

**TOXICS ADVISORY COMMITTEE
JUNE 2, 2005**

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

Delaware
Rick Greene

Academia
Not represented

Agriculture
Dr. Ferdows Ali

Pennsylvania
James Newbold

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
Steven Lubow

Environmental/Watershed
Peter DeFur

Industry
Larry Sandeen

Federal Fish & Wildlife
Dr. Tim Kubiak (via conference call)

Environmental/Watershed
Dr. Anthony Aufdenkampe

Municipal
Dennis Blair

Delaware River Basin Commission
Robert Tudor
Dr. Thomas Fikslin
Dr. Ron MacGillivray
Dr. Daniel Liao

(DRBC Continued)
Gregory Cavallo
Pamela Bush
John Yagecic
Dr. Daniel Kreeger
Donna Gushue

Other Attendees
Thomas Harlukowicz, PSEG
Bruce Aptowicz, PWD
Roy Romano, Phila. Water Dept.
Tom Healy, Phila. Water Dept.
J. Bart Ruiter, DuPont
Marc Gold, Manko Gold
David Piller, Exelon
Tom Starosta, PA DEP

Recommendations & Agreements

1. The meeting minutes from April 7, 2005, will be revised and distributed for review at the next TAC meeting.
2. Mr. Ruiter and Mr. Greene will submit draft motions for the revised PCB criteria by June 10, 2005, to Dr. Fikslin who will forward them to members of the TAC for comment.

I. Call to Order

Dr. Hemmett the Toxics Advisory Committee chairperson called the meeting to order at 9:45 a.m.

II. Review of meeting minutes from January 18, 2005 and April 7, 2005

The minutes from the January 18, 2005 meeting were reviewed. Mr. Greene made a motion to approve the January 18, 2005 meeting minutes with the revisions discussed. Mr. Lubow seconded the motion. The motion carried unanimously.

The meeting minutes from April 7, 2005 will be changed and reviewed at the next meeting of the TAC with the noted modifications.

III. Update of “Rule for Establishing Pollutant