

Stormwater Advisory Board (SWAB)

January 6, 2012; Friday, 3:00 PM

SWAB Meeting Minutes

W.A.T.E.R. Center, 101 E Pawnee, Wichita, KS

Present: Chris Bohm, Chair; Jeff Bradley, Member; Mitch (M S) Mitchell, Member; Richard Basore, ex-officio Member; David Leyh, Member; Jim Weber, Member; Hoyt Hillman, Member; Larry Henry, Member; Scott Lindebak, Support Staff; Colleen Shirley, SWAB Secretary; **OTHERS:** Joe Hickle, Don Henry, Jim Hardesty, Mark Hall **Absent:** Gary Oborny, Member; Joe Pajor, Member

Regular Agenda

I. Welcome

1. Meeting called to order at 3:01 P.M. by Chris, SWAB chair.

II. Review and Approve/Revise Minutes from December 9, 2011 Meeting

1. Motion by Jim: To approve Minutes from December 9th meeting; seconded by David
2. Comment by Chris: Question to Scott regarding a blank on page 2, regarding discussion on the stormwater ordinance, any issue. Scott – no issue
3. Vote: Unanimous approval
4. Resolved: The minutes of the December 9, 2011 meeting are approved and entered into the SWAB records.

III. SUB-COMMITTEE REPORTS

1. Operations and Maintenance (O & M) Committee

Jim stated committee had a brief meeting right before this meeting, first one; discussion consisted of who could perform inspections.

Chris commented he remembers that being an outstanding issue in previous discussions, another issue is initial contact with the owner once the facility is permitted or when it's in full operation. Once it's been approved by the city what does the owner receive from the City saying "the clock has started on your permit?" Jim responded they plan to schedule meetings soon to get everything going.

2. Liaison Committee

Chris stated this committee will reach out to communities of similar size in the Midwest. Any report?

Jeff responded the committee has not formally met yet. Commented he is looking for proprietary devices similar to Wichita; looking for large scale treatment structures, large scale treatment devices to see what's available.

Hoyt remarked he attended a couple REAP meetings and asked similar questions of the regional area, still looking for appropriate spots. He is looking forward to the first meeting.

3. Downstream Channel Protection Committee

Chris stated the committee met a couple of times, brought attention to the hand-out distributed at beginning of the meeting: **Proposed Modification to the Requirement for Downstream Channel Protection Volume, Section 3.5 of the "Wichita-Sedgwick County Stormwater Manual"**. Noted verbiage came about after discussion amongst the committee on different occasions; this would replace be an addendum to the language in the manual. Chris read hand-out section 1: "The City of Wichita Storm Water Division shall create and maintain the **Map of Downstream Protection Volume Watersheds and Channels**. Downstream long-term channel protection shall be provided for applicable developments and redevelopments in watersheds delineated on this map prior

to discharge from the new/redevelopment site in accordance with the downstream stabilization standards and criteria provided in the Storm Water Manual.” Commented the map would probably be in City’s GIS system at some point. Continued reading section 2: “The requirement to design and provide **Downstream Channel Protection Volume** shall be required for new developments and redevelopments that will create or add five acres or greater of impervious cover that are part of a larger common plan of development or sale that will result in five acres or greater of impervious cover.” Follow-up comment, current verbiage is one acre; this will change it to five acres. It would prevent situation of ten 4.9 acre lots side by side. Downstream Channel Protection Committee brings this to the SWAB for consideration and possible motion to forward to Alan King, Public Works Director, for consideration. Chris asked Scott: Would Mr. King have the authority to adopt this as an addendum to the Stormwater Manual? It would be easier to handle the manual than to change the ordinance, it could be modified again the future if warranted.

Jim asked if there would be any guidance given to the City on how to set-up the map? Chris deferred response to Scott.

Scott replied the committee will actually go out and physically review areas which could be problematic, follow-up with the GIS map based on the experience. Said they plan on going into the field to spot-verify so it’s not just Stormwater Management producing the maps requiring everyone to abide by.

David remarked coding the map based on a level of severity: high, medium and low or to use a point system would make sense in order to differentiate areas that have the most need and to get the best improvements. Scott mentioned he thinks it’s a great idea.

Richard pointed out; as “devil’s advocate”: how to handle a development that’s going to deal with (for example) three acres impervious right next to a stream or right above a confluence where erosion is occurring right downstream from it? It’s under the five acres; would there be a way to pull in water quality or an erosion backer in the statement, 4.9 acres could have a real impact if you’re in the wrong place.

