

From: Thomas Mortimer [mailto:mortwater@earthlink.net]
Sent: Wednesday, February 11, 2009 3:03 PM
To: Gaffney, Tim (ECY)
Cc: 'Don Perry'; 'Ken Howe'; 'Fanny Yee'; 'Jim Miller'; 'Blanchard, Larry'; 'Hal Schlomann'
Subject: RE: Rule Advisory Committee Meeting Agenda

Dear Mr. Gaffney,

I have prepared the following general comments on the baseline rule behalf of my municipal clients, which include City of Kent, Whatcom PUD, and the SnoRWA. Due to a fairly hectic workload, I have not been able to devote great detail to my comments, but will provide you my best effort at this time, per general feedback from clients.

Comments:

In general, there is concern that the proposed rules:

- Inadequately and/or fail to define key terms (e.g., whole systems approach)- which is likely to produce confusion and/or interpretative legal conflicts in the future unless addressed. Further, in the absence of their definition, my clients cannot determine their support for the rules.
- Provide for a process, procedures, and project submittals that facially make no accommodation for the scale or magnitude of a project (including potential impacts/public benefits), and are very likely to deter all but largest, most financially solid municipal systems in the state.
- Provide for a feasibility study process that again facially, appear inflexible relative to scale of project, or project sponsor, as well as being fairly costly and onerous to complete. Again, absent state grants, only a limited number of entities will be able to pursue a source option that state policy seeks to address as a statewide source of supply option.
- Provide for no distinction between marine discharge and freshwater discharge projects relative to feasibility analysis, engineering and other project analysis.
- Request a demand analysis of project proponents to show how future needs will be met if reclaimed water is not used. This is confusing – are you demanding information that a proponent advise you of water use if they don't pursue a reuse project at all, or information pertaining to a reuse project that is proposed, but once constructed is not used/or underused by customers? Under any circumstance, these questions do not appear to be based on current practice or the legal authority of the agency to request such analysis as a condition of permitting. Utilities are fully aware that they must evaluate the feasibility of reuse in their water/sewer planning documents. This responsibility is distinct from what the rule is requesting for a feasibility study.
- Per the feasibility study, seek cost analysis of speculative market acceptance and other factors as permit decision issues. It is far from clear that Ecology has the technical resources to challenge or revise the economic and financial modeling that utilities will engage in before even attempting to promote costly reuse projects.

I have no doubt that crafting a rule for reclaimed water is a difficult challenge. Further, we all have to start somewhere, and I respect all the hard work in producing the baseline rule as a strawman. However, If the state is sincere in its desire to promote reclaimed water, it needs to develop a process that has some

hope of being cost effective for middle and small size systems, rather than a highly costly one size fits all administrative procedure that is likely to swamp the financial abilities of many interested, but now likely deterred sewer/water systems. Maybe that is not possible, but if that is the situation, reuse in the state will never achieve its potential.

As a final note, I would like to make a general comment about a broader concern. Marine projects involve no impairment issue and represent projects that in most circumstances, should be feasible. Such projects are likely to occur in coastal areas with higher population densities and greater economic wealth. Freshwater reuse projects are more likely to be a supply option considered by smaller inland jurisdictions with more limited populations and economic bases. However, the hope of such jurisdictions that such projects could aid them in avoiding future moratoria and economic stagnation now appears dubious at best, due to Tribal objections to any diminishment of flows, ESA issues, and an Ecology impairment standard holding that a one molecule reduction of flow of a closed or regulated surface water constitutes unlawful impairment. Unless Ecology can change this latter reality, it should advise the legislature that it cannot, as a matter of current law and policy, promote freshwater reclamation as a viable source option, rather than allowing legislators to continue to have a false impression of actual conditions.

I might also note that the idea that utilities will put capital at risk for reclamation projects that provide little certainty of supply (per interruptible flows) is simply not realistic.

Thank you for your hard work and the opportunity to present these comments.

Tom Mortimer

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Representing City of Kent, Whatcom PUD and SnoRWA

From: Thomas Mortimer [mailto:mortwater@earthlink.net]

Sent: Wednesday, March 11, 2009 3:13 PM

To: Gaffney, Tim (ECY)

Subject: RE: Reclaimed Water Rule Update

Hi Tim,

As a follow-up comment, I concur with John Kount's comment and edit to WAC 173-219A-10 - altering the draft rule language to provide that a water system plan must **evaluate**, rather than **include a feasibility study evaluating opportunities for reclaimed water as part of the submittal.** I have further comments in this regard provided below for your consideration.

1) I don't believe the draft rule language (referenced above per "feasibility study") is consistent with legislative intent per RCW 43.20 and the MWL. The legislative context of this section, as someone involved in bill drafting negotiations, was that reuse opportunities should be surveyed and evaluated for potential future project development— that is a far cry from requiring a technical feasibility study which can cost as much or more than a WSP. Utilities would have strongly opposed this language in the MWL if they knew it would be interpreted by Ecology (or other parties reading the rules) as requiring a highly costly/technical feasibility study for every possible reuse project within their service area. Yikes!!!

2) Water system plans are for water not sewer. While a basic survey and evaluation of potential reuse project opportunities/customers is appropriate as a future supply/planning consideration, a feasibility study should not be presumed required of a water utility unless the evaluation indicates there is a viable prospect – which may more properly result in a feasibility study being prepared for an actual project permit at a future time – or in the context of a sewer plan or regional wastewater plan. Also, water systems serve water – they may not have any access to WWTP's, or be in reasonable proximity to one. A feasibility study should not be necessary to determine reuse is simply not realistic in these circumstances, or where the water system is so small to finance a reuse project, or where existing WWTP's by contract refuse to allow local water (and sewer systems) to develop their own reuse projects and facilities.

3) Your language may invite counties that have no regard for WSP costs and have major reuse agendas to deny a consistency determination of WSPs based on the argument that the WSP's are inconsistent with local comp plans/policies because they do not include a reuse technical feasibility study for the universe of possible reuse customers within their service area –or to require one as a condition of a WSP consistency determination. This is of real concern.

4) The term **evaluation** is the correct one (vs. feasibility study) because if a water system operator is inland, and for all practical purposes precluded from effluent reuse due to a RCW 90.03.380 impairment standard, or stream closure/minimum flow – where Ecology staff without rule or law, but per policy, currently applies the same standard (irrespective of DOE impairment guidelines), there is no point in developing a costly feasibility study. A simple evaluation and discussion of regulatory/legal barriers should suffice in explaining why reuse cannot occur or is not cost effective to pursue. Further, if there are no potential reuse customers of necessary size to make reuse cost effective to develop, or within a reasonable distance making treatment/transmission of reuse water viable, this is fairly intuitive and easy to determine without a feasibility study.

Thanks for the opportunity to make further comment. I'm sure you are sensitive and aware of these issues but wanted to make sure they become part of your consideration and record.

Tom Mortimer
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