Meeting Minutes
January 7, 2009

Surface Water Quality Standards Advisory Workgroup Meeting

9:30 – Welcome – Karen Holligan
Introduction of Implementation Procedures Updates by L'Oreal Stepney

9:40 – Introduction of Attendees (see sign-in sheet)

9:50 – Mike Pfeil – WET Coordinator, noted that changes in testing frequency go back to the 1995 IPs. Discussed "reasonable potential" testing frequency and if there are no toxics and no WET limits, then the permittee would be eligible for reduced testing frequency. Sublethality – if no toxin is identified but failures continue, then WET limits for sublethality would be included in the permit. For reasonable potential determination for toxicity, need to refer to the 1991 Technical Support Document and review the previous 5-year biomonitoring history.

TCEQ proposal – review the lethal and sublethal history separately. For lethality, a WET limit is required if more than 2 failures in 3 years or more than 3 failures in 5 years occur. For sublethality, a WET limit is required if more than 3 failures in 3 years or more than 5 failures in 5 years occur.

LStepney emphasized that negotiations between TCEQ and EPA have been on-going for the past year and resulted in major changes in the draft IPs. However, stakeholder input is welcome and needed.

Tony Bennett – if you're doing a TRE and identify the toxicant, but you already have a WET limit, then what happens? MPfeil – this scenario is already addressed in the current IPs.

Lial Tishler – how will it work having separate lethal and sublethal limits? MPfeil – no double jeopardy. LTischler – how will historical data be dealt with if plant changes (modifications) have occurred? MPfeil – this would be included in "other factors." LTischler asked about the nominal error rate of 0.01. MPfeil responded that this will be an option for the discharger.

Lauren Kalisek – is the enforcement protocol in the IPs? MPfeil – affirmative. L Kalisek – page 89: can BMPs be included to resolve toxicity? MPfeil – affirmative. L Kalisek – how to move forward with permits while TCEQ and EPA continue to negotiate? LStepney – there are approximately 20 affected permits and they could go into a holding period, if needed.

Dolan McKnight – if a failure is then shown to be a pass by analysis at a second lab, will it be counted as a pass? MPfeil – not a pass, but it would be considered neutral or maybe an average.

Chris Pasch – if 3 tests are conducted in a quarter, do you use the average or the minimum value? MPfeil – the average. Bruce Huther asked if EPA will accept the average value? MPfeil – probably. LTischler noted that BPJ may be appropriate and wished TCEQ good luck with EPA's new "reasonable potential" method!

Sara Burgin– what if you have a TRE, identify the toxicant, but there is not enough time to amend the permit, then can a toxic limit replace the WET limit? MPfeil – affirmative.

PGlass - TCEQ has done a good job with this issue, but . . . . .1) a different sublethal trigger than NOECs is needed; and 2) a WET limit should not take effect before a permit expires since the permittee has no control over the permitting period.

Roger Schenk asked if a WET limit would come in during the permit term? This has happened. MPfeil – TCEQ has not done this in the past.

Randy Palachek – has TCEQ looked at the historical data to evaluate the potential impacts of the new IPs? MPfeil – affirmative.

LStepney – the actual number of permittees that will require sublethal testing with the new reasonable potential approach will probably be less than 100.

11:05 KVHolligan – a couple of the afternoon agenda items
Drainage area ratio equations – 0.89 exponent is good for 0 – 50% flow. 7Q2 calculations are based on a USGS study.

SBurgin – what is the purpose of adding ditches to intermittent streams? KVHolligan – includes all waters of the state.

KVHolligan – alternate low flows for spring-fed streams. Spring flow 7Q2 can be higher than 10^{th} percentile and thus not provide as much protection. Springflow-dominated streams can have 7Q2 be a 20^{th} percentile flow. For streams without endangered species, the TCEQ used the 5^{th} percentile flows in the new appendix (springs are footnoted). Mike Bira (EPA) – asked if the ratio was based on impervious cover? PRadloff – asked what is the typical 7Q2? KVHolligan – the median is approximately the 7^{th} percentile for gages not directly below reservoirs.

1:00 PM – Welcome by KVHolligan and Chip Morris

Jill Russell – MALs – handouts and slides. NELAC requirements are in 30 TAC §319.12. Labs are evaluated on a case-by-case basis.

KKramer commented that the Sierra Club wants to see more verification for alternate test methods and what is the basis for approving an acceptable alternate test method? JRussell – responded that the method requires a parallel test study (e.g., if the permittee has a high permit limit, then a less sensitive method is OK). KKramer – does this result in increased workload for TCEQ? JRussell – that can be up to the permit writer.

RPalachek – why not set up alternative test methods in the IPs ahead of time instead of individual requests? JRussell – TCEQ will consider that approach. A list of pollutants would be helpful.

LTischler – MALs need to be set at useful levels (e.g., background levels for aluminum are 100 ug/L but the MAL is 5 ug/L. LTischler emphasized that more guidance is needed for the applicants and that it is not possible to meet MALs if influent testing requires dilution. LTischler will communicate with JRussell via email.

Nan Thomey noted that she served on an advisory committee. It looks like Texas selected the most sensitive MAL. She noted that it is more important to focus on compounds with NO approved analytical method. A smaller stakeholder workgroup is needed and it needs to focus more on goals than process. KW noted that it is useful for TCEQ staff to work directly with the permittee to address any questioned MALs in an application.

