

TOXICS ADVISORY COMMITTEE
MAY 27, 2009

A meeting of the Toxics Advisory Committee (TAC) was held at the Delaware River Basin Commission Members or alternates present were:

Delaware

Rick Greene (via conference call)

Academia

Dr. David Velinsky, Academy of Natural Sciences

Agriculture

Dr. Ferdows Ali, NJ DOA

Pennsylvania

James Newbold, PA DEP

Public Health Interest

Not represented

U.S. EPA

Dr. Rollie Hemmett, EPA Region II

Denise Hakowski, EPA Region III

New York

Not represented

New Jersey

Thomas Belton, NJ DEP

Environmental/Watershed

Maya van Rossum, Delaware Riverkeeper Network

Industry

Lawrence Sandeen, Dow/Rohm & Haas

Federal Fish & Wildlife

Dr. Timothy Kubiak

Environmental/Watershed

Dr. Anthony Aufdenkampe, Stroud Water Research Lab

Municipal

Roy Romano, Phila. Water Dept.

Delaware River Basin Commission

Dr. Thomas Fikslin
Dr. Ron MacGillivray
Gregory Cavallo
Dr. Namsoo Suk
John Yagecic
Dr. Feng Shi
Donna Gushue

Other Attendees

Debra Hammond, NJ DEP
Jeff Fisher, USGS
J. Bart Ruitter, DuPont
Jenifer Fields, PA DEP
Danielle Kreeger, Partnership Delaware Estuary
Dr. Thomas Church, University of Delaware

I. Call to Order

Dr. Fikslin stated that since the last TAC meeting in December of 2007, Rick Greene was elected chairperson. Mr. Greene's year of service is now completed. Dr. Hemmett the previous (TAC) chairperson will conduct today's meeting. The meeting was called to order at 9:30 a.m.

II. TAC Business

- Review and discussion of December 5, 2007 meeting minutes
- Election of Vice-Chair
- Membership Review

1. The meeting minutes were reviewed. Mr. Belton moved to accept the December 5, 2007 meeting minutes. Dr. Velinsky seconded the motion. Motion carried. Election of a TAC chairmen and vice-chairmen was postponed until the next meeting of the TAC. Dr. Fikslin reviewed TAC membership including the procedures for the appointment of non-signatory party members, and the current status of the terms of appointment of these members.

III. Delaware Estuary Program Update

Dr. Keeger, Science Director for the Partnership for the Delaware Estuary gave an update of the recent activities of the Partnership:

1. The Delaware Estuary Program released the “2008 State of the Estuary Report”.
2. A possible goal date of 2011 was given for technical report that will form the basis for the next State of the Estuary report. The current plan is that the Estuary Program will work closely with DRBC and the MAC (Monitoring Advisory Committee) on this technical report.
3. At the next STAC meeting in July, an outline for the next State of the Estuary Report will be developed.

IV. Directives from Commissioners - Uniform Standards for Shared Waters, Stacked Interstate Waters, Basin-wide Standards

Dr. Fikslin presented a brief history on the Commission’s Water Quality Regulations:

1. There have been issues with the Commission revising its Water Quality Regulations (last major revision was in 1996). Initially in the early 2000s, it was decided that the best approach would be to do a complete revision of the Water Quality Regulations and the Water Quality Advisory Committee (WQAC) was given this task. During this time, the TAC had completed the revisions of selected criteria, and passed motions recommending their adoption. A draft of Articles 3 and 4 were subsequently produced.

2. One of the elements of the revisions was the Commission’s Special Protection Waters regulations for the Lower Delaware River between the Delaware Water Gap and Trenton, NJ. These proposed regulations received extensive public participation and revision, and were subsequently adopted this past July. In the meantime, the TAC recommendations were not implemented along with a number of other policies, procedures and criteria. Therefore, it was decided that DRBC needed to meet with the Commissioners regarding a number of policy issues. DRBC convened a retreat in January with the Commissioners at which time five policy issues were discussed:

- ***Uniform Standard for “Shared” Interstate Waters***. The recommendation from staff was that the Commission should focus on “Shared Waters”. The recommendation was for DRBC to focus on the mainstem. The Commissioners did agree with this with several exceptions because in some cases, States do not have corresponding standards. One of the specifics under this policy is toxics criteria. The TAC has voted to extend DRBC’s current toxics criteria, which applies to Zones 2, 3, 4 and 5, to the Delaware Bay (Zone 6) and to Zone 1 above Trenton. As part of the Uniform Standards Policy, the Commissioners agreed to move ahead extending Toxics Criteria to Zones 1 and 6.

- ***“Stacked” Interstate Waters***. A related policy is that the Water Quality Standards currently contain standards for a number of what are called “Stacked Waters”, which are tributaries that pass from one state to another. Staff recommended that stacked tributaries be eliminated and the Commissioners agreed.

- ***Regionalization***. There is a policy statement in DRBC Regulations that encourages region wide water treatment solutions. The DRBC staff recommended and the Commissioners approved revisions to this language.

4. The Commission is considering a resolution at their July meeting institutionalizing these directions. Since DRBC was unsuccessful at getting a whole scale revision of its Water Quality

Regulations in the past, it is anticipated that DRBC will move ahead and revise specific criteria. This year DRBC is looking to work on four different criteria.

5. WQAC reviewed staff's recommendations on upgrading DRBC's pH and temperature criteria. At the last meeting of the WQAC in May, the committee past a resolution to adopt recommended changes to the pH criteria. The WQAC will be considering temperature criteria at its next meeting in June.

