Meeting Summary
BACTERIA TMDL STAKEHOLDER MEETING
Houston-Galveston Area Council
August 30, 2007
4-7PM

MEMBERS PRESENT: Neil Bishop (Development Community) represented by Mark Lowry; Claire Caudill (Business Community); Marilyn Christian (Local Government – Regulator); Catherine Elliott (Local Government – Flood Mgmt); Robert Hauch (Reservoir Operator); Tom Ivy (General Public); Trent Martin (Local Government – Stormwater); Carol Ellinger (Local Government. – Stormwater); Michael Schaffer (Development Community); Linda Pechacek (White Oak Bayou Homeowners Association); Todd Running (Clean Rivers Program); Linda Shead (General Public); Brenda Thorne (Local Government – Public Health); Carol Ellinger (Local Government – Stormwater)

MEMBERS ABSENT: Craig Bourgeois (Conservation Group); Delwin Cannon (Agriculture Community); Terry Hershey (General Public); Bob Hunt (Local Government – Wastewater); Steven Johnston (Estuary Program); Mary Ellen Whitworth (Conservation Group)

H-GAC STAFF PRESENT: Carl Masterson; Kristine Swann

OTHERS PRESENT: Mary Jane Naquin (Facilitator)**;** Ron Stein (TCEQ); Casey Johnson (TCEQ); Tom Weber (TCEQ); Hanadi Rifai (UH); Karen Atkinson (TCEQ); Mel Vargas (Parsons); Tran B Duffey (HCPHES); Gail Price (COH); Linda Broach (TCEQ); Alisa Max (HCSWQ); Snehal Patel (County Attorney Office); Camille Sowells (CDM); Many Purzer (TCB); L. Johnson (BPA); Jason Maldonado (PBS&J); Kerry Whelan (Reliant); Michael Bloom (PBS&J); Catarina Cron (Harris County Judge's Office); Tony Bennett (TCB); David Barton (Jones and Carter); Sharon Crabb (ENSR); David W Peters (Civil Tech Engineering); Cindy Contreras (TPWD); Faith Hambleton (TCEQ); Brian Koch (TSSWCB); Marc Friberg (TCEQ); Tom Beck (TxDOT)

WELCOME & INTRODUCTIONS

The meeting was called to order at 4:10p.m. Mary Jane Naquin welcomed the group, followed by self-introductions.

REVIEW AGENDA

Mary Jane Naquin reviewed the agenda with the group. It was requested by the stakeholders that half the meeting be spent on summary and the other half on analysis. Mary Jane Naquin asked everyone to write down questions on the documents that had been distributed before the meeting, and also asked for everyone to write down what they expected to be achieved by the end of the meeting.

Some of the main points that the group wanted touched upon at this meeting included:

- Funding issues with TMDL/WPP
- Who would lead the WPP
- What support does the JTF get in the decisions
- What are the strategies involved in a WPP
- What are the differences in timelines between TMDL/WPP
- How to ensure implementation under WPP
- How appropriate are the regulations or load allocations

- Which would have the greatest benefit – TMDL/WPP
- Is there a mandate
- Is flexibility limited in a WPP/is there an advantage
- How did the stakeholder group get to its present situation

Some of the results the group was hoping to see by the end of the meeting included:

- Direction
- Optimism on and commitment to water quality improvements
- Consensus
- Understanding of the differences between a TMDL and WPP

The history of how the issue of TMDL vs. WPP arose within the stakeholder group was reviewed. In short, there were many concerns with the available models, which led to less understanding on how to do a TMDL/I-Plan effectively, which led to the Joint Task Force statement at the June 25 meeting.
It was decided that at the beginning of each meeting of the stakeholder group, a review of previous meetings and a tracking of the process would occur.

