

**CLARK COUNTY
CLEAN WATER COMMISSION
Meeting Notes**

Wednesday, December 3, 2008
6:30 – 8:30 P.M.

Public Works Operations Conference Room B-1
4700 NE 78th Street, Vancouver

Call to Order

Clark County Clean Water Commission Members Present

Don Moe, David Morgan, Carl Keller, Virginia van Breemen, Susan Rasmussen, Bob Even, Patty Page, Art Stubbs, Bill Owen

Clark County Clean Water Commission Members Absent

None

Clark County Staff

Earl Rowell, Trista Kobluskie, Jeff Schnabel, Ron Wierenga

Public

Greg Winters, Department of Ecology; Michael Andersen, *The Columbian*

Agenda and Materials Review

1. Agenda
2. November 5, 2008 meeting notes
3. October 1, 2008 revised meeting notes
4. Clean Water Commission (CWC) 2008 calendar

Approval

The November meeting notes were approved as submitted.

Communications with the Public

Mr. Rowell reminded all about the December 8 and December 16 hearings by the Board of County Commissioners (BOCC) to consider adopting the revised stormwater and erosion control ordinance, the revised water quality ordinance, and other related code revisions and manuals. Mr. Owen encouraged all to attend at least one of the hearings.

Mr. Rowell introduced Ron Wierenga as the new Clean Water Program Manager beginning December 15. Mr. Owen asked if Mr. Wierenga will be the liaison to the CWC. Mr. Wierenga replied that for the near future Mr. Rowell will continue as the liaison.

Mrs. Rasmussen relayed her discussions with rural landowners who contacted her about a recent mailing from the Clean Water Program (CWP). The letter requested entry to property for the purpose of stream assessments, and many owners were concerned about the county snooping around. Mr. Schnabel replied that the program makes every effort to address concerns, and does not send staff or consultants to spy. Of 1,300 letters mailed this year, he has received 40 phone calls, and about 15 have barred the county from entering. Others had questions answered or concerns such as dogs.



Mr. Schnabel described the stream assessment process. Staff walks up the stream near the bank looking for problems such as erosion, invasive vegetation, and for opportunities for capital projects. Mr. Stubbs asked if the property owner could accompany staff. Mr. Schnabel said that they could, but time constraints prevent staff from making appointments to enter all 1,300 properties. Mr. Keller asked if it is coordinated with state or federal redd surveys. Mr. Schnabel said no because most of the streams segments are quite impacted already and do not have salmon runs. Findings such as fish passage barriers are shared with Fish & Wildlife and other agencies. Mr. Owen asked why walk streams in winter when flows are high. Mr. Schnabel replied that brush and stinging nettle are less. Crews do not go out when flows might be dangerously high, such as after a storm.

Public Comments

Mr. Winters stated that he will attend the adoption hearings mentioned previously.

Mr. Stubbs asked for an update on Ecology's opinion of the ordinance. Mr. Winters replied that the county already knows that Ecology does not agree with some of the provisions in the drafts. Ecology will take no action until the ordinances are actually adopted; then higher-ups in Ecology will make some decisions.

Mr. Owen asked about Snohomish County. Mr. Winters replied that Ecology required substantial revisions to Snohomish County's proposed manual.

Mr. Moe stated that City of Vancouver is holding hearings to adopt new stormwater standards in advance of the NPDES Phase II deadline.

Updates

2009-10 Budget

Mr. Rowell reviewed the handout from September 11, 2008 that summarizes CWC input into the budget development process. He warned that some of the specific dollar amounts have changed since then because of the county budget crisis.

For the Capital budget, the county is implementing several capital projects and a lot of capital planning.

For the Monitoring budget, the county has hired USGS to do the suggested neighborhood monitoring in 2009 and 2010.

For the Education & Outreach budget, staff agreed with most of the comments made by CWC.

The group discussed the Pet Waste Program, staffed by an AmeriCorps volunteer. It is required by the permit, so it does warrant that amount of investment.

Ms. Page asked if Watershed Stewards could make the bioswale slideshow and tours. Mr. Rowell: in theory, yes. Mr. Owen asked if the Watershed Stewards budget would increase as suggested by the CWC. Mr. Rowell replied that he could not be sure because of the budget difficulties, but it did not seem likely.

Mr. Rowell stated that in the permit, the county must allow LID. Once that happens, LID can be encouraged in the community.