Chris explained this would not eliminate the need for water quality treatment, no change to that. Said it is only for downstream channel protection volume. In the example provided by Richard, the manual would say you do not need stormwater detention because of its proximity to the receiving channel, if you meet the collective upstream acreage requirements. Water quality would be required on the site. Not sure how the map could be created to address that situation; to a larger degree the whole idea is when you develop or are seeking to purchase a piece of property, look on the map and see if you’re in a sensitive area and know instantly if you have to provide downstream channel protection volume if it’s five acres or larger in that basin. It would be a known; you could factor the information into your pricing or development costs; providing consistency when looking at a property to know what to do or what will be expected.

Hoyt expanded on the explanation provided by Chris; specifically talks about downstream channel protection volume for five acres of impervious cover, it does not exempt the one plus acre requirement for drainage or any kind of issue we’ve seen in the past for control and containment – this just relates to the downstream channel protection volume. Hoyt continued analysis; Richard provided a good example of a situation where the City – in this case – would be responsible for improving/modifying some of the areas rather than the developer if something had to be done. Correct?

Scott responded the City is necessarily responsible, if this is private property it would be the private landowner’s responsibility to maintain their stream or drainage system.

Hoyt asked how do we cite, inform or work with the landowner when there is significant erosion taking place?

Chris said the mapping would hopefully provide this. The sensitive channels and streams in town would be identified on the map and you would know instantly if providing the downstream channel protection volume was necessary. The way it is worded, it would have to be five acres or more and meet two tests; 1) It's in a sensitive basin (if not, there's no downstream channel protection volume) and; 2) it's over five acres.

Hoyt and David commented – if there are problems with it extending past your property line, would the responsibility of dumping the extra water extend to working with neighbors to accommodate the volume? They asked if it may be necessary to have a community effort where the City would act as a control agent.

Scott said the ordinance gives some flexibility if people can't meet the exact requirements. The ordinance offers options. They would require a site-specific plan and would be handled on a case-by-case basis; the City would be open to alternatives.

Jim asked for clarification: then it would not be necessary to do downstream channel protection under any circumstances unless you were in one of the identified basins? Chris answered that was #1, yes. Jim inquired of Scott, what kind of five acre impervious - what's an average percentage in Urban...75%? Scott replied more like 7/8s.

Hoyt said a good example is the recent South Fork development which has come through the city and was being resubmitted to the county. They addressed the property on site and had to follow a strip approximately a mile downstream to the turnpike and then create a better quality bridge and an outlet for the water flow down, increasing the volume capacity of the channel so it could handle future water runoff. This would be an excellent example; maybe it would be good example to put in the notes.

Jeff said the map would identify those areas and become a tool developers could use and seek options. He asked how to provide a sense of fairness to each developer? How is the actual scope determined for the improvement? (I.e. the developer can say "I've upheld my commitment to the City, but I'm not clear on the final scope.")

Chris answered it would be a case where the downstream protection storage claim on the site couldn't be met; which is #1, if you can do it you have to. In the case where it's difficult and you can prove the difficulty, you go to step #2 and work with the governing agency.

Scott expanded; there are certain circumstances where land is polluted or has groundwater or saltwater contamination and it's better to cap the site rather than do on-site improvements. It may be worthwhile for the committee to look at other options in those circumstances, what is feasible. Scott stated he could see where it would be difficult to know when to stop or start a project, if you start too soon it ends up washing out everything you put in. It would be a case-by-case basis too.

David asked what the defining trigger would be for determination. What would be looked at? If it's polluted and best to cap, how do you respond to the developer who comes to you and says it's not going to work for economic or whatever reasons?

Scott replied; on a large site (i.e. 7 or 8 acre site) where are you going to put five acres of impervious? Probably going to say the developer will need to have some room to implement that water quality; that's the treatment for channel protection. If you have that much land, you will probably have to incorporate it in the build.

Hoyt asked how this would apply to the Brownfield Development like the old Derby Oilfield Facility. What would happen there if you want to put in an industrial park or something? Scott answered the permit does not allow us to discharge developed runoff in certain areas and a specific industrial discharge permit from KDHE would be needed. There are other permits they need to achieve and they would trump our permits.

David asked how we create a list of 'triggers'? Economical impact is not really or not always a valid reason. What parameters/criteria would we have to tell the developer you must meet "x" number of these triggers?

Chris stated these could be action items for the Downstream Channel Protection Committee's list. First, help in making the sensitive channels map. Second, we should collectively get ideas for the exchange. A) What do you do in a situation where you can't do the downstream protection volume on site? B) What constitutes not being able to do downstream protection on site? Basically; what is acceptable remediation and at what magnitude, need consistency.