STATEMENT BY JOINT TASK FORCE

Mark Lowery of TCB gave the JTF statement. The concerns of the JTF are to improve water quality and lower public health risks. The JTF is mainly in agreement with the EPA and TCEQ, but it is also concerned about allocations. One of the purposes of looking into the WPP was that it could offer more flexibility to look into public heath risks in comparison to the TMDL. The JTF feels that a WPP can be implemented earlier than a TMDL/I-Plan.

Questions/Answers

Question: Will the WPP address concerns about the allocations or just issues outside of allocations (namely public health risks)?

Answer: Allocations are not achievable because the bacteria is naturalized or has regrown, which does not have a relationship to public health risk. The JTF feels that the WPP would allow for a direct address of the fecal inputs that do have a relationship to risk.

Comment: The load allocations for these types of inputs have not matched with the data collected from the sources of these inputs. If the I-Plan is based on addressing this load allocation inconsistency, it would be a use of already limited resources for what is a lesser problem.

Question: Has there been any evidence that the bacteria regrowth is not a public health risk?

Answer: No; this is part of the research that would be done on the long term. H-GAC is taking part in research on this matter; but to date there has been no study that quantifies pathogens in the bayous to compare to the high *E coli* loads seen.

STATEMENT BY TCEQ

Tom Weber made the statement on behalf of the TCEQ that focused on models, uncertainties, and standards. A full blown comment response will happen at the next meeting. There were errors in the draft TMDL, but it hoped that there will be greater acceptance of the revisions, which will show assessments of three models used in the TMDL: LDC, Mass Balance, and HSPF model. Uncertainty cannot be removed completely. Many efforts to reduce uncertainty have occurred in response to stakeholder concerns; however, most of the times these efforts have not been beneficial. If there were a WPP effort, there would likely be just as many uncertainties.
The TCEQ workload is driven by the water quality standards for indicator bacteria. These standards are to be revised before starting a TMDL; however, there is no procedure for evaluating bacteria in recreational use and there are no other alternative criteria than contact and non contact

recreation. The TCEQ is trying to address this with the H-GAC, but these are longer term strategies. The TCEQ cannot put off the TMDL while studies on standards occur. The EPA has a strict timeline for the TMDL once it's begun.
The most optimistic forecast for a WPP is that it could be submitted to the EPA with the 303(d) list in 2010. Another problem is the anticipated scope of the WPP. The TMDL identifies the required maximum pollutant load, an aggregate of waste load, an aggregate of load allocations, and estimates reductions. In a WPP you have to do all this and also identify enforceable implementation strategies that are to be approved by the EPA. This is not done in the TMDL process, which leaves implementation up to the state. There is no evidence that a WPP would eliminate the requirements for MS4 permitting. A WPP in this case would involve a long time frame, with no less uncertainty, with an uncertain approval process with the EPA, a deviation from policy on state authority over implementation and conflicts between commitments with EPA on TMDL production. It would also have few advantages in removing the MS4 permitting. Completion of a TMDL in FY 08 with a focus on phased implementation with a focus on optimizing existing permit compliance activities and the revision of the end goal is the best strategy.
The TCEQ believes that the I-Plan is the best strategy and that it will still allow for a focus on human health.

Questions/Answers

Question: The dominated source is point source? What about the other sources?

Answer: Stormwater runoff through a pipe is also a point source.

Question: Would adopting the TMDL require existing permits to be reopened and numeric effluents and load reductions put in?

Answer: The operative guidance from the EPA on the MS4 indicates that the way in which to approach eliminating sources is through BMPs, not numerical effluent limitations. In some parts of the country, there have been narrative prohibitions put into the permits. The TCEQ believes in the adaptive management approach, and would like to work with the Stakeholders to target what type of BMPs and what areas of the metro are need to be looked at first. Some of this could focus on indications of where the biggest potential threat to human health is. Implementation can also include the studies discussed, with a review of the water quality standards and population dynamics of bacteria in the bayou. Revisions could occur of the stormwater management programs by the MS4. Sanitary sewer overflows are prohibited by all permits, but is the TCEQ doing an adequate job enforcing these permits, and what could be done to enhance enforceability?

