Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) and Basin Plan Amendment

Stakeholder Informational Meeting
Draft Meeting Summary

MEETING DATE: June 25, 2009

LOCATION: Center for Collaborative Policy
815 S Street, First Floor
Sacramento, CA 95811

ATTENDEES: See attachment

ACTION ITEMS

1. Center for Collaborative Policy (CCP) will add the following link to the online repository and send out to the active group www.mercury.mlml.calstate.edu
2. Regional Board Staff will send the 7 page Basin Plan Amendment excerpt to the active stakeholder list
3. CCP and Board Staff will send out Workgroup Meeting notices to the active stakeholder list as scheduled

MEETING SUMMARY

Welcome, Introductions, and Agenda Review

Dave Ceppos, CCP Facilitator, opened the meeting. Due to scheduled speakers that that were present and other speakers that the group was waiting for, Mr. Ceppos proposed revising the agenda and move the TMDL Technical Presentation before the TMDL / BPA Options Discussion item. The group agreed. Participant self introductions followed.

TMDL Technical Presentation

Michelle Wood, Water Board Staff, presented the scientific foundation for TMDL development and basin planning (see attached PowerPoint presentation).

TMDL /BPA Options Discussion

Mr. Ceppos introduced Jon Bishop, State Water Board Staff, and explained that Mr. Bishop would be speaking about TMDL's he oversaw while the Executive Officer at the Regional Water Quality Control Board Region 4.

Mr. Bishop explained that Region 4 was required to complete on average four to five TMDL's each year so they adopted a quicker, more efficient model. Essentially what they did was to start with a minimal approach such as a computer model, then got together with stakeholders, and asked if any data was missing. The Regional Board then put in reopener milestones/trigger points to formally ensure that approved TMDLs were revisited and reconsider on target dates following some period of implementation. Mr. Bishop discussed that to do this, Region 4 staff and Board, and stakeholders had to undergo a cultural change that allowed them to feel more comfortable with uncertainty and adaptive approaches. The end result was that during the six years he was the executive officer, Region 4 completed 25-30 Basin Plan Amendments.

Mr. Bishop then described the process and outcomes of the following TMDL's:

- Calleguas Creek Watershed Nutrient TMDL
- Los Angeles River Watershed Trash TMDL
- Marina del Ray Harbor Toxic Pollutants TMDL
- San Gabriel River and Impaired Tributaries Metals and Selenium TMDL
- Upper Santa Clara River Chloride TMDL

The group had the following questions /comments on Mr. Bishop's presentation:

- With 97% of the mercury coming from legacy sources, how would you determine responsibility?
    - *Mr. Bishop Response: The DDT/PCB Marina TMDL had a number of sediment toxicity issues. Regional Board issued 13267 letters stating that entities have to jointly assess responsibility.*
- Agricultural interests have a lot of questions about why there is even MeHg in their water to begin with. They are inheriting the responsibility.
    - *Mr. Bishop Response: If you move water and use it, you take some responsibility for it. The level of responsibility can be worked out.*
- How do you define stakeholder?
    - *Mr. Bishop Response: Region 4 Board Staff were open to allow people to self select into processes. Finding the right people was sometimes a challenge.*
- California Department of Fish and Game is concerned about regulations on wetland management.
    - *Mr. Bishop Response: Same issue applies to bacteria which are caused by wildlife in wetlands. If TMDL addresses all man made sources and still exceeded limits, the Regional Board will give an exemption of natural sources.*

- How did you ensure that everyone was at the discussion table?
    - *Mr. Bishop Response: Region 4 did not guarantee that everyone was at the table.*
- Concerned about how to make the voluntary approach fair: how do you address some stakeholders taking action and some not.
    - *Regional Board Response: TMDL's have allocations and default timelines that will not be voluntary. The Regional Board encourages the use of coalitions.*
- Did Region 4 have TMDL's where significant contributors were other state agencies?
    - *Mr. Bishop Response: Yes, Region 4 enforced allocations on federal and state agencies, although there were issues of sovereign immunity.*
- What other documents than the TMDL did Region 4 use?
    - *Mr. Bishop Response: Region 4 has used structured documents such as a Memorandum of Understanding or agreement letter; and some agreements did not need to be written down. It depended upon the level of trust.*

Stakeholder Group Formal Initiation and Charter Review Process

Mr. Ceppos introduced the draft charter and explained that the Regional Board had recently sent out invitation letters soliciting representative members. Mr. Ceppose then walked the group through the draft charter, explaining the purpose of each section.

