

**Spokane River DO TMDL Implementation Advisory Committee Meeting  
Minutes: February 24, 2011**

**Committee Members or Alternates:**

Tom Agnew, Dale Arnold, City of Spokane, Brian Crossley, Rick Eichstaedt, Scott Fields, Sid Fredrickson, City of Coeur d'Alene (phone), Charlie Kessler, Doug Krapas, Bud Leber, Meghan Lunney, Laurie Mann, US EPA (phone), Don Martin, US EPA (phone), Lee Mellish, Liberty Lake Sewer & Water, Todd Mielke, David Moss, Mike Neher, Mike Peterson, Dan Redline, Ken Windram

**Observers:**

Jim Bellatty, Kim Betz, Ben Brattebo, Ginny Darrell, Pat Hallinan, Paul Klatt (phone), Ted Knight, Spokane Tribe (phone), Shaughnessy Murphy, Brian Nickel, EPA, Mike Paulson, Grant Pfeiffer, Kevin Rasler, Bruce Rawls, April Smith, Kris Holm (phone), Sarah Hubbard-Gray, John Rudders

**Ecology TMDL Staff:** Dave Moore, Kelly Susewind, Helen Bresler, Melissa Gildersleeve, Tony Whiley

**Spokane River Forum Staff:** Andy Dunau, Tonilee Hanson.

**Welcome and Introductions:** Andy Dunau welcomed participants to the meeting, each of whom introduced themselves.

All meeting materials, including those referenced in these minutes, can be found on-line at <http://www.spokaneriver.net/?p=3890>.

**Updates:**

Check-in on permit time frames: Ginny Darrell reported that the NPDES permit application for the proposed Spokane County facility is complete and available on-line. For the draft permits for existing facilities, Doug Krapas asked if changes were going to be significant enough to require another round of public comment. Ginny replied that depended on outcomes of this meeting, e.g.—if DO TMDL was going to be reopened to accommodate alternative seasonal limits.

Status of BAP Studies: Kelly reported that Ecology is committed to utilizing BAP as part of long term strategy to determine if dischargers are meeting their waste load allocation. Ecology does not, however, have enough information to integrate BAP into this round of permits. Currently, Ecology is waiting on the final report from UW that includes comments to draft report and UW responses to the comments. Significant committee time was spent assessing the implications of BAP being integrated into permits now (which would require a modified TMDL

and permits with subsequent comment periods) vs. in the future once permits are issued.

For IEP, the critical issue is around “certainty.” Without the level of certainty they are looking for, the question becomes if IEP feels the need to challenge the TMDL now. Some committee members indicated they believed stakeholders had a six year window to challenge the TMDL.

Ecology and committee members reached consensus on forming a subcommittee to evaluate “next steps” for BAP research, e.g.—what additional research is needed, defining sufficient sampling, protocols, etc. Recommendations will be used to plan implementation activities and further consider permit needs.

Nonpoint study update: Ben Brattebo (Spokane County) provided an update on the on-going bi-state NPS phosphorus study. The Ecology funded portion of the study was initiated in 2009. The study purpose is to identify and quantify non-point source (NPS) phosphorous loads in the Spokane River/Lake Spokane watershed. The study also includes identifying BMPs, cost-effectiveness of those BMPs, and development of a NPS phosphorus reduction plan. The reduction plan may be used to support future nonpoint reduction work needed as a component of the DO TMDL.

Ben clarified that the information from this study, e.g., identification of phosphorus loads in subwatersheds, can answer part but not all of the criteria needed for nutrient trading. An example was used for Lake Coeur d’ Alene; the NPS study might identify how much phosphorus loading is occurring in to the lake but the study will not determine how much of that phosphorus affects dissolved oxygen in Lake Spokane.

The next nonpoint advisory committee meeting is being planned for March or April to review results and consider next steps. The DO TMDL committee will be advised of the NPS advisory committee meeting date so they can participate.

Idaho/EPA Settlement Discussion: Based on Idaho dischargers filing complaint in U.S. District Court challenging EPA’s approval of Washington’s TMDL, settlement discussions have occurred.