Mr. Moe asked if the county has an inventory of developed areas discharging directly to streams with no water quality treatment. He recommended putting more LID curb extensions in those areas. Mr. Rowell replied that the sites chosen so far had no stormwater infrastructure at all. Mr. Schnabel replied that program staff generally knows what areas were developed when water quality treatment was not used. Also, the Stormwater Needs Assessment Program (SNAP) partly addresses it. Mr. Wierenga: updated mapping, which the program is working on, will help identify those areas, too. Mr. Moe clarified that it is somewhat based on institutional knowledge. Mr. Wierenga said the program is working on creating a ready list of projects to build.

For the Regulation and Enforcement budget, the program cannot implement the CWC suggestion to modify the code enforcement fines because those are defined by county code. The best way to address violations is the stop work order. Weekend staff will not be hired; the county currently has a hiring freeze.

For the Maintenance and Operations budget, the CWC is concerned with cost of maintaining stormwater filter vaults. Mr. Moe verified that the cartridge replacement cost includes the cartridge plus labor.

For Administration and Coordination budget, funding for the new administrative staff is coming from the capital balance. The BOCC does not support pulling funding from the Endangered Species Act program. The billing cost of the fee will decrease, as hoped by the CWC. And the county continues to coordinate with cities, as hoped by the CWC. Mr. Owen hoped that the coordination would turn into programmatic coordination across jurisdictions on what is best for each watershed. Mr. Rowell agreed that more work needs to be done.

Mr. Owen complimented Mr. Rowell on including the CWC in budget deliberations. It's the first time in his six years on the commission that it has happened to this level.

Old Business

Officers

Mr. Owen opened the floor for nominations for Chair. Mr. Owen nominated Ms. Page. Ms. Page declined.

Mr. Morgan and Mr. Keller advocated for a seasoned member of the commission to take the chair. Mr. Owen announced that he does not plan to continue on the commission at all. Mr. Moe regretted the loss. Mr. Stubbs advocated for somebody with a fresh perspective. Mr. Moe agreed to take the chair in 2010 if Mr. Stubbs would take it in 2009. Mr. Even announced that he may or may not remain on the commission, so he withdrew from the election for vice chair.

Mr. Owen nominated Mr. Stubbs as Chair. All were in favor. Mr. Owen nominated Mr. Moe as Vice Chair. All were in favor.

Proposed Stormwater Codes & Manuals

Mr. Owen opened the floor for motions to approve the current proposed ordinance revisions and manuals.

Motion 2008-12-01

Mr. Morgan moved to adopt the proposed ordinance revisions and manuals. Mr. Stubbs seconded.

Discussion

Ms. Page wanted to give approval to the new regulations pending the approval of Department of Ecology because some items still need to be hammered out. Mr. Morgan said they would go back to Ecology. Mr. Winters concurred that, as written, some provisions of the revised ordinances and manual will not be approved by Ecology. Ms. Page did not want to approve something that Ecology will not approve. Mr. Wierenga said the BOCC may adopt the ordinance as proposed with our without Ecology's approval. Ms. Page said that as an advisory commission to the BOCC, this is their chance to stand up and say, "No, you're not doing it right, yet." Mr. Winters added that Clark County will be in violation of its NPDES permit if it adopts the ordinances and manuals as currently proposed.

Mr. Morgan withdrew the motion.

Mr. Keller asked about the provisions that are not approvable. Mr. Winters: they are engineering differences. Mr. Wierenga described the two differences:

- The county's flow control standard models the pre-developed condition as the site conditions that created the least runoff since 1955, whereas Ecology requires the pre-developed site condition to be modeled as forested.
- The county did not include a threshold that triggers flow control for infill development that creates a 0.1 cfs increase in flow from the site.

Mr. Winters complimented the county on other aspects of meeting the permit, such as outstanding proposals for BMP monitoring.

Mr. Winters stated that Ecology will not take a stand until the ordinances are passed, but likely will issue a notice of violation if they are adopted as written. The county also will be vulnerable to third-party lawsuits.

Mr. Moe said that the difference in pre-developed condition is the difference between matching runoff rates from 50 years ago (the proposed county standard) and from 400 years ago (the Ecology standard). Mr. Winters: matching a natural forested condition. Mr. Stubbs asked how that is possible. Ms. van Breemen said that some Native Americans burned the forests. Mrs. Rasmussen said that a lot of it was under cultivation for agriculture. Mr. Moe asked if any other Phase I jurisdiction attempted to bypass the forested condition requirement. None did. Mr. Moe stated that Phase II jurisdictions appealed the forested condition to the Pollution Control Hearings Board, and he wondered where the appeal stands. Mr. Winters: the hearings were in October and have not yet been decided, but Ecology has won all the appeals, except the appeal to make the language on low impact development stronger.