Question: Currently we don't have bacteria in any of our wastewater treatment plant permits. Will it be added through WPP or TMDL?

Answer: This is a site specific question. You already report this indirectly through other measurements, and it may not be necessary for many permits.

Comment: The EPA is pushing the TCEQ to include bacteria monitoring or hard limits in all permits.

Question: Would having an I-Plan prevent the TCEQ doing a WPP later, and can an I-Plan be phased or amended later?

Answer: A WPP can be done with a TMDL or without a TMDL. What is being asked for by the stakeholders is a WPP without a TMDL. The TCEQ has asked other watersheds to do WPP in concert with an I-Plan.

TCEQ COMPARISON OF CURRENT TMDL I-Plan APPROACH TO WPP ALTERNATIVE

Faith Hambleton led this portion of the meeting. See the documents from the meeting for in depth comparisons of the differences.

The process of the WPP in lieu of a TMDL and I-Plan is as follows. A WPP is developed for a given impaired water body. The WPP is submitted to the TCEQ. The TCEQ determines if WPP meets 9 elements; once it does, it is submitted to the EPA. The EPA determines if the WP meets the 9 elements. If it does not, a TMDL must be developed. If it does, the WPP is approved with the 303(d) list. The point source controls are updated into a WQMP by the TCEQ. After controls and monitoring are implemented by local entities, it is determined whether the water quality standards are attained within a reasonable period of time. If so, then no further action is needed. If not, a TMDL must be developed.

The process of the TMDL and I-Plan is as follows: A TMDL study is conducted on an impaired water body. A Draft TMDL is developed. The TMDL public is notified. The TCEQ responds to public comment. The TMDL is sent to commission. The TMDL is adopted and sent to the EPA. The TMDL is approved by the EPA. The I-Plan leads to permits being revised to be consistent with the TMDL allocations and the WQMP. After controls and monitoring implemented by local entities and the TCEQ, it is determined if the WQS have been attained within a reasonable period of time. If so, no further action is needed. If not, the controls and monitoring implemented will be strengthened.

STAKEHOLDER GROUP DISCUSSION OF ALTERNATIVES

Mary Jane Naquin led the discussion by asking what questions remained following the statements and presentation.

Q: Who could be the lead entity?

A: The JTF, Harris County, and municipalities. The entity would have to be formed.

Q: Funding?

A: The capital funding will be the same as the TMDL process – from local funds. The planning process would have to find funding.

Q: Will the Phase 2 communities be interested in participating? (e.g. Katy, Jersey Village)

A: Considering they would be required to update their permits, it is assumed that they would be interested in permitting. If not, so be it.

Q: How long would it take to organize the entity?

Q: Will the WPP/I-Plan be pulled into the SW general permits?

A: For an I-Plan, the regulated sources including a phase 2 entity will be part of a revised SW program. In special occasions, there can be a prohibition against covering a phase 2 city under the phase 2 ms4 general permit.

Q: What about construction?

A: This would be considered in the I-Plan. Lots of states have standards on sediment and erosion. The stakeholders would have to look at control for construction. There are mechanisms for a phase 1 city and their jurisdictions.
Q: If communities are modifying SWMP, can the state as a stakeholder look at the construction general permit and the impact to bacteria in impaired water bodies?

A: Yes.

Comment: The "after construction" is covered by local entities. It is the "during construction" that local entities need help on, as these are the periods of most runoff.

Comment: Whatever the stakeholder group feels is necessary for controls and measures are needed can be implemented through permit changes. Any and all permits that need changing will be changed. Even issues of human health risk can be addressed. Local regulations are more strict that the state's. If you are touching the ground you have to have appropriate measures in place.

Q: The TCEQ's TMDL group will advocate for the stakeholders to other groups within the TCEQ if it asks for different things to be changed within permits that the TCEQ is a permit holder for?

A: The framework has exceptions for coverage if necessary for the protection of water quality.