Jim – motion to endorse this language and forward it to the Director of Public Works and Utilities for his review and comment while the committee works on supplemental information to set up criteria for mapping and identify a list of triggers for what might be required – could have legal review verbiage also.

Chris countered the first item mentioned would be "yes", the creation of the map, that would be pertinent to the application of this language. The others are beyond this language and are now in effect for any one acre or larger site. The only thing needing implemented with this language is the map; that would allow the process to happen in a sensitive area. Would you like to revise your motion for the map only, but yet and separate from the motion would be the idea the committee needs to look at those other issues relative to the issues of the general stormwater policy? Jim stated "Yes" he would revise the motion with the wording provided by Chris. David seconded the motion. Mitch asked; does that remove the change from one acre to five acres?

Chris responded; "no" it's included. Clarified: the motion is send the language on the hand-out labeled "January 6, 2012 SWAB Meeting Proposed Modification to the Requirement for Downstream Channel Protection Volume" to the Director of Public Works for the City of Wichita (Alan King) for consideration as an addendum or appropriate modification to the manual, or response to the SWAB with his comments. In the meantime this Downstream Channel Protection Committee will help City Stormwater create the sensitive channel map. Chris reminded the board there is a motion and a second and asked for any discussion.

Larry asked if any requirement would be necessary to amend the ordinance itself, since this is referencing the manual. Chris reiterated this addendum is to change the manual and the ordinance would stand. Jim added the director can make changes "at will".

Vote on motion passed unanimously by all members present. Chris requested Colleen (secretary) and Scott ensure Mr. King will be forwarded the verbiage and whatever he needs (also to Law if necessary) for his thoughts/comments and/or to formally adopt the verbiage to the manual if/when he chooses to do so.

IV. WATER QUALITY REPORT

1. Water Quality report previously provided by Richard at the November 30, 2011 meeting. Chris reminded the board it shows testing results from the Big River north and south of Wichita.

Richard suggested the board invite Tom Styles in to update on the monitoring and how it applies, as he willing to come in and is the authority. Richard said Mr. Styles has a much broader/deeper knowledge on the issue and more competent to respond to questions.

Discussion occurred between board members on the hand-out, regarding the purpose and/or relevance of the report. Discussion between Richard, David, Mitch and Jim regarding the PIM, TSS etc in the report, the manual etc

Chris inquired of Scott: would it be possible for your staff that do the testing and sampling come in and explain what they look for? We could schedule Mr. Styles for the same meeting and discuss relative elements of the data and beyond, which the board feels is information to be instructed on. He also asked Scott: if a Stormwater staff would be willing to discuss the testing done, who would it be?

Scott replied it would be Jim Hardesty, who was sitting in the audience. Jim is the water quality specialist and has been doing it for 15-17 years. Mr. Hardesty commented there is a disconnect between data collected for storm events and wet weather at particular points versus what Mr. Styles would collect. Stated Mr. Styles is sampling at different points in the river; which is a conglomeration of all the little outfalls and gets the "whole stew", however the City's wet weather program samples at some of the outfalls (8); a few components of the "stew".

Chris summed up the conversation by saying it would be informative to hear from both City Stormwater regarding their testing process and Mr. Styles to see if there is any interconnect to determine possible future ways to reconcile the data and learn something more. Chris requested that Richard schedule Mr. Styles to speak and asked if there were other questions on this report.

Scott stated he wanted to be clear; we focus on TSS in the manual and our hope is by treating total suspended solids we also treat other pollutants. Stated they are aware nitrogen does not attach itself to suspended solids. There are other water quality requirements through TMDL's on the rivers and streams; nitrogen is one of those nutrient lows. Said they have to be conscientious that someday in the future KDHE or EPA may require more above and beyond measures to our simplified approach in only treating TSS and it may include some type of chemical treatment process. Not sure if it will happen, just an FYI - nutrients are a difficult thing to treat through today's practices.

V. Poe & Associates Letter - Review

1. Chris reminded board this letter was handed out at the first meeting and offered copies for those who did not have one. First: Restrictive Covenant. The O & M Committee is looking into this. Second: Recording O & M Manual with the Register of Deeds regarding reporting of the restrictive covenant and other items in regard to the permanent BMP's, this falls under the same committee assignment. Third: Private Project Drainage would follow the same process as private stormwater. Scott reminded the board he passed out a fee schedule for private projects that all consultants have, dated May 2, 1990 about two meetings ago. Said he would be happy to pass the schedule around.

