

## San Diego Stakeholder Meeting for Proposed Compliance Options for TMDL Implementation

January 13, 2017

### Option On-Site TMDL Compliance:

- Colin Kelly: If they design the Best Management Practice (BMP) it will need a rigorous maintenance plan in order for it to function and upkeep the 85<sup>th</sup> percentile capture. This sort of language should be incorporated.
  - Erica Ryan: I would concur that there should be specific detail on what's required and what kind of maintenance is needed. Need a written operation and maintenance plan.
- What would be the value of collecting sampling data above 85<sup>th</sup> percentile (the bypass)
  - To see the effectiveness of the BMP. If 85<sup>th</sup> percentile is in compliance for TMDLs, we'd want to know if it's accurate.
  - If overflow exceeds California Toxics Rule (CTR), is that an enforceable violation? Or would the Regional Board say we'd need to get out of this option? Does overflow create liability?
    - Laurel Warddrip: our intention is no.
- Matt O'Mally: How do we know 85<sup>th</sup> percentile will meet the Waste Load Allocation (WLA)?
  - Laurel: It's a starting point. We'll be getting some data from Environmental Non-Governmental Organizations (NGO's) on 85<sup>th</sup> capture of pollutants. We are waiting on the data to make sure we make the right decision.
  - Concern with anti-deg and backsliding policies. (Laurel's response was that these TMDLs have not been incorporated yet, so we are writing the language to implement water quality standards/protect water quality and will have to provide rationale on how this approach does that).
- Is overflow data reflective of TMDL pollutants or all pollutants?
- Laurel: All pollutants because it's a capture and infiltration BMP and you would have to consider pre-treatment to see if it's a good idea to infiltrate. This does not intend to pollute groundwater. If that is the case, then this option isn't for them.
- City of San Diego: In the event of overflow that does exceed Water Quality Standards (WQS), the city becomes liable for exceedances of WQS from a discharge that isn't theirs and that is a problem.
  - Erica Ryan: If industrial discharger is sampling at the point after the overflow, then the cities will have information on who's responsible
  - Ed Othmer: Why would dischargers benefit if they're still liable for overflow, what's the benefit?
    - Colin Kelly: The benefit is not performing all other required action of the permit
  - Laurel Warddrip: That's why we're having these meetings, if we come across too many concerns and problems to make this work, then it gives us direction on whether to move forward on these options.
  - Wayne Rosenbaum: This is only worth it for industries to invest in BMPs if they have safe harbor for overflow. The Regional Board should review overflow data and purse action only when necessary and not have a receiving water limitation requirement.

- Ed Othmer: We need to consider that when 85<sup>th</sup> percentile water is captured, that water needs to be used quickly to work for the next storm event.
- Ed Othmer: The engineer may not be the appropriate person to approve the BMP, maybe the Legally Responsible Person (LRP) or the Qualified Industrial Storm Water Practitioner (QISP)?
  - Laurel Warddrip: What I meant is that the engineer would provide the report to the LRP to upload to the system. QISPs will be on a required basis, not everyone will have one.
  - If you have the engineer design the BMP, then the LRP or QISP could confirm that the actions have been done
  - Erica Ryan: Then the engineer needs to write up exactly what they need to do in the follow up: photo documentation and operation and maintenance provided to confirm that it's working. We need some way to go back to someone who's technically qualified to assess the work.
  - Consider delegating the information assembled by the engineer to the QISP or LRP
  - Colin Kelly: I'm concerned by the smaller facilities just delegating to LRPs because the LRP's don't know how to do this work. I prefer someone who's qualified and is more appropriate. A QISP is better than the LRP.
  - QISP to review for the first 3 years and then a Professional Engineer could review? (the time frame for review needs to be worked out; depends on design, who reviews, and what the review includes).
- Erica Ryan: We need a third party review to go over the submittals (a neutral party) to recognize that it looks ok.

