

HPA Citizens Advisory Group – Meeting Notes

Date: September 26, 2019

Time: 10 am to 3 pm

Place: Washington State PUD Association, Olympia, Washington

Summary: Follow-up actions

| Item | Follow-up |
|--|---|
| Summary of budget request for compliance staff | Schedule WDFW budget staff for November meeting |
| Teresa’s notes from rule discussion | Teresa will send draft to group |
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Attendance:

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|-------------------|----------------|
| Amy Carey (phone) | Jennie Rotsten |
| Kim McDonald | Jim Shellooe |
| Ted Burns | Norm Peck |
| Josie Cummings | Tina Whitman |
| Edrie Risdon | Steve West |
| | |

Staff: Randi Thurston, Teresa Scott; Pat Chapman; Neil Aaland (Facilitator)

Welcome/Introductions/Agenda Review: Neil Aaland, Facilitator, opened the meeting. Introductions were made around the room. The agenda was reviewed.

Rulemaking: implementing civil compliance enhancements from 2SHB 1579: Teresa Scott gave a powerpoint presentation on this topic. She reviewed 2SHB 1579, section 8, paragraph 6. This bill added civil compliance enhancements. Some questions were then posed to the CAG to frame the discussion. Comments and questions included:

- Does WDFW keep track of civil violations? [No; no civil penalties have been issued. It was noted that some permits have had revisions for mitigation.]
- Norm recommends starting such tracking from here on. Consider using Ecology’s ERTS system.
- Counties typically track such matters
- Are violations the permittee’s responsibility? [Good question. That topic is open right now.]
- Everyone associated with the permit should be included in penalties.
- Would the statute support strict joint and several liability? [The regulations are being set up with that understanding.]
- A CR-101 has been filed; this officially starts the rulemaking process
- Josie noted that BIAW has filed a lawsuit against the Governor’s veto of a section of the law; they believe WDFW doesn’t have authority to adopt a rule until that question is answered. A hearing is scheduled for November 22 in Thurston County Superior Court.
- With regard to a question about Endangered Species Act (ESA) compliance, WDFW does not believe it can address ESA within the Hydraulic Code.
 - Pat Chapman thinks we should make a judgement call on the value of the species, whether it’s listed or not
- Teresa asked whether a history of violations should count for more of a penalty?
 - Norm recommends including knowledge as a factor in determining penalty
 - Kim thinks knowledge is definitely a factor
- Steve thinks whether an emergency exists should be a factor
- Tina noted that WDFW will HAVE to track

- Norm thinks the tracking should be publicly available; Tina agreed
- Is WDFW going to staff up for compliance? [WDFW currently does not have staff for this. They may have a supplemental budget request for compliance staff; 8 inspectors and one manager. They can have WDFW budget staff come to the November meeting and discuss.]
- Norm thinks SEPA/NEPA review will be important

Teresa reviewed Ecology's water quality/pollution enforcement penalties. This is under the state water quality statutes, not federal NPDES authority. She then reviewed penalties under DNR forest practices. They have a maximum penalty of \$10,000; they use "repairability" as a factor.

Norm thinks knowledge and intent should be considered separately; Steve agreed.

Issue of economic benefit was discussed. Penalties need to include property owner. The benefit will be complicated to address; it is hard to determine the value of an economic benefit. The statute provides reduction of penalty under certain circumstances.

Kim emphasized the education piece, reminding people of her comment last meeting about putting billboard up saying, "you need a permit!". Ted agrees; his group would be willing to share costs with DFW in sending postcards to lake Washington property owners, since their business operates there. Tina likes the idea of mitigation that includes removal.

Teresa will transcribe and send out her notes for review; DFW can take comments until Friday, October 18. Send any comments directly to Teresa. (Teresa.Scott@dfw.wa.gov)

Lunch break was taken.

ORIA: Aaron Everett, Executive Director, and Penny Rarick, Regulatory Improvement Consultant, presented this topic. ORIA has been in existence for about 20 years. It started as the Office of Permit Assistance at Ecology and has changed/added focus over time. It currently has three main responsibilities:

1. Call center/in-person assistance;
2. Small business assistance;
3. Regulatory improvement.

Their website is business.wa.gov.

They also help specific projects through the regulatory process. He gave an example of a proposed surf park in the Yakima area as one they have assisted. ORIA has also been assigned tasks from the legislature. For example, they had a task to determine how long it takes to approve permits.

Aaron talked about JARPA (Joint Aquatic Resources Permit Application). When it was created 25 years ago, the notion was simplifying the approval process by having one form. It was never authorized in statute, it was something that agencies took on under their own initiative. ORIA is currently helping with efforts to keep one form. One issue is the Army COE cannot "cede governmental authority to the state".

Questions and comments:

- ORIA does not make any permit decisions; they provide general permit answers when contacted for information
- Randi said that Tony Warfield told her the Port of Tacoma has an online permit system, and it seems like recreating systems isn't useful. Aaron says they cannot take that on

- Ted says some local governments are not meeting required timeframes for permit approval. Aaron said that's also something he cannot take on.
- Does ORIA have statutory authority for the three primary areas Aaron earlier mentioned? [It's a patchwork of directives; the Governor can designate a "project of statewide significance;" successive governors and legislatures have added priorities]
- Teresa said a lot of people don't know they need an HPA; she likes the changes to the website and hopes ORIA can help get the word out
- Penny noted that ORIA can help with public materials and making them more readable by helping to find someone with the right skill set
- Would it take a strong effort to get ORIA back in to JARPA? [Aaron said they're working right now on the technical end of things; would need to go to Legislature and ask for funding to support.]

The discussion concluded with Aaron saying he would need more information about the issue with JARPA and would need some requests from agencies that JARPA needs help before he could go forward.

Roundtable:

- Kim wonders when a briefing by Tim Quinn on the use of data on suction dredge mining can happen; Randi said there is still legislation pending from last session, and they don't want to do this if the legislation passes. If it doesn't pass, they'll re-consider.
- Norm noted that regarding the need to identify messaging and target audiences, might consider hiring temporary outreach specialists. He also wonders if DFW is going to pursue other legislation on penalties. Randi doesn't know the answer.
- Teresa noted that, regarding the rulemaking, the next step is scoping what the rule will say. There will be draft rule language produced after that.

The meeting adjourned at 2:10 pm.

Next meeting: November 26, 2019 – Location TBD