MTCA / SMS Advisory Group & Sediment Workgroup

Meeting Notes

Friday, December 17th, 2010

Ecology NWRO, Bellevue 09:30 – 12:00 Hrs

Meeting Synopsis / Summary

This was the eighth MTCA / SMS advisory group meeting. ***What's happened so far and next steps*** – Ecology announced that per the Governor's executive order (10-06), work on the MTCA rule will be suspended for one year. However, Ecology will continue to work on the sediments rule. Also, some issues (e.g. fish consumption) will be worked within the framework of the sediments rule. ***Sediment management standards*** – Ecology provided a brief re-cap of work to date, as well as a general framework for moving forward.

Introduction - Overview

O9:35 Hrs – Start Meeting –Tamie Kellog

Welcome / introductions. A lot to get done today. One break in the middle. You will receive rule update, as well as path forward.

Martha Hankins, Ecology

Who are we? What is our mission? Brief update and recap. Good feedback to date. We've met 7 times over the last year. Feedback has been provided, it's now Ecology's turn to take that feedback and craft rules. Two major accomplishments – Ecology is fairly close to draft MTCA rule amendments and SMS rule language. Governor's moratorium on rule making (Executive Order 10-06) was announced about a month ago. This was done to minimize small business impacts. OFM guidelines – is rule required by state or federal law? Is a rule needed to protect public health, safety and welfare? Ecology made the decision to suspend MTCA rule for one year. However, Ecology will move forward with both the sediments and underground storage tank (UST) rules. SMS rule – this is viewed by Ecology as critical to public health, e.g. Puget Sound, etc. Fish consumption – this issue will be incorporated into SMS rule work (it will be moved forward). Dialogue with tribes and other stakeholders will continue. A revised CR-101 will be filed in early Jan (2011) to reflect new rule paths. Path forward – how do we see next year playing out? Ecology does intend to reconvene the MTCA / SMS advisory group at some point.

Question / Comments

- Will Ecology's work on state water quality standards continue? Yes. This rule will not be suspended.

Dave Bradley, Ecology

MTCA Rule Update

10:04 Hrs--Pete Kmet, Ecology

Number of issues and topics have already been vetted, e.g. vapor intrusion, Method A cleanup levels, ground water to surface water, remedy selection, early life stage, etc. Ecology plans to post draft rule language; however, actual rule making will be suspended. MTCA rule revisions – four basic components:

- ***Integrating sediments rule*** – work-in-progress.

- ***New science*** - toxicity values (IRIS / HEAST), early life stage exposure, cPAHs as a single substance, lead (IEUBK), vapor intrusion, fish consumption, soil ingestion + dermal cleanup level equations (concurrent exposure), Method A cleanup levels, TEE cleanup / screening levels.

- ***Statutory issues*** – UECA – uniform environmental covenants act / periodic reviews, voluntary cleanup program (VCP) , e.g. permission to issue NFA opinions on portions of sites; geologist licensing, regional citizen advisory committees (eliminated), science advisory board (SAB) - eliminated, biennial report.

- ***Implementation issues*** – clarify RIFS protocols (Section 350,360, etc.), vapor intrusion; clarifying the rule / breaking it up into smaller pieces, e.g. cleanup level sections; Method A cleanup levels; standard / modified Method B (reduced to one); leaking fuel tanks – deadlines / timelines for site investigation and cleanup; financial assurances; initial investigations / site hazard assessments; analytical method updates (Section 830); ground water – dissolved vs. total / filtered samples, compliance monitoring; terrestrial ecological (TEE) – reorganized.

Questions / Comments

- ***Will Method A cleanup level changes wait?*** Yes.
- ***TEE cleanup level changes – will those be posted on web site?*** Yes.
- ***How much new "stuff" (rule language) will be posted?*** You've seen ~ 1/3 of what's been revised.
- Sounds like we're getting a 1-yr comment period. ***Will you post rule comments on web page?*** No. We cannot work on the rule. We need to honor Governor's directive.