Spokane County, the City of Spokane, Avista Corporation, and Kaiser Aluminum intervened in the lawsuit as defendants. The Spokane River Keeper moved to intervene, but plaintiffs are opposing that motion. EPA’s response to the complaint is due on April 11, 2011.

Washington phosphorus reduction fertilizer legislation: The Lands Council, River Keeper, IEP, Avista, City and others have worked to support legislation to minimize sale of fertilizer with phosphorus. There are exemptions for parks, golf courses, new lawns, etc. For a typical consumer needing fertilizer with P, they’d

ask for it and customer service would get it from the back. Scotts fertilized has been selling around country. WA would be the 5<sup>th</sup> or 7<sup>th</sup> state to pass this type of legislation.

SB - HB 1489 passed out of committee and could be passed in the house as early as next week. Action will then be needed by the Senate.

Rick Eichstaedt noted that University of Michigan study showed an average reduced P of 28% resulting from similar legislation.

Kris Holmes asked if significant reductions occur, how it would be incorporated into TMDL. Some watershed wide P reductions are already assumed in the model. The ban needs to be in fully in place before monitoring and trying to measure impact. A number of technical issues will come into play, as is the case with dishwashing P ban. Assuming passage, committee consensus is that monitoring and trying to determine impact will need to become part of DO TMDL Implementation plan.

Responsiveness summary for trading framework: Helen Bresler reported that Ecology chose to delay release by about two weeks because a number of policy questions were raised that are best responded to with a joint Ecology/EPA response. This should minimize any future confusion. Currently, it's about a 50 page document that will be regularly revisited and revised.

### **Modeling January/February Limits**

Kelly Susewind reported that results from PSU modeling show an impact to dissolved oxygen in Lake Spokane in January. This results in a .04 mg/L maximum difference in August through October compared to natural condition.

Whether, how or when to integrate the additional modeling information into the TMDL and/or permits was the subject of extensive discussion. Key discussion points included:

- The “cleanest” way to include modeling results is to quickly run a new scenario and then amend the TMDL. Concurrently, permits would be revised and reopened for public comment.
- Spokane County does not believe the TMDL and NPDES permits can be quickly revisited (at least “one year” out, according to Bruce Rawls), the net result being that their application for a new permit and opening of their facility could be significantly delayed. Their current time line for starting up the new treatment plant is fall, 2011.
- If the TMDL is adjusted and alternative limits adopted, it's not clear which dischargers would make use of this flexibility. The reason is that addition of chemicals and high end treatment technologies have significant

operations and maintenance costs. Whether incurring these costs would be needed (or desirable given other alternatives) is not known.

- Another option is to leave TMDL and permits “as is,” and develop language that allows both to be revisited when more is known. Ecology and EPA believe they can do this in a way that does not trigger “back sliding” provisions of Clean Water Act.
- As with BAP, IEP and other dischargers are concerned that the issue of establishing “certainty” is delayed. A permit with allocations they are confident of meeting is preferred to permits that can be revisited and adjusted based on outcomes of future research and results of monitoring.
- Lands Council and River Keeper strongly believe that any modification to the TMDL would require permits be reopened for public comment. They reiterated their belief that stakeholders have six years to challenge the TMDL.
- Idaho dischargers reiterated concerns that were articulated in dispute resolution and currently part of EPA settlement discussions. Their preference is to revisit the TMDL to address these concerns. Kelly reiterated that Ecology is only considering revisiting the TMDL to address alternative seasonal limits.
- There were inquiries as to whether Spokane County could start their plant under the umbrella of the City of Spokane permit. Kelly will ask the Attorney General’s office but is not optimistic. Recent case law (Carlotta Copper) shows that you can not issue a new permit to a discharger putting an additional pipe (and therefore additional effluent) into an impaired water body unless all of the dischargers to that water body are on compliance schedules.
- Another inquiry was whether you can delay one or more permits until new modeling done. Kelly responded that all permits must be issued before a new discharger is to be added based on the case law.
- Idaho dischargers have similar issues as IEP in terms of defining “certainty” as it relates to permits and possible changes to the TMDL at a later date. Brian Nickel commented that it doesn’t make sense to litigate a TMDL that may be modified in the future, especially if it addresses some of the issues from the litigants. Sid responded it does make a difference if you know the answer in six months.
- Ecology and EPA acknowledged that they will need to make a regulatory decision about whether to 1) reopen part of the TMDL immediately, and 2) inclusion of language (based on answer to item 1) for when/how to incorporate permit changes for seasonal limits, BAP or other factors being researched and monitored.