Patrick Morris, Regional Board Staff introduced the following alternative TMDL implementation approach.

TMDL

- Fish tissue objectives and beneficial uses
- Load and Waste Load Allocations, Margin of Safety

Implementation

- Point Sources: waste load allocations, interim limits, mercury minimization, compliance schedule
- Nonpoint Sources: load allocations, compliance date

Special Studies

- Voluntary studies using adaptive management approach and stakeholder process
- Study results to amend the TMDL and implementation program
- Staff involvement
- Technical advisory committee (TAC) input and review

Interim Progress Report

- ~2014, update Board on progress of special studies and TAC activities

TMDL Review

- ~2017 Regional Water Board reconsiders TMDL (objectives, allocations, implementation provisions and schedules, and the final allocation compliance date) based on new information and results of special studies
- Without new information, the TMDL would not be changed. Board could consider requiring individual management plans or WDRs

  Monitoring
    - Conduct monitoring to show compliance with allocations

  Allocation Compliance Date
    - MeHg load allocations to be met by 2030 (unless the Regional Board amends the allocations and extends the implementation schedule and final compliance date)

  Other Requirements
    - Develop Risk Reduction Program
    - Develop plan and schedule to reduce mercury loads from the Cache Creek Settling Basin
    - Develop guidance for mercury offset pilot program

Mr. Morris explained that this kind of a TMDL would put more responsibility on the stakeholders. Mr. Ceppos asked the Stakeholder Group about their ability to dedicate funding if the Board transitions into a voluntary approach. The group discussed this issue and agreed that it could be a concern for some of them. The group discussed the option of having both mandatory and voluntary steps which would consist of some fixed hard milestones with soft milestones in between.

The group had the following questions /comments on the alternative TMDL approach:

- Do not see the connection between being mandatory or not and being an adaptive framework.
    - *Regional Board Response: This approach fits into the adaptive framework because the group would still be conducting studies based on measured outcomes.*
- Securing funding in today's economy is a common concern. Applaud interest in voluntary milestones, but for the California Department of Fish and Game to be involved hard deadlines would be needed.
    - *Regional Board Response: The group could consider putting in more fixed check in points.*

- The original wetland allocation was based on Twitchell Island and could change based on new information that shows there are different types of wetlands.
- Making voluntary TMDL measures does not make sense; opposed to vagueness and lack of assurances in a TMDL.
- Need criteria dischargers would have to meet and should be done in a way that allows for flexibility.
- The group invested a lot of time developing the guiding principles, where would they go in this alternative TMDL approach?
- Need to consider on how studies are selected, and funding applied effectively.
- Can a discharger simply accept their allocation and not do the studies?

Mr. Ceppos asked the group if it would be reasonable to have a Memorandum of Agreement or Memorandum of Understanding between the Regional Board and certain regulated agencies such as the California Department of Fish and Game. Several members of the group thought it would be.

Ken Landau, Assistant Executive Officer, Regional Board stated that Regional Board members like to be assured that Board Staff have a good technical foundation.

Mr. Ceppos announced that CCP and Regional Board Staff were going to move ahead with the revised BPA; and would attempt to balance brevity with assurances.

Seek Consensus on DRAFT FINAL Outcomes from Principles Workgroup

This agenda item was postponed until the July 16th Stakeholder Meeting.

Review and Discuss Outcomes from NPDES Workgroup

Tony Pirondini, City of Vacaville, presented a brief summary of the document the NPDES workgroup had been working on.