Ms. Page clarified that the forested standard only applies to new development and redevelopment, so a field is OK. Mr. Winters said there is an agricultural exception; the permit is very complex. Ms. Page said the developers and the environmentalists must be friends. Mr. Winters said the approach devised by Ecology is a compromise between those who don't want anything and those who want everything. He reminded the group that the permit allows the flow control standard to be met using another method, such as basin study data and a basin plan, but the county has not submitted data to justify the 1955 standard.

Mr. Owen stated that he personally does not like the 1955 standard and prefers the forested condition. It has been widely known in the stormwater management industry for years that it is best to address stormwater at its source, to replenish the groundwater and to reduce higher velocities entering streams. More progressive utilities and jurisdictions use that approach. However, he stated that he respects the public process that went on for 18 months and included two CWC members on the Stakeholder Advisory Committee, even though he did not like the outcome. He recommended endorsing the draft documents.

Mr. Stubbs agreed, saying that compromises have been made through a long process. He stated that he had not been aware during the process that Ecology had hard and fast rules about what would be acceptable under the permit. He recommended endorsing the draft documents.

Ms. Page asked Mr. Moe and Mr. Stubbs if they were satisfied with the outcomes. Mr. Stubbs was, and he stated that everybody at the table had input. Mr. Moe stated that nobody was happy. He said that the objections to the forested condition came from the development community because of land costs for stormwater management and from the BOCC because it would affect the ability to meet density requirements within the urban growth boundary (UGB) under the Growth Management Act (GMA).

Mr. Stubbs said that the county came up with provisions that were more economically feasible than those Ecology devised. He believed that for redevelopment, some improvement is better than leaving the property sit with no stormwater controls whatsoever.

Mr. Winters said that Ecology clearly stated in August that the two provisions, along with other language that since has been adjusted, would not meet permit requirements. Mr. Moe pointed out that staff and several members of the Stakeholder Advisory Committee knew that the two proposals did not meet conditions of the permit, but staff received direction from the Board of County Commissioners to keep the provisions in. The BOCC thought the two provisions would take too much land. Mr. Wierenga agreed that Ecology had been clear that the county's proposed 1955 pre-development condition and the elimination of the 0.1 cfs increase in flow trigger were not approvable.

Mr. Moe asked if the advisory committees voted to support the draft documents after reviewing Ecology's comments. Ms. Kobluskie answered that SAC did not reconvene subsequent to Ecology's comments, but TAC reviewed them thoroughly. TAC did not vote, however.

Ms. Page argued that recommending the BOCC adopt a fully compliant ordinance would support the work of SAC and TAC. Mr. Morgan thought it seemed crazy to recommend that Clark County adopt ordinances that would violate a permit issued by a state agency. Mr. Keller said that the county could justify its reasons for the differences between its ordinances and Ecology's requirements; if it is a sound document, move forward, and then state the reasons why. Mr. Winters: Ecology did not accept the two provisions because the county did not provide data, such as basin studies, to support the differences. Ms. Page said the county already had a chance to justify it, and did not. Mr. Moe asked if the Clean Water Program would end up paying to defending the county in a lawsuit if sued. It is a possibility.

Mr. Keller asked if the issues could be resolved in a timely manner. Mr. Wierenga said the BOCC would be voting whether or not to adopt on December 16th, so not before then. Mr. Winters stated that the county is already out of compliance with the permit because the deadline for adopting a compliant ordinance was August 16, 2008, so no. Mr. Keller argued that the

county is earnestly trying to work things out. Does the county feel it can be compliant within a reasonable timeline? Mr. Wierenga: something has to be formalized, and we're doing a back and forth now. Until a decision is made, and documents are adopted, we don't know what will happen next. Even though we're out of compliance by being late, once the county adopts a non-compliant ordinance, Ecology will say the county is *really* out of compliance. It is reasonable to say we could change the ordinance fairly quickly, but we don't know how long that might take.

Ms. Page said if the CWC recommends adopting a compliant ordinance, and the BOCC agrees and directs staff to begin working to propose a compliant ordinance, then the county will be in a better position to defend against lawsuits. Mr. Winters thought that private parties would wait to file suit until the county adopts a non-compliant ordinance. Ms. Page said that if the BOCC does not adopt the current proposed drafts, and directs staff to correct the deficiencies, then it would demonstrate goodwill to those waiting to sue. Mr. Stubbs suggested recommending that the BOCC adopt the ordinance with the stipulation that the two items in question be changed to comply with Ecology. Afterwards, then begin fighting with Ecology on those two standards, possibly by providing data that demonstrates the county can meet the standards in other ways. Ms. van Breemen agreed. Mr. Moe agreed.