1:50 PM – Nutrient Implementation – JDavenport
Handouts and slides

Glenn Clingenpeel – voiced concerned with the process application and the level of BPJ used in determining if a water body is impaired. JDavenport – this is the reason the process remains mostly qualitative. GClingenpeel noted his concern with the stream screening process and its application.

DMcKnight asked how to deal with "run of the river" impoundments (e.g., Lake Dunlap on the Guadalupe River)? JDavenport – don't know at this point. DMcKnight asked what is Appendix F? JDavenport – it provides the mean ambient chlorophyll-*a* and TP values and the TP screening values, not numeric criteria. It may be used in the assessment procedures.

PRadloff – the assessment procedures are hard to read and need to be simplified. However, TPWD likes the "weight of evidence" and trophic status approach for permitting and recommends using the same for 303(d) list assessments.

PGlass noted a major concern is that the TP screening procedure makes TP a de facto criterion and there is not a good relationship (correlation) between influent TP and ambient TP. PGlass also noted that the Chl-*a*/TP ratio is not meaningful (e.g., the ratio is the same for Lake Livingston and Amistad, Lake Travis is moderate, and Cedar Creek is high). TP is not the driving force in what is going on in reservoirs. JDavenport noted that local effects will likely show up before main pool effects.

PGlass – reservoir clarity needs to be correlated with algae. PGlass agrees with the proposed nutrient limit ranges with some minor changes.

Paul Carangelo – what about discharges into estuaries? JDavenport – not as many and TCEQ does not yet have a framework as for streams and reservoirs. PCarangelo asked where did the TN = 8 mg/L and TP = 0.5 mg/L come from and what is the connection to seagrasses? JDavenport – limits came from limited data and TCEQ welcomes additional suggestions from stakeholders. PCarangelo asked if the numbers were for ambient (pristine) conditions or permit discharge levels? JDavenport – ambient levels would be lower and the numbers may be approximate limits for dischargers.

Mike Bira – how will the state address streams and reservoirs with high nutrient, non-point source input? MBira emphasized that ALL sources need to be included in developing numeric nutrient criteria. JDavenport – yes, and TCEQ will continue to work with EPA.

RPalachek – aren't there already rules on nitrogen requirements? May need language for other permits by rule (e.g., fish processors). May need an exemption clause for rural activities.

Darrell – can we look at other models? JDavenport – affirmative.

Threatened & Endangered Species
Cindee Contreras – delete "if appropriate" for state listed species

Seagrasses
Sara Burgin – seagrasses are included as use in the 2000 WQS. What is the purpose of additional screening procedures? Gregg Easley – it is appropriate for the protection of receiving waters and it captures what TCEQ is currently doing. SBurgin – if a discharger is permitted in a seagrass segment, what is the impact on the permittee? GEasley – need to look at the flow, location, etc. on a case-by-case basis. SBurgin – is this separate from antidegradation procedure? GEasley – not really. This is basically what standards is already doing.

RPalachek – what level of change is appropriate (e.g., 5%? or 20%?). The language is too general. What are we trying to prevent? JDavenport – for example, decreases in salinity or temperature and other localized impacts.

PCarangelo – representing Port of Corpus Christi, Texas ports and navigation interests. What is the biological problem? Concerned with unintended consequences for navigation. CWA 404 and 401 programs are already rigorous, and the proposed seagrass segments may prevent future dredging. PCarangelo noted the conflict in §307 protection for seagrasses and navigation. The issue of bay segments if overly broad since we already have sub-segment or even more detailed data for seagrasses. The basis for toxicity to seagrasses is not well established. Good research is on-going at the university level, including requirements for seagrass propagation.

SSullivan (TxDOT) – there appears to be a preference for a single issue (resource). For example, dredge and fill can create rookeries and seagrass habitat – which will TCEQ manage for if they're competing?

KKramer – pleased with the approach to seagrass protection. We don't have all of the answers at this time, but we can go forward without dire concerns and implement in a way to meet concerns.

PRadloff – kudos to the Seagrass Research Group. PRadloff noted that there are many development pressures along the Gulf coast and kudos to TCEQ to help protect the remaining seagrass beds.

Raul Cantu – it appears that TCEQ has developed more standards without any defined goals. How do permittees avoid violations or know what to do for compliance?

MFisher – TCEQ is still working of the IP revisions

3:30 PM - Other topics
KVHolligan – drainage area ratio equations. Alternate low flows for spring-fed streams.

Application of Human Health criteria for intermittent streams. Overview.

Dechlorination moved to toxic pollutant section. Will start adding dechlorination requirements to permit phases of 0.5 MGD or greater for new permits or permits being amended for more flow.

Debbie Miller – Aluminum in stormwater. Based on two plants that commingle discharge and stormwater. Soil appears to be the source of Al. Plants used BMPs for control. Sara Burgin – what about a general stormwater permit with overland flow? DMiller – not applicable; only for point discharges. PGlass – why are BMPs put in a permit if no problem exists? DMiller – the language is from the permitting group. RPalachek – may this find its way into MS4 permits? DMiller – specific only to single discharges.

Fish tissue-based criteria (Hg, dioxins, furans, PCBs)
DMiller – EPA recommends BAF instead of BCF
RPalachek – maybe there is enough Hg data in the state to determine an estimated BAF number

Screening for chloride and sulfates in intermittent streams – no comments

Updated ambient values – TSS, pH, etc.