

Revising Oregon's Industrial Stormwater General Permits Advisory Committee Meeting Notes

Meeting: Meeting 6- Benchmarks, Tiered Regulatory Approach and Discharges to Impaired Waterbodies

Date: January 19, 2009

Location: DEQ-Headquarters, Portland

Attendees: Committee:

- Michael Campbell-Stoel Rives LLP on behalf of Oregon Industrial Stormwater Group
- Calvin Noling-StormwaterRx
- Dan Mensher, Pacific Environmental Advocacy Center, on behalf of NEDC and Columbia Riverkeeper
- Richard Vincent and Jamie Berg for Dorothy Sperry- Port of Portland
- Neil Alongi-Maul Foster & Alongi, Inc.
- Mark Riskedahl, NEDC
- Doug Pennington-Oregon Metals Industry Council
- Rick Fischl-Clean Water Services on behalf of OR Association of Clean Water Agencies
- Michael Pronold-City of Portland, Bureau of Environmental Services

DEQ: Jenine Camilleri, Paula Calvert, Rodney Weick and Annette Liebe

Chair: Commissioner Ken Williamson

Benchmarks:

Jenine Camilleri discussed DEQ's proposal to develop Oregon derived benchmarks based on the water quality characteristics of state's receiving waters.

The committee members provided the following comments:

- Dan Mensher had concerns regarding how representative of the dilution rate would be for the varying receiving waters in the state. DEQ may consider setting dilution based on river order or volume of water in river rather than looking only at Eastern and Western Oregon. Need some level of specificity regarding point of discharge to have meaningful assessment of water quality standards compliance. Could have a range based on presumed dilution of receiving stream.
- Mark Riskedahl commented that important not to set a presumption that if meeting benchmarks then meeting water quality standards.
- Michael Campbell need to discuss how ensuring compliance with water quality standards and what it means to meet water quality standards. Don't want water quality based benchmark approach and another approach for determining if meeting water quality standards. If develop water quality based benchmarks, need to consider/address what happens next if exceeding the benchmarks and would need to evaluate in some fashion compliance with water quality standards.
- Dan Mensher commented that benchmarks in permit and corrective actions due to exceeding benchmark are narrative water quality based effluent limit. Narrative cause it is not black and white.

- Neil Alongi commented that this is a good approach since with you can't talk about stormwater discharges in absolutes. This approach is realistic. The consequences of not meeting the benchmarks address the folks who are most likely to exceed water quality standards. Good blend of system that provides some assurance and statistics and most of the time it will fix the problems that are causing water quality issue.
- Michael Pronold asked whether DEQ has considered doing a watershed based approach that would consider specific flow data. Calvin Noling also commented that watershed based approach would consider mass/load rather than simply concentration based, which incentives dilution.
- Mark Riskedahl questioned whether DEQ is considering one dilution rate or a range. Annette Liebe expressed that DEQ is open to considering different options and would look to the consultant to evaluate feasibility of developing dilution rates based on different bioregions and make a recommendation based on available data.
- Michael Campbell expressed that DEQ needs to consider what it means to meet water quality standards and how facilities will show they are meeting standards. Benchmarks seem like screening value for meeting standards. If that is the case, then permit needs language on how facilities will demonstrate compliance. Need to understand how facilities would evaluate water quality standards compliance.
- Dan Mensher expressed that the benchmarks are like trigger levels that require additional actions if they are not met. If exceed benchmarks (trigger level) and do not conduct corrective actions, then violation of water quality standards. Trigger value should be set lower than water quality standards so that if exceeding level then not the same as violating water quality standards.
- Michael Campbell is looking at this issue from the point of view that there this is a lack of knowledge regarding whether facilities are meeting standards. Facilities can be meet benchmarks but still exceed standards since this is a general permit and don't have facts to know if meeting standards.
- Mark Riskedahl commented that this scheme should consider an off ramp for acute situations where facilities are significantly exceeding benchmarks. There needs to be an opportunity for DEQ or citizens to step in and require facilities to take specific actions. Michael Campbell agreed with this comment.
- Commissioner Williamson commented the benchmarks become a flag that can be exceeded and they set goals for facilities to achieve, which is a narrative approach. For streams that are meeting water quality standards there is some assimilative capacity. As a result, since there is uncertainty with stormwater discharges, should not have to prove for every discharge with 100% certainty that they are meeting water quality standards. Should allow benchmarks to be set at certain percentage of exceeding water quality standards and should not be set at zero. Need probability distribution curve for discharges in Western Oregon for copper.
- Michael Campbell questioned whether Oregon would be much different from Washington. Could DEQ use Washington data rather than trying to replicate these numbers so that we don't spend a year and do redundant work. Annette Liebe expressed that DEQ will need to assess Oregon data to determine if we could rely on Washington's data.
- Dan Mensher commented that a basin approach makes the most sense, but he understands the resource constraints. Annette Liebe responded that DEQ would like to go to a basin approach in the long term, but don't know how far we can get down that path in this next permit cycle. The basin approach would be protective of the resource and would tie into the TMDL. Michael Pronold also noted that DEQ could incorporate the impaired waterbody requirements in the watershed permits.

Draft Tiered Regulatory Approach:

Jenine Camilleri discussed the latest proposal for the draft tiered regulatory approach that incorporated comments received from DEQ and committee members since the last meeting.