Motion 2008-12-02

Ms. Page moved to recommend that the BOCC adopt the new ordinances and manuals when the sections which fail to comply with the requirements of the Phase I municipal stormwater NPDES permit are made to comply.

Without a second, the motion died.

Motion 2008-12-03

Mr. Morgan moved to urge the county to modify the new manual and ordinances to be in compliance with Ecology's basic requirements and then to adopt them.

No second, but it appeared that several agreed generally with the concept.

The chair called a vote. The motion passed 7 to 2 with Mrs. Rasmussen and Mr. Even opposing.

Communications with BOCC

Mr. Owen tabled the topic until the next meeting.

Community Education & CWP Public Relations via *The Columbian*

Mr. Owen welcomed Mr. Andersen, a reporter for *The Columbian*. Ms. Page summarized a meeting she and Mr. Owen had with Mr. Andersen a few weeks ago. They hoped *The Columbian's* coverage of water quality issues could be framed so that the public finds water quality regulations to be for the common good instead of ridiculous. Mr. Owen praised *The Columbian's* willingness to meet and accept input. Ms. Page praised Mr. Andersen for attending the meeting. They did learn that reporters do not write their own headlines. Mr. Owen asked the group for comments on working with *The Columbian* in the future. Mrs. Rasmussen stated that there had never been so much public interest as when Mr. Andersen wrote about car washing. Mr. Andersen appreciated members of the commission sharing their concerns.

Status of Utility Development

No change.

Other

Mr. Owen signed a letter on behalf of the Clean Water Commission supporting Public Health in seeking a Community Development Block Grant for loans to repair failing septic systems. Mr. Morgan urged Public Health to look into composting toilets in situations where septic systems are failing.

New Business

Method to Evaluate Clean Water Program

Mr. Owen asked Mr. Moe for thoughts on how to evaluate the Clean Water Program. Mr. Moe said he'd struggled to find another way. Mr. Owen suggested consulting the 2008 work plan, which has performance measures. Another way is to evaluate the trend at the long-term monitoring stations. Mr. Moe clarified that the purpose of the evaluation is to evaluate the Clean Water Program's performance in 2008.

Mr. Stubbs said that Commissioner Morris recently made a pointed comment, "Can you show me a chart that the streams are better because of this program." Mr. Stubbs thought it wouldn't be possible to answer that unless each stream in the county were monitored, yet everybody wants to know the answer. Mr. Wierenga said they were cleaner than they were 10 years ago.

Ms. Page said that they do not know how to evaluate the program, which is why she requested help from a consultant in the past. Mr. Morgan said that the SWOT is a common method. Mr. Owen thought it wasn't very valuable, but it could be done if others wanted it. Mr. Moe: it was more of a gut feel, but if we got information in advance, it would help. Mr. Owen: work plan metrics and monitoring sites data will be helpful, which must be provided by staff.

The evaluation will be January 7, 2009 from 6:00 – 7:00, and the regular meeting will be held afterwards until 8:30. Mr. Rowell will provide the third quarter metrics.

2008 Annual Report

Mr. Owen needs all sections by the January meeting. Please send to him in e-mail.

Open Forum for Commissioners

Mr. Owen noted that the Board of County Commissioners did not approve the 2009-2014 Stormwater Capital Improvement Program primarily because Commissioner Morris had a basic question that could not be answered. It could be answered in the future if the county put together a gross-level pollutant-loading GIS model to know which streams are the most polluted. Mr. Rowell said that in lieu of that, a simple map based on data from the Stream Health Report could identify poor, fair, and good-condition streams.

Mrs. Rasmussen has also been getting phone calls about the December 8 meeting in Battle Ground. She was not sure how to prepare. Mr. Owen recommended going through some of the items on the www.clark.wa.gov/stormwater web site and a summary from a commission packet over a year ago. Mrs. Rasmussen said that the documents on the web site were too technical for many people to understand. Ms. Kobluskie will ensure that the informational documents that are in plain English are called out in a separate box to facilitate review.

The group complimented Mr. Owen on his work as Chair for three years.

Adjourn

Respectfully Submitted,

Trista Kobluskie

Action Items

- Write and e-mail to Mr. Owen assigned sections of the 2008 Annual Report – all Clean Water Commissioners
- Provide 3rd quarter performance measures to CWC – Mr. Rowell
- Provide long-term monitoring station data and/or trends to CWC – CWP staff
- Update the www.clark.wa.gov/stormwater page to call out informational documents that are in plain English – Ms. Kobluskie

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