Sediment Management Standards (SMS)

10:31 Hrs--Dave Bradley, Ecology

- Where did we leave off? Two tier decision framework, recontamination, etc.
- What's happened over the last four months? A lot of internal meetings. Starting on draft rules. Also re-tooling process, per Governor's edict.

-----BREAK --- 10:38 Hrs ----------
-----Re-convene – 10:51 Hrs----------

Sediments (cont) - Chance Asher, Ecology (PowerPoint Presentation)

What has Ecology Decided?

- Criteria framework – retain current two-tier decision framework.
- Cost – retain current SMS methodology.
- Site units – allow for settlements for both discrete units and larger sites.
- Recontamination – clarify source control requirements and PLP liability.

Other Issues

- Terminology, e.g. remediation vs. cleanup levels, etc.
- How to resolve or settle liability.
- How to achieve long term environmental goals.
- What criteria will be used to resolve liability for "watershed" or larger-scale areas?

Strategy

- Target and cleanup highly contaminated / high risk areas.
- Provide economic incentives for resolving liability.
- Use multiple strategies / tactics to resolve liability, e.g. active cleanup, source control, etc.

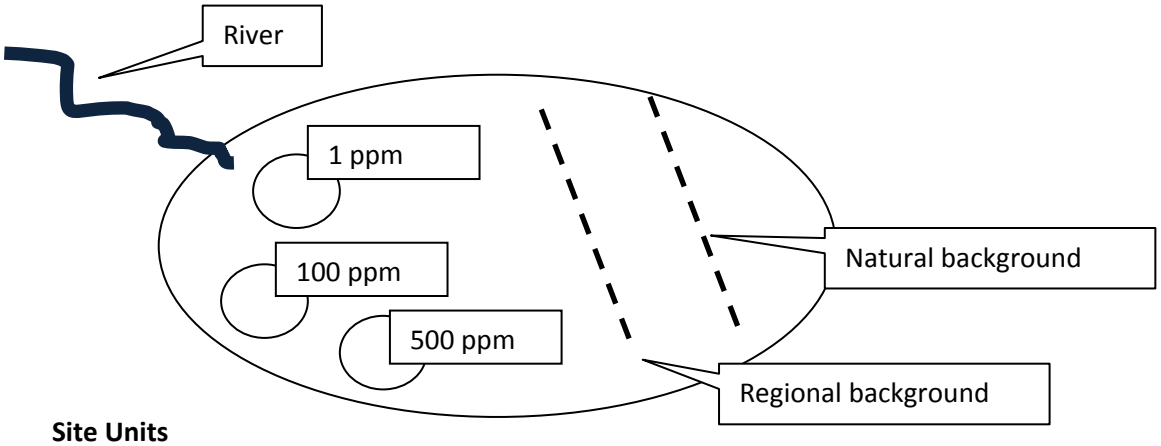
Framework

- Cleanup standards – SMS – methodology - upper bound = regional background/ 10-5 risk; lower bound = natural background / 10-6 risk.
- Site units – use this as a tool to get target areas cleaned-up. Proposed SMS rule will clarify how to use site units.

Decision Flowchart

1. Is contamination widespread? Yes = establish baywide site. No = establish individual site.
2. Are there specific chemicals or chemical signatures that may be used to identify baywide sites?
3. Establish site unit within baywide site.
4. Assess PLP contribution to baywide site.

Example Bay Wide Site



Site Units

- Resolving liability – site unit, or, baywide.
- RIFS work.

Regional Background

- Includes some level of ambient pollution.

Questions / Comments

- ***Terminology – what do you mean by a site that is "watershed" wide?*** This is confusing. Watershed, from a hydrogeologic standpoint, normally defines some upland area. Ecology – we're trying to use this term to define large areas. Do you have suggestions on how to improve? Yes, watershed is not a good choice, it's too broad. Please be more specific.

- ***If stormwater is impacted by multiple sources, then who is responsible for what***? You are only responsible for permit limits (e.g. NPDES).