Comments on the draft tiered regulatory approach:

- Neil Alongi commented that the approach looks good. He suggested that the timeline for facilities operating under the new permit account for time for implementing BMPs. If not meeting the benchmarks in first year, then fix the problem in the second year. At the end of the second year, should not look back at the data from the first year since it does not reflect the new BMPs that were installed during the second year. May need another year to determine if BMPs are effective. Rodney Weick summarized that in the first year we could evaluate data to determine if meeting benchmarks, the second year would be the implementation year and in the third year determine if BMPs are effective.
- Rick Fischl commented that DEQ should evaluate corrective action reports and provide technical assistance on effective BMPs during the first year. Otherwise you may have more facilities falling to fix the problem and still having issues with the facilities in the third year of the permit. Having a PE stamp the corrective action report is not a guarantee. Under the current permit there are big voids and hard to motivate facilities so it important to have a carrot and stick. Annette Liebe commented that DEQ could add permit language so that it clear that DEQ or the Agents can ask a facility to do more if it is necessary.
- Karen Tarnow commented that under the rigorous evaluation facilities should be required to characterize the potential sources of pollutants in their discharge which can lead to more successful choice of effective BMPs.
- Richard Vincent commented that DEQ should include the option to install operational BMPs under the more rigorous evaluation of BMPs. It is best for the facility to decide what BMPs are best.
- Michael Campbell asked whether most facilities will have to eventually do treatment since the benchmarks (if set at Ecology's values) will be considerable lower than they are now. Calvin Noling explained that if they are in an urban area they would likely have to do treatment. Calvin Noling and Neil Alongi expressed that Ecology's copper value will be difficult for many facilities to achieve all the time. Calvin Noling commented that facilities that have a combination of rigorous BMPs may be able to get below these numbers much of the time.
- Michael Campbell commented that this seems like a complicated, costly approach for smaller facilities to do the more rigorous evaluation of BMPs. Need to look at potential off-ramps such as you could just pick treatment rather than going through the BMP evaluation. If impaired waterbody, conduct water quality standards analysis rather than going through the BMP evaluation.
- Jay Waldon commented that there should be an off ramp based on volume/amount of discharge. For example, some facilities who have gravel lot versus asphalt are putting out trickle of stormwater discharge.

Discharges to Impaired Waterbodies:

Jenine Camilleri explained the options DEQ is considering for developing new requirements for discharges to impaired waterbodies:

Comments on discharges to impaired waterbodies:

- Michael Pronold asked how we would evaluate whether there was remaining Waste Load Allocation in the TMDL to allow new discharges to impaired waterbody with a TMDL. If an

industry goes out of business is that load available for new discharges? Jenine Camilleri responded that a TMDL would have to have reserve capacity to allow the new discharge.

- Mark Riskedahl commented that DEQ's scheme should consider if specific parameters for which stream is impaired and facility may discharge other pollutants for which there is assimilative capacity and then prohibit the discharge of the impairment pollutants for which there is not assimilative capacity but allow the facility to discharge the remaining pollutants. Annette Liebe responded that facilities will likely still not be able to get a permit because they can not meet standards for impairment pollutants.
- Michael Campbell commented that you need to look at what stream is listed for. For example, if listed for acute does not necessarily mean end of pipe limits. Could be listed for seasonal issues. If on the list for human health criteria which has a 70 year exposure, do you have to meet the standards every time? If we do not consider these issues, urban sources will not have many options but to discharge to sanitary. Is source violating water quality standards if it is ever over criteria such as human health criteria?
- Dan Mensher commented that CWA says you can't cause or contribute. You are contributing to a standards violation if it's a molecule over the standard if you are water quality limited and TMDL is developed.
- Michael Campbell expressed that the issue with the human health criteria is that the listing is based on seventy year exposure. Whereas stormwater discharges are episodic and there is higher flow in the receiving stream so listing may not be based on stormwater conditions. Listings can be based on two samples. DEQ needs to consider these issues otherwise scheme may have unintended consequences. Annette Liebe expressed that if these facilities were to get an individual permit they would get the same result-meet standards at the end of the pipe.
- Commissioner Williamson commented that DEQ needs a de minimis off ramp. For example, there could be a brownfield site in an impaired waterbody and if they have to zero discharge then would be discouraging the redevelopment of the site. Annette Liebe explained that DEQ is not requiring facilities to get to zero but that they have to show they are meeting water quality standards if they are discharging to an impaired waterbody without a TMDL. Mark Riskedahl and Commissioner Williamson thought that if they are discharging any amount of the pollutant into an impaired waterbody without a TMDL then they are contributing to a water quality standards violation. Neil Alongi stated that if the discharge is below the water quality standards then the discharge is diluting the receiving stream so they are not contributing to a water quality standards violation.
- Michael Pronold asked what the criteria is for listing a waterbody on the 303(d) list. Jenine Camilleri responded that in the past DEQ listed a waterbody based on two samples. But the methodology may have changed. Michael Pronold had concerns that these new requirements could result in significant costs for these facilities based on old data and the way DEQ developed the 303(d) list. Commissioner Williamson requested that staff who work on the 303(d) integrated report and the TMDL program provide background on these issues at the next meeting. Annette Liebe responded that DEQ will invite these folks to the next meeting.
- Karen Tarnow noted that the Portland Harbor data may be helpful for looking at what concentrations are showing up in these discharges and compare these values to the human health and acute criteria.

Follow-Up items:

- DEQ will keep the committee in the loop on the Request for Proposal for the benchmarks.

- At the next meeting, staff from the TMDL and 303(d) integrated report will provide an overview of these programs
- Discuss further DEQ's options for developing numeric effluent for discharges to impaired waterbodies without TMDLs. Also discuss DEQ's evaluation of the Columbia Slough TMDL and options for requirement for these facilities in the slough.
- May have projected timeline for future meetings/work for the committee