<u>Pollutant Minimization Programs (PMPs)</u>

- Every NPDES permit holder in the Delta and Yolo Bypass subject to this TMDL should implement a PMP.
- NPDES permit holders should not be penalized for early implementation of successful pollutant minimization efforts prior to adoption of the Delta (or upstream) Mercury TMDLs (or implemented during Phase 1 or Phase 2).
- NPDES permit holders outside the boundaries of the TMDL should be strongly encouraged to implement PMPs for mercury, prior to adoption of TMDLs for their watershed.

Mr. Pirondini mentioned that pollutant minimization programs are routine. He said that the workgroup discussed the need to make sure that every TMDL allocation holder would be doing pollutant minimization programs. The group did not want people who had been doing PMPs for a long time to be penalized for starting early.

Phase 1 Characterization and Control Studies

- Phase 1 characterization and control studies should consider the potential effects of conservation, recycling, storage and BMPs on effluent MeHg and, conversely, the effects of MeHg controls (concentrations or loads) should be coordinated with other control actions, including those intended to protect other designated beneficial uses.
- Phase 1 control studies should evaluate the actions needed to comply with WLAs and, for dischargers that need to reduce their MeHg loadings, evaluate the feasibility of potential MeHg load reductions that could be achieved. Pilot-scale field studies should be considered to confirm broad-scale findings.
- Source category groups, such as POTWs, should participate in the Phase 1 studies collaboratively or conduct an equivalent level of analysis individually.

Mr. Pirondini stated that there was a need to think about the big picture when considering characterization and control studies.

Final Wasteload Allocations

- Calculate WLAs based on annual MeHg mass loading, as done in previous drafts of the BPA. Adjust the WLAs at the end of Phase 1 based on more recent data. [Differing Opinion (Dan Cloak): Include WLAs for total mercury, too.]
- "Unassigned allocations for new discharges" should be available to growing communities (i.e., existing discharges) as well as to new communities.
- A regional facility should assume the individual WLAs of those new contributors (or portion thereof). Adjustments for situation-specific considerations should be allowed. Anti-degradation policy should be addressed.
- The BPA should state: "To encourage early implementation of PMPs, WLAs will not be reduced for Phase 2 if more recent data indicate lower levels are attributable to proactive beneficial actions by NPDES permit holders."

Interim Limits

- Interim limits should be based on current performance as total mercury loading. [Differing Opinion (Dan Cloak): Interim limits should be used to drive load reductions and the consideration of treatment upgrades even during Phase 1 and additional interim limits should be given for MeHg.]

- Rather than calculate interim limits and include them in the BPA, the BPA should provide written guidance explaining how to calculate interim limits as permits are renewed during Phase 1. This methodology will be re-evaluated at the end of Phase 1.

Mr. Pirondini remarked that interim limits are until phase 1 ends.

Compliance Schedule

- Adjust the BPA language for Compliance Schedules to account for the delay in promulgating the BPA and to recognize the role of Phase 1 in potentially revising WLAs.

Mr. Pirondini indicated that the compliance schedule was not a contentious issue for the work group members.

TMDL Boundary

- Apply WLAs only to NPDES facilities in the Delta and Yolo Bypass in the current Delta Mercury TMDL [no change required].
- Subsequent mercury TMDL(s) should be adopted to address mercury in upstream tributaries to the Delta [no change required].

Regional Monitoring Program

- NPDES permit holders should be allowed to comply with their mercury receiving water monitoring requirements by participating in a regional monitoring program, when implemented.
- A regional monitoring program should be designed to assess the effectiveness of TMDL implementation. The comprehensive Phase 1 studies also should be designed to understand better the fate and transport of MeHg in open waters.

Mr. Pirondini remarked that the regional monitoring program was not a contentious issue for the work group members. Mr. Pirondini announced that the NPDES Workgroup would be reviewing offsets at the July 14th meeting.

Review Financial Status

Mr. Ceppos provided an update on the project financial status and representative stakeholder process. He informed the group that the Environmental Justice Caucas would be convened shortly.

Review and Discuss Key Questions from Non-point Source Workgroup

This agenda item was postponed until the July 16th Stakeholder Meeting.

Adjourn