The committee agreed to create a sub-committee to consider policy and some technical issues around doing additional model run(s) to more fully consider the effects of alternative seasonal limits on TMDL and permit waste load allocations.

## **Modeling - River location ratios scope of work – Tony Whiley**

Ecology is working with EPA to secure funding for modeling necessary to establish locational ratios. PSU will be the contractor. By mid-March they expect to have a scope of work complete. It will be posted on SRF web site, SRF will inform stakeholders it's been posted, and a three week comment period will begin. If the comment period needs to be extended, it will be.

Tony commented that the committee discussions are helpful in setting the parameters for the modeling. If, for instance, waste load allocations are changed, this will impact the basis of the locational ratios. A decision to enable waste load allocations to be changed at a potentially future point is also a decision to rerun the model (at that future point) to reset locational ratios used to support trading, e.g.-- nutrient bubble concept, stormwater reduction, etc. that dischargers may wish to use.

## **Nutrient Bubble Concept**

Bud Leber from Kaiser provided a presentation on behalf of Washington and Idaho dischargers plus Avista. These entities developed a nutrient bubble concept as a means for point source dischargers to meet permit limits by providing "mutual aid," e.g.– utilizing unused permit discharge allowance from one point source to meet overage at another point source. The concept is based on the principle of participating dischargers meeting their combined riverine assessment point requirements.

A PDF of the PowerPoint is on line at <http://www.spokanriver.net/?p=4544>.

During Q & A the following was asked and/or clarified:

- If one discharger is out of compliance and the bubble is exceeded, the responsibility is that of the faulty discharger. Ecology or EPA (depending on state) would take the enforcement action.
- The concept is blind to the possibility that one chronically underperforming discharger may continuously receive assistance from others. The rationale for this is that the goal is to meet compliance at the assessment point.
- It's unclear whether Ecology and EPA would "co-regulate" a cross border bubble or whether they would individually regulate their portion. To individually regulate, EPA would need to establish a compliance number at the state border.

Committee agreed the bubble concept has potential.

To utilize the bubble concept, both technical and policy issues must be worked through. There is consensus that this can be integrated into second cycle of permits. As with other tools being considered, Ecology and EPA need to establish enabling language for this to occur.

### **Next Steps**

- Helen Bresler will get response summary out and notify all when it is posted.
- Ben Brattebo will let SRF know when the next nonpoint advisory committee meeting will be held.
- BAP. Committee members to send to Dave Moore name of technical person(s) to participate in BAP subcommittee. Dave will set up conference call and agenda to initiate work. Outcomes of work will be communicated at next meeting.
- Alternative Seasonal Limits (ASL). Committee members to send to Dave Moore name of policy person(s) to participate in ASL subcommittee. Dave will set up conference call and agenda to initiate work. Outcomes of work will be communicated at next meeting.
- Tony Whiley will continue working on locational ratios and putting funding in place for model runs. Scope of work will come out, and then a comment period will open. Update at next meeting.
- Ecology will develop a strategy for nutrient bubble concept and other tools to be integrated into future permit cycles.
- The storm water presentation will be moved to next meeting
- Ecology & EPA recognize regulator decisions need to occur that affect timelines for issuing permits. These decisions will be made as soon as possible.

It was noted that other concepts, such as adding oxygen to Lake Spokane, have not yet been evaluated. Ecology and EPA will address these as part of considering permit language for BAP and other tools/research to be integrated into future permit cycles or as part of the trading program.

### **Next Meeting and Adjournment**

The next meeting is expected to be in April. Committee agrees subcommittee work needs to commence and be reported out by next meeting.

The meeting was adjourned at 12:00 p.m.