- ***What about combined sewer overflows (CSOs)?*** How will this work? Ecology – if we name a PLP and they cleanup and that CSO is not under their authority, then they are not responsible. This issue connects to recontamination. Point – full "suite" of PLPs is not always defined up-front. This is a significant problem. There are typically many contributors for contamination; however, not all are held responsible. Concerned that proposed framework "divides" PLPs. Ecology should identify all PLPS up front.

- ***Under current joint / several liability law, the PLP has the capacity to identify "upstream" polluters.***

- ***If you identify too many PLPs, then that muddles process.*** You waste time trying to identify "legacy" polluters. It's not Ecology's job to identify everyone. If you have identified a PLP, then stick with that and go from there. Get something done.

- ***Do you want "clarifying" questions at this point?*** Time is an issue for this meeting. Ecology – please keep it "balcony view" for now. You will be provided with path forward details in last ½ hour of meeting, e.g. how to submit comments.

- ***How will baywide sites be established?*** How can Ecology do this under budget cuts? Ecology – we currently do have a lot of data for 6 Puget Sound embayments. Please provide details on how a baywide site will be defined / determined.

- ***You don't always get "nice" concentration gradients across baywide sites.*** Tides and currents will smear pollutants across areas.

- ***If you can demonstrate that your site was recontaminated by someone else, then will that impact your consent decree?*** Ecology – probably not.

- ***Proposed decision flowchart – does it have to work this way?*** How much flexibility is there? If PLP is will to settle for unit, then why not allow you to move forward?

- ***Don't make it too difficult to establish a baywide site.*** It's important to say that there is a baywide site, without getting into a lot of details. Maybe you should allow PLPs to settle out for a unit, or, larger areas. Ecology should consider this. Chemical signatures – that's a yes / no question, e.g. Elliott Bay and Port Angeles.

- ***What happened when PLP is meeting NPDES permit and they exceed SMS standards?*** Ecology – we are not applying to all permits. Would the permit include SMS criteria? Ecology – yes, we've done that before (TBD).

- **Remedial alternatives – no in-situ treatment or degradation?** Will Ecology allow that? If these options are not clearly stated, then they often get lost.

- ***Do you have an example of a source that cannot be identified?*** Ecology – sheet flow into a bay, etc. It all depends upon where you sample. More details on this will be provided.

- ***Avoid "reach of a river" in the context of regional background.*** "Hydrodynamic" does not define a regional area.

- ***Some river "reaches" are distinct and do contribute background signature, e.g. Portland Harbor. Ecology should consider this.***

Wrap-Up / Next Steps

12:15 Hrs – Martha Hankins

Everything from today's meeting will be posted on Ecology's web site. Path forward:

- Identify staff leads (Jan-2011).
- File sediments rule CR-102 (Feb / Mar-2011).

- Schedule follow-up meetings (May-June, 2011 timeframe). Two-group meeting process will now be reduced to one group. Ecology is evaluating various possibilities, e.g. sediment advisory committee (SAC), etc.

- Draft rule language – to be vetted Fall, 2011.

- Announcements – TPH guidance – draft posted for review (March, 2011). TEE guidance – to be released in the near future. Vapor intrusion guidance – Ecology hopes to finalize soon. UST rule – if you would like to be on e-mail distribution list, then please sign-up.

- Video conference – was this OK? Yes, as long as you repeat questions.

Questions

- ***Should we hold comments until we review the draft rule language?*** Ecology – if you feel it's something that's really important, then please "speak-up" now. Otherwise, please wait and send comments under the designated timeframe / process.

- ***What will the size be of the proposed sediments advisory group?*** Ecology – likely 20-30. Please keep it< 20.

- ***Bioaccumulation / background issues – Ecology has done a really good job listening and tending to feedback.*** Thanks!!! ☺

- ***How long will it take to review comments from first rule draft?*** Ecology – 1-2 months, minimum.

----------12:30 END Meeting ----------