Chris stated he believed the third bullet is a process already in place. Fourth: Water Quality Infrastructure Scott said he believes the units can be placed on special assessments. Stated it may not be feasible for a single commercial lot but for a use that serves more than one tenant or one landowner it can be considered public. Suggested it may be a question for bond council.

Jeff questioned if it is any different than sidewalk assessment in the aspect the City would have a right to enforce maintenance costs. Chris commented; ponds for subdivision or commercial developments that are in reserve and there is an easement have a

stipulation; if it is not maintained by the owner the City maintains it and sends out a bill. No inconsistency. Continued with next section delineated as having a longer timeline; First: Review MS4 Permit. Stated this has been done, said we have been through the MS permit and continued to read the next paragraph, said City Stormwater is talking about their monitoring process and changes seen over the years may help the board think about those items.

Scott suggested an opportunity for a board field trip to a stormwater pump station that collects public runoffs. Said it would provide an understanding of the type of pollutant the stations collect and have to be vacuumed out and hauled to a landfill on a regular basis.

Chris recommended we finish the last sentence of the bullet: *The industry believes that it is prudent for the city to engage outside legal counsel who are experts in environmental law to work with the city to assure that the city is compliant with the MS4 permit but in a manner that is both economical and reasonable.* Chris said there was a consensus by members at a City Council Workshop / Stormwater Workshop held two months ago, City should engage with their consultant to look at legal ramifications and other communities to see what has been done from a legal standpoint. Asked Scott if this had begun?

Scott said they did meet with City Council Member and explained what was being done as part of the board and committees were being formed. Explained committees are looking outside at other entities and would report back. Stated if this group and body, particularly O & M Committee, felt there was specific legal interpretation needed they would seek advice of City legal counsel or outside legal counsel.

Chris said he thinks this bullet is saying the EPA made a mandate coming down to City of Wichita wherein they need to put permanent BMP's on every site and must tell when and where it has to happen and see it's done. Chris re-read the paragraph, understands after reviewing the MS4 permit there is a mandate to do this on new sites on permanent BMP's and it was made clear by KDHE and ultimately the EPA to Wichita. David said essence is mandate from EPA; does it make sense from a regional approach to work with EPA and KDHE, turn around/modify and come up with a solution helping our community find ways to create better water in our communities. Gave example of what City forefathers did with groundwater contamination. Scott agreed with the comment and stated it is what they explained to the council members; SWAB has short term, mid-term and long-term goals and regional approach. Chris added he thinks the Liaison Committee would be charged with that exact thing. Inquired of Richard, as KDHE representative; has KDHE proper reached out to surrounding states to discuss ways they implement requirements or what requirements the localized environmental agencies have placed on cities of similar size?

Richard suggested board speak with Rod Geisler for the MS4 program under stormwater in Topeka. Said Region 7 states talk to each other, other states have their own construction-demo permits etc. Seems everyone has the same issues with EPA. Jeff commented it would be difficult to benchmark this as there are so many variables.

Jim repeated this is part of their (Poe & Associates) longer timeline, not necessary to get bogged down in this right now. Stated Liaison Committee is kind of "plugged into this" and it's really long-term. Committee wasn't thinking about the state and perhaps the federal level, needs to be kept on the agenda down the road. Says he thinks we are charged with trying to wrestle with the immediacy of the regulations, we are not in a position to negotiate with KDHE about how the permit looks. Need to think about what we want to do in this section, not this year, maybe a 5-year time frame.

Don commented on behalf of the City/as observer of the board; agrees with Jim and what Scott mentioned. Stated he also attended meetings with council members, regarding talk of obtaining outside counsel; not opposed to outside counsel, lot of work needs to be

done first. This committee can address some of the issues and concerns in combination with review from the City's legal department sometime down the line.

Second: Subdivision and Zoning Changes. Chris asked Scott if he had met with the Subdivision Planning Commission to discuss any possible conflicts with the zoning ordinance changes and the goals of the stormwater policy. Scott said some of the language regarding stormwater was updated in the zoning ordinance (approximately) a year ago. Scott remarked in his opinion this bullet was a "smoke screen" as our zoning and subdivision rates are very flexible. There are items in our regulations which allow low impact development strategies. He gave examples of regulations and requirements. Scott stated he does not see anything substantial needing changed but recommended a committee form to review it for any conflict of interest. He stated the Planning Department would not see the regulations from the same vantage point a private developer or landowner would. David responded he agrees with Scott. Stated he sees possible need for relief with parking code and gave example of Sam's.