#### Option 2: Watershed based TMDL compliance

- Just to get the structure, ordinances, and CEQA in place it'll take a minimum of 5 years. Still can't do alternative compliance for anything else. How to manage the program? Who owns, operates, and pays for the BMPs. Will it cross jurisdictional boundaries?
  - Erica Ryan: it needs to be up and running and available already if this is to work
  - Laurel Warddrip: if they started putting resources in the watershed, would that be enough?
  - Colin Kelly: How to price it? Is it off volume or pollutant or concentration?
    - Jon Bishop: We will not micromanage that. We'll be involved in overseeing the agreement but we can't go into describing how each individual agreement will work. MS4 and dischargers will need to see what makes sense; then bring in the Regional Board to see if concerns are addressed. We will not manage the agreements.
- Matt O'Mally: Who's liable, where is the point of compliance?
  - Laurel Warddrip: City will have the ownership of it.
  - Jon Bishop: Part of MS4 regional system so they are liable, attribution of risk will be within the agreement.
- If industry discharges directly to the waterbody, these option may not apply to them and this needs to be clarified.

- The Regional Board need to offer up options that will be available unique to each situation. It's hard to start up ideas and let it evolve because of the potential for suits.
- Matt O'Mally: Keep the nexus between the discharge site and the receiving water, and not reduction up stream in a different jurisdiction or reduction to a different waterbody not associated.
- Laurie Walsh: Pollutant trading? When the reduction in one area is a greater benefit?
  - Colin Kelly: That's a concern, our jurisdiction is huge within the Santa Ana river and don't know if it'll work
  - Erica Ryan: May need to have a greater benefit, not a 1 to 1 benefit
  - Colin Kelly: Most of our colleagues will think this will be one big BMP at the end of the river
  - Jon Bishop: the CWA allows the addition of pollutants; but does not allow the impairment of a Waters of the United States beneficial uses because of the addition of pollutants. The concept is to invest in a system that results in a larger reduction of pollutants in the watershed vs. on-site. This is a challenge to implement. Consider allowing the regional water boards flexibility on this approach.
  - Laurie Walsh: if beneficial uses being supported in a reach with trading, this is something that could be considered.
  - Under the IGP, we're only addressing a small piece of the problem, if it's at the end of the MS4 pipe then we're addressing a larger part of the subwatershed (it will capture the area that there's a problem)
  - Colin Kelly: The concern is putting in BMPs where there are two. If BMP is in reach 2, then will reach 1 be forever impaired?
- Matt O'Mally: From NGO perspective these two options will not go very far to be achievable, but prefer option 1 over 2.
- Mark Gray: what about the redefining of the BAT/BCT definition? (response: Since these are water quality standards; goes beyond BAT/BCT).
- Mark Gray: Is there any information online about this? Will notes be posted? How did the strawman get created?
  - JB: We held initial meetings in December with stakeholders that submitted comments to the Regional Water Board on their draft TMDL-Implementation language. From those meetings, this topic was raised as a potential option for compliance. So we set up today's meeting and the L.A meeting early this week as a follow up to talk more extensively about this topic. We invited MS4s and other parties impact their jurisdiction and permit.
- Ed Othmer: For industries many would want to go with these options as a safety net over meeting the WQS via control discharge.
  - Jon Bishop: At the end of the day, if we use this now and evidence shows later that 85<sup>th</sup> percentile isn't enough then it'll have to be revisited for compliance with WQS. I can't commit that what we write now for the language will remain this way in the future when more data becomes available.

- Colin Kelly/Matt O'Mally We've seen 85<sup>th</sup> percentile work for most pollutants, except for bacteria. And are working with the L.A NGOs as well to provide this information to you.

Meeting in March; send us comments about options 1 and 2. We would like suggestions on these options and on the trading in the watershed as part of option 2.

Action Items: State Water Board to develop a website on the meeting outcomes, power points, and notes.

Action Items: The Water Boards will share issues that come up from participants, with the group.

Adjourn.