6. The TAC will be looking at Ammonia Criteria and the upgrade of the Toxics Criteria implementing many of the recommendations that the TAC made in early 2000s.

7. The Toxics Criteria Subcommittee met two weeks ago and discussed the ammonia criteria and compared it to the basin state criteria. They are working on a recommendation. Aquatic life criteria were reviewed including some of the recommendations and changes that are needed because of changes in EPA National Criteria, which most of the states have adopted.

8. The objective is for that the chairs of the TAC and WQAC would present the recommendations of the two committees regarding pH, temperature, ammonia and the toxics criteria.

Update of Toxics Criteria (Dr. MacGillivray)

Dr. MacGillivray presented an update of the Toxics Criteria. He noted that the Toxics Subcommittee is doing a comprehensive review and update of all the Toxics Criteria, and comparing the EPA and the basin States criteria. Dr. Kubiak asked about the previous motions of the TAC regarding the adoption of wildlife criteria for bioaccumulative pollutant such as PCBs. DR. Fikslin stated that he would ask the staff to research the topic for discussion at the Toxics Criteria Subcommittee.

V. Subcommittee Report and Discussion: TMDL Policies and Procedures for the Stage 2 TMDLs including Margin of Safety, Reserve, Wasteload Allocation Procedure, and Non-Contact Cooling Water Dischargers. (Drs. Fikslin and Suk)

1. Dr. Fikslin noted a resolution in 2005 authorized the public participation of the new Human Health Water Quality Criterion for PCBs. It also directed the Executive Director to work with the regulatory agencies to develop some kind of plan for implementation. Dr. Fikslin noted he had spoken to the TAC regarding this plan last December, which was called the Water Quality Standards Implementation Plan.

2. This plan is still being discussed, although current plans still call for DRBC to have a notice of public participation of Water Quality Criteria, and develop Stage II TMDLs based upon these criteria. In order to complete this task, last fall DRBC re-instituted the TMDL Policy and Procedures Subcommittee. This subcommittee had met during the development of Stage 1 TMDLs basically to review some of the policies.

3. Dr. Suk presented the TMDL Polices and Procedures Subcommittee Update (**see attachment handout**).

Lunch 12:15 p.m. -1:15 p.m. (continuation)

1. Dr. Hemmett reviewed questions that were raised before the TAC had left for lunch.

2. The reserve and dealing with the amount of reserve that was necessary (the proposed reserve is about 5% and some believe the reserve should be larger, while others feel that 5% is appropriate). There was also a discussion about breaking the reserve into two components.

Dr. Suk continued his presentation.

1. Dr. Hemmett questioned Dr. Fikslin about what is being asked of the TAC today. Dr. Fikslin replied that today's discussion includes margin of safety, reserve, allocation procedure, and having recommendations to the Commissioners. This would be through motions, then through voting, and if the motions pass (according to DRBC rules) to be taken to the Commissioners. Dr. Fikslin noted, however, that any recommendations would be passed on to EPA Regions II and III that will actually establish the Stage 2 TMDLs. EPA would be free to accept any or all of the recommendations.

2. Dr. Hemmett noted the following: The TAC is going to be asked to vote on some resolutions to move forward to the Commissioners for their July/September meeting. Dr. Hemmett discussed the past TAC meetings when wording was completed on recommendations and the length of time involved in this process. It was decided that a special meeting of the TAC will be brought together quickly for these particular issues to see if the TAC can resolve them. Dr. Hemmett suggested setting up another TAC meeting, volunteering EPA people who are responsible for these items to attend.

3. Dr. Aufdenkampe then suggested that two reserves be utilized: one for newly identified discharges from existing sources and corrections to loadings assigned in Stage 1 TMDLs; the second for new discharges.

4. Dr. Kubiak stated that expired allocations (from facilities and discharges that had been terminated) should not be returned to a reserve.

5. Mr. Sandeen stated that the concept of not allowing a reserve to be used for new and expanded discharges is a change from how the reserve is used in TMDLs and burdensome to both the regulated community and to the regulators. The TMDL would need to be repromulgated prior to any change in the TMDL's WLA from new or expanded sources. Further, the impact of such changes is not relevant to the current implementation, which is decades from the achievement of water quality objectives and loadings are currently orders of magnitude higher than the TMDL.

6. Mr. Sandeen also stated that all new or increased discharges to the Delaware, no matter how small will contain PCBs and represent an increase in loadings to the estuary. This is due to the ubiquitous nature of the pollutant and the extremely low target detection limits.

7. Mr. Romano asked about planned recapture of stormwater by the City of Philadelphia wastewater treatment plants and whether this could be covered by part of a reserve.

Dr. Aufdenkampe then made the following draft motion for consideration by the TAC:

- a. A 5% reserve be set aside from WLA portion for
 - Newly identified discharges from existing NPDES permittees, and
 - Increased wasteload allocations of existing discharges where revisions have been identified as incorrect at the time of the TMDLs.
- b. A reserve of 1% be established for new dischargers and that there be no reserve allocation for expanded dischargers for existing permits (they be handled internally i.e., hold the load or point to point trading).

- c. For a municipality or other entity that is capturing and treating stormwater, credits should be established for offsetting non-point source loads.
- d. Unused allocations should be expired entirely, and should not be returned to a reserve.

VI. Public Comment

No public comment at this time.

VII. Meeting Adjourned

The next meeting of the TAC will be on June 24, 2009. Meeting adjournment - 3:00 p.m.