Jim said he understands what this is about and historically these types of changes start with industry. Stated we were not set up to look at subdivision and zoning regulations, suggested they possibly need to access the Planning Department and does not believe this is the place to start. Does not want to see the board get sidetracked and also said he agrees with Scott regarding flexibility with the Planning Commission.

Scott said he did talk with Planning Department years ago and asked how to resolve some parking issues; he was basically told "get in his own lane" and did not need to be involved. Stated those requests need to be made by public addressing the Planning Commission, then the commission can create a committee or a zoning board... Mitch made a follow-up comment regarding the Planning Commission, City Council and County Commission all advising on parking requirement that have been in effect for 20ish years, noting there has recently been major reductions in those requirements.

Chris said the board should write a letter of response to Poe & Associates to address the area stating that particular charge needs to be taken up the industry through the Planning Department. Said there are cases like open ditch roadways and storm sewer systems which aren't described in the subdivision as much. Street width, parking rations and zoning are, so he agrees it ought to be an industry driven review and ideas could be forwarded to Planning Commission or Planning staff for their consideration.

Third: Mitigation Credits: goes directly with the Downstream Channel Protection Committee. Fourth: Regional Approach: something we hope the Liaison Committee will gain information/knowledge about over time. Stated he believes we are handling most things addressed in the letter and asked Scott what the appropriate action would be regarding a letter of response to assure the associates and those they represent that the issues are being addressed. Suggested, since the letter was addressed to Mr. King, it would be suitable for Mr. King's office to draft a letter, and the board could sign it or Mr. King could sign it.

Scott replied the board could draft a letter for Mr. King's approval and recommended Chris sign it as SWAB Chair. Chris affirmed the suggestion and asked if it would be fitting for the board to write a letter to Mr. King and inform him what is being done and then Mr. King's office can forward a response in whatever format he believes is proper. Scott and Mitch stated they agreed. Chris suggested that he and Scott draft the letter, stating he would start and then request input from Scott with the meeting minutes in order to be as detailed as necessary. Stated the letter would be completed and available for the board's review next meeting.

VI. Next Business Steps

1. Future meeting scheduling.

David proposed we keep the same frequency as there is a lot this board and the committees need to do. Jim agreed stating need to keep up the momentum. Chris then asked if Fridays were working for everyone – no disagreement.

Board adopted the following meeting dates: February 3rd and 17th; March 2nd and 16th; April 13th & 27th.

2. Agenda Items for Next Meeting; January 20, 2012

Chris asked the board what should be discussed at the next meeting. Reminded the board we talked about having another presentation on a larger site and asked Scott if he'd be able to arrange that by the January 20th meeting. Scott said yes.

Jim mentioned Scott was also going to look at a field trip to a pump station and inquired if we were going to invite Mr. Styles for a meeting. Chris asked Richard to get with Mr. Styles and find out which meeting will work for him. Richard said yes.

Chris raised the question; would it be feasible for the next meeting to pull up the City of Wichita's GIS mapping for the board to look at and review the known sensitive channels? This would give the board a working knowledge of how the new map will be made then the subcommittee could refine the map. Also review draft letter for Mr. King regarding response to Poe & Associates and committee reports.

VII. Adjournment

1. Jim made a motion to close the meeting, seconded by Larry – motion passed unanimously at 4:26 P.M.

Action Items

A. Committee Reports

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| a. O & M Committee | - Mitchell, Henry, Weber and Basore |
| b. Liaison Committee | - Bradley, Oborny and Hillman |
| c. Downstream Channel Protection Committee: | - Bohm, Lindebak, Bradley & Hillman |
| i. Sensitive Channel Map | |
| ii. Collectively obtain ideas for the exchange. | |
| 1. What do you do in a situation where you can't do the downstream protection volume on site? | |
| 2. What constitutes not being able to do downstream protection on site? | |
- B. Forward Proposed Modification to the Requirement for Downstream Channel Protection Volume, Section 3.5 of the "Wichita-Sedgwick County Stormwater Manual" to Public Works Director, Alan King for action/response. - Scott L / Colleen S
- C. Schedule Mr. Styles to attend/speak at SWAB Meeting - Richard B
- D. Schedule City Stormwater staff to attend/speak at SWAB Meeting - Scott L
- E. Review draft letter to Public Works Director, Alan King regarding response to Poe & Associates letter. - Chris B / Scott L
- F. City Stormwater presentation of larger site - Scott L