any new or proposed increased activity. That is pretty much the verbatim of a, b, c and d. I represent construction and it is not separated from an activity that is going to be on the site long-term. When you get into social and economic benefits you are talking about the end result, not the result to get there. There needs to be recognition between short-term impact and the continual impact. Just referring to the definition as it is done in this doesn’t clarify the activity that we are doing the social impact on, whether it is end product or the product in process to get the end product.

In Section 2 [1708.10(a)(2)], I have a little struggle with the word fully in “if necessary to fully quantify”. I would prefer to have the word fully struck because I am not sure that the Department’s word “fully” and my interpretation of “fully” mean the same.

There is another section, when you go to (b)(3) [1708.10(b)(3)], with a similar word I would prefer to change. In “proposed project or activity outweigh the environmental harm that could be caused”, I would like to see “environmental impact”. I am not so sure harm is the right word for that because the impact, how long, and the duration under the other sections of rules talks about writing reports on how the impact would be. I think that harm is a misleading term, that it could be a permanent impact.

When it comes to (d) through (e) [1708.10(d)-(e)], and I know I represent consultants, it turns into consultant heaven. How the words in here say “shall describe each of these” and present it to the Department. I don’t think it is appropriate that someone would have to file for impact to tourism if there is no impact to tourism, or have a study of that to be presented. I was hoping for some language to have to submit to be deemed appropriate for the social impact and not

necessarily mandatory, because as this reads, when this gets to (f) [1708.10(f)], that all of those things you will be gauging, whether you accept or deny, will create a lot of work that may not be necessary in the analysis of economic versus environment.

I tried to stick to this but I went back to other sections as they were referred. I went back to 1708.12. I know that wasn't intended. I have a concern under (a) [1708.12(a)], the cross out of "rivers, streams, lakes or ponds, or water used as a public water supply". I will give an inference that I don't think it was the intent of the department. I represent sand and gravel operations that have different types of settling ponds and they transfer water between some of them. How those words are cut out leaves it gray whether some things that are unintended become part of the regulation. I think you are trying to look at waterbodies that are public water supply or a high class of water and those are already intended for degradation and filtering of material. When I saw this crossed out I was concerned that somebody could misinterpret that any waterbody would have to meet this versus a certain level of quality water or specific and so I am raising the issue.

This last item may refer to the second act of rule making. Under 1703.11, which is turbidity, which for us in the construction industry is a major item. If you read 1703.11, under Class A and Class B waters it is none or under 10 NTU above naturally occurring. I believe that section ought to be part of these rules. They are so stringent and unrealistic from the construction side where the EPA has a standard of 280 NTUs. Because construction sites are going to disturb the land we are going to have some disturbance of the water and stormwater. We know that it is not going to be zero. I am from an organization that also has a national organization, which is right now going head to head with EPA over whether 280 is the wrong number. For the state of NH to have 10, and I believe this ought to be fixed because the longer this stays on the books, the less credibility the Department has with the development community. It is obvious, with the circle that I am in, that this is not realistic in the bigger picture. I would like to see that section moved to the EPA standard that is currently in place. I know that we could have further discussions on it but I feel that it is a major item that fits with this degradation of water quality.

I appreciate the opportunity to come before the department and give our comments and if we get additional comments we will give those to you.
(No written testimony was submitted).

Phil Trowbridge – I feel the subject of turbidity is better suited for the second hearing.
Gary Abbott – We can't see any reason to not go to the EPA standard for construction.

Steve DelDeo (NH Water Works Association)

My name is Steve DelDeo and I am the Executive Director of the NH Waterworks Association. I would to thank DES, the Committee and the public at large for the time they put into developing these revised rules. I know it was a lot of work. I will limit my comments to 1708.12. The NH Waterworks and our members feel that there should be an exemption for water suppliers who historically have made transfers and the capability and the mechanisms in place to make transfers. We have a number of water systems in this category. These transfers are critical in order to meet certain demands: drought, low water levels, emergencies, specifically, health requirements and fire protection. You will hear from some of our members on the specifics as

they relate to their individual water systems. With that, I would offer that the NH Waterworks Association would be willing to work with you all in revising the rules, specifically, new language that would exempt water suppliers who are in the category that I mentioned. I would like to thank you all for the opportunity.