Q: How long would it take to begin implementing with either process?

A: The JTF has already begun implementing through primary polluters. The county will be more likely to spend on one form of implementation. The implementation plan committee could be in place and working by Fall. From the City's point of view, primary polluters are being addressed already due to an agreement with the TCEQ.

Q: Why would the equation have to be fought over if doing an I-Plan?

A1: The stakeholders will direct either the I-Plan or the WPP.
A2: Things like the WWTP outfalls are not being accurately monitored.

Q: Will the equation that is submitted in the TMDL going to go into as much detail as the stakeholder group is concerned about?

A: No, the how and from where are all scenarios, which are background information for aggregate WLA and LA. Under the WPP alternative there would still have to be a point source allocation.

Q: What allocation would get incorporated?

A: The aggregate for the WLA and LA. After an I-Plan is adopted, the new revised effluent limitations would be updated.

Q: If regrowth is given an allocation of zero, then how can we come up with methods of stunting regrowth?

A: Regrowth is an issue of the processes that are occurring in the stream. The WLA and the LA describe what's going into the stream. Previously the TCEQ had been studying instream processes under the LA, which was erroneous, and we will change the language that we are using to describe that. But instream processes govern the load capacity of the stream, so if regrowth is a

substantial process then the load capacity of the stream is diminished, which would mean that allowable loads to the stream would have to be even more restricted so that the regrowth would be controlled. So there are no allocations for instream processes, because they are not loads being introduced to the stream.

Q: Can you decrease instream processes by going after co pollutants?

A: These are things that can be developed in an I-Plan.

Q; Regrowth is also occurring in the effluent pipes and storm sewers as well. It is not singularly related to the stream.

A: Permits can be modified to deal with those loads. That can also be dealt with in the I-Plan. Comment: The BLEST model did consider regrowth, but it was all canceled out by the sunlight. The population dynamic study is hoping to address this.

Q: How much time? A: The WPP could be out by 2010. But the deadline for the TMDL by 2008? So the WPP would take longer?

A: We are hoping to have a consensus basis to propose and adopt 14 maybe 17 TMDLs by the end of August 2008. In contrast, the WPP is to be submitted with the 303(d) list. The most likely time that this could be submitted is April 2010 due to the 3 year increments of submitting the 303(d) list. If we submitted the TMDL by August 2008, the I-Plan would be done in one to two years following that. This wouldn't stop any of the implementation that is presently occurring by the local governments. The formality of a plan that would extend beyond the SWMP would take one to two years. Activities that are already occurring or that are already planned belong in an I-Plan.

Comment: It seems that the TCEQ interpretation of the WPP and the TMDL is that there isn't much difference and that it would be much faster to go with the TMDL.

Q: Does the county have the authority to require waste water regionalization in terms of the plants to remove those package plants offline at the upper watershed, because there are some problems in these plants, and they are at the beginning of the watersheds.

A: The County does not have the authority. The TCEQ does.

Q: Does the entity consider regionalization?

A: No one has accepted the authority for regionalization.

Q: Does that mean authority is up for claim?

A: It lies in the policy emphasis that the agency wants to put on it. If regionalization is desired by the agencies, we can recommend it. This issue of regionalization should be addressed by a watershed coordination committee workgroup. The I-Plan is a place for this.

Q: Has the business community been engaged well enough?

A: The stakeholder group has engaged with the business community.

Comment: There are studies that could be done as part of the I-Plan, and they are being outlined.

Comment: From the public health standpoint, there has never been a report of an outbreak incident related to the bayous.

It was requested that everyone present should send Carl Masterson their comments on which of the two options should be taken: the I-Plan or the WPP. The TCEQ will respond before the next meeting to these comments. There will also be the final allocations based on the three models. The next steps will be based on the feedback they receive from the stakeholder group.

NEXT STAKEHOLDER MEETING DATE

TBD

ADJOURN

The meeting adjourned at 7: 16 PM.