(No written comments were submitted at the time of testimony).

Phil Trowbridge – You have the opportunity to submit written comments up until April 25th.

Philip H. Bilodeau (City of Concord, NH)

My name is Phil Bilodeau and I work for the General Services Department for the City of Concord and I have sat in this room many an occasion for a number of years as a member of this Committee. Thank you for taking this opportunity. I will try to paraphrase some of my letter and I will leave a copy of my letter on behalf of the City of Concord.

I am here today representing the City of Concord, primarily to its existing transfer that presently takes place between the Contoocook River and Penacook Lake. The City of Concord serves 12,000 service connections which provide potable water and fire protection to our customers in the City of Concord, a lot of whom are the State Office buildings. Presently, today, if you took a drink in this building you would be drinking City of Concord water. The City of Concord established the transfer of water in 1981, plus or minus months, working with the Water Supply and Pollution Control, which is the predecessor to the Department of Environmental Services, to implement the long-term needs of the City of Concord. There were some droughts that took place in the 60's & 70's which led the City of Concord to investigate the Contoocook River as a supplement to Penacook Lake. We constructed the pump station in 1981 with the approval of the State of NH Water Supply and Pollution Control Commission. Since 1981, we have relied upon the Contoocook River as a backup supply for the City of Concord's Penacook Lake during dry seasons.

From many years the City of Concord, myself, and some of our employees have been actively involved in the Water Quality Standards Advisory Committee, continually taking the position that the existing water transfers should be given an exception to the rules. Rule 1708.12 simply states, as it is printed today, "Transfers shall not be allowed unless all of the following conditions are met". I won't read the conditions because they have all been posted. Phil Trowbridge sent them out to everyone. Our question is what would prevent a future regulator or interested party from asking the City of Concord to demonstrate the conditions. The language needs to be clear to exempt the existing transfers.

I am speaking today, specifically, for the City of Concord. The City of Concord will continue to work with the Department of Environmental Services and this Committee to advance the protection of the valuable resources of safe, potable drinking water within our community and within throughout the state. Thank you.

Don Ware (Pennichuck Water Works)

My name is Don Ware and I am president of Pennichuck Water Works. I did have an opportunity for a short time between Phil [Bilodeau] and Mike [Metcalf] to sit on the Water Quality Standards Advisory Committee and did have some input into what is currently before us.

I want to thank the Committee because I know they've worked hard to develop a set of regulations that will meet the needs of all parties.

Our comments, similar to Concord's, are the concerns with 1708.12 and the lack of specific language relative to the grandfathering of existing transfers. In our case, Pennichuck Water Works has been transferring water from the Merrimack River to the Pennichuck Brook Water system since 1985. That transfer has become a critical part of meeting the community supply needs of the communities of Nashua, portions of Amherst, Merrimack and Hudson. I would like to reiterate and support Phil's [Bilodeau] desire, the City of Concord's desire, to see that there is language specifically added that would grandfather existing transfers, providing that the methods of withdrawal and discharge are not modified and that grandfathering should be for all withdrawals that are in effect at the time that the rule takes effect.

I will be following this up with written comments.

Don Ware (Town of Hanover, NH)

My name is Don Ware and I am the utility engineer for the town of Hanover and I would like to reiterate what has been already said.

Hanover, for the last 50 years has transferred water from one reservoir to another reservoir when needed, during dry times of the year. Back in 1960 they built the one reservoir, that we transfer water from one reservoir to another, and it was for that purpose. We would like to make sure that there is a clause in there to allow Hanover to do what they have been doing for 50 years. We have a treatment plant. When we transfer water we transfer water from a Class A reservoir to another Class A reservoir. Again, we have maybe some aquatic growth in Reservoir 3, the third and upper one, like purple loosestrife, that can be transferred to our other reservoir, which maybe doesn't have purple loosestrife, but we consider that insignificant because we treat the water. That ought to be taken into consideration too. What is the reason for this because this is our drinking water source? We treat it anyway. It is important that it is a Class A water, don't get me wrong, but anything that might be in it we filter out. I would like to say, for Hanover, that we support and reiterate Concord, NH, Waterworks, and Pennichuck.

Phil Trowbridge – For clarification, when you say that you treat the water, you treat what is in the system, you don't treat the water while it is being transferred?

Don Ware – That is right. It is just raw water.

Mr. Ware will submit written testimony by the 25th.

Judith Spang (State Representative, Lamprey LAC)

My name is Judith Spang. I am a state legislator but I am also a past member of the Lamprey Local Advisory Committee. This provision is familiar to me because of a similar provision in the Instream Flow Rules that we have been wrestling over for what seems like half of my adult life. I think that it is critical that clarify the importance of the Water Conservation Plan. I think that the idea behind this is that it is understandable, and probably predictable, that any source water, particularly a public drinking water source, is going to be facing water shortages at one

time or another. The purpose of the Water Conservation Plan is to make sure that there is advanced planning for those emergencies. We need to be able to have these four criteria looked at in advance by every water system when they are determining how much water they are going to take, when they are going to take it, how to minimize the impact, the ecological impact in particular, on their source of their emergency water supply that they are going to be tapping. The Water Conservation Plan makes sure that an emergency is a genuine emergency and something that could not have been prevented by good planning, for example, alternative water supplies, storage of water to help to take of emergencies. I would like to suggest, and I don't know if it is a matter of clarifying the language or expanding on the language, maybe working with the water suppliers so everyone understands fully what the conservation plan is supposed to do and the importance of it for helping with these situations.

The Public Hearing was closed at 2:10 pm after all the testimony had been received. Philip Trowbridge read the following statement:

“Seeing no one else who wishes to comment, this hearing is hereby closed. I remind you that written comments can be submitted on or before *April 25, 2011 at 4:00 pm*. Thank you for coming.”

4) Public Hearing on the Triennial Review of New Hampshire’s Water Quality Standards

The Public Hearing was opened at 2:10 pm by Philip Trowbridge, who read the following statement:

“The Department of Environmental Services is seeking advance public comment to determine if any modifications to New Hampshire’s surface water quality standards are needed. The New Hampshire surface water quality standards consist of RSA 485-A:1-4, 8-11 and Env-Wq 1700, Surface Water Quality Regulations. The Department is seeking suggestions from the public for possible revisions to the standards per 40 CFR 131.20. These suggestions will be considered by the Department’s Water Quality Standards Advisory Committee for future modifications to New Hampshire’s water quality standards.

I need to stress that comments provided in this hearing have no bearing on the active rulemaking process for Env-Wq 1708.10 and 1708.12. Instead, comments will be considered for potential future rulemaking with a time table to be determined.”

At the beginning of the hearing, Paul Carrier asked Gary Abbott if his testimony regarding the turbidity standard in the previous hearing could be transferred to this hearing. Changes to the turbidity standard are more relevant to this hearing than the previous one. Gary Abbott agreed.

Two people provided testimony at the hearing

<u>Name</u>	<u>Address</u>	<u>Representing</u>
Bill Arcieri	VHB	VHB
Ken Rhodes	CLD Engineers	Associated General Contractors

The testimony provided during the hearing is transcribed below.

Bill Arcieri (VHB)

My name is Bill Arcieri and I am a water resource scientist with VHB. I wasn't planning on testifying but I do have suggestion that DES revisit the chloride standard for two reasons, one is the State of Iowa has done some new studies and have come up with some new toxicological information that suggests that chloride toxicity is dampened in the presence of increased hardness and the presence of sulfate concentrations. The other issue is the return frequency that is associated with the EPA recommended standard of not more than once in a three year period, which is a difficult number or frequency to assess when you are dealing with monitoring data. Lastly, to add with that, I am not sure that DES currently has included the one-hour average for acute concentrations in the four day average for chronic criteria.

Bill Schroeder – Are you referring to the chloride standards that have been talked about a fair amount recently with respect to chloride runoff from highway salting and there is currently a standard that is acute and chronic? Do those numbers come from the EPA?

Bill Arcieri – Yes.

Bill Schroeder – You are suggesting that we revisit those numbers?

Bill Arcieri – Yes, for the reasons just stated.

John Hodsdon – Are you suggesting that NH should have more stringent standards on chloride than Iowa for reasons of ecological preservation?

Bill Arcieri – I am suggesting you use the data that Iowa developed which changes the standards. It actually increases the chronic standard but lowers the acute standard based on new toxicological information on various species.

John Hodsdon – You are aware that, because of New Hampshire geology, we have a low chloride which gets into our streams and some species that come from areas that have higher levels of chloride may be invasive if they get into our streams, which they could thrive in if our chloride levels were higher to the detriment of species that are natural here.

Bill Arcieri – Yes, I am suggesting to look at this information here.

Phil Trowbridge – The purpose of the proposal isn't to debate the merit of the proposal but to take in the proposal.

Ken Rhodes (Associated General Contractors)

I am Ken Rhodes and I am a member and vice-chair of the WQSAC. I thought that it might be prudent, as part of the triennial review, to put on the record that this Committee's activity, particularly as they relate to designated uses/classifications and antidegradation, are extremely important going forward. Particularly, as part of the triennial review or other issues that are ongoing or need to be focused and clarified, so that we have a really good platform moving ahead. Without testimony, or at least putting it on the record, it is just a reinforcement of that. He made me do it. Again, I think particularly as some of the rules related to antidegradation and the classification work that this Committee is ongoing with is going to be really beneficial if we can come up with a good rubric. Thank you.

The Public Hearing was closed at 2:30 pm after all the testimony had been received. Philip Trowbridge read the following statement:

“Seeing no one else who wishes to comment, this hearing is hereby closed. I remind you that written comments can be submitted on or before *April 25, 2011 at 4:00 pm*. Thank you for coming.”

5) Other Business

After the public hearing, there was discussion about how the comments regarding water transfers could be addressed. The following points were made:

- It should be clarified that a transfer that has mechanisms in place but no permission to operate would not be grandfathered.
- There are 8-11 existing transfers for public water supplies in NH. There is a list but it should be updated.
- One idea discussed previously is that these transfers would be exempt until a new Water Quality Certification is needed. Another limit would be effects on the source water quality. Transfers cannot expand to the point where they affect the source water.
- Why not use the definition of surface waters of the state instead of ‘waters’.
- Why do existing transfers need to be excluded if they meet the criteria? Antidegradation evaluations take time and resources and are new to most people.
- Doesn’t DES have the authority now to stop transfers that will affect water quality in source and receiving waters using the Water Quality Certification process? Yes, but the new rule makes the process clearer, more explicit.
- Are the water conservation plans from Env-Ws 2101 sufficient to satisfy Rep. Spang’s comments about planning? All of the existing transfers have some sort of water conservation plan already, although they may not fully satisfy Env-Wq 2101. The existing transfers are truly needed, not a result of wasteful practices.
- How is the rule related to the ISF process? ISF sets minimum flows which cannot be violated except in emergencies. Withdrawals need to comply with these minimum flow requirements.
- Next steps
 - DES will review comments and prepare revised language for the June 9 WQSAC meeting
 - DES and NHWWA will work on a list of existing transfers. Other transfers besides water supply need to be added (e.g., transfers for snowmaking)
 - After June WQSAC meeting, the rulemaking proposal will be submitted to JLCAR.

6) Adjourn

The meeting was adjourned at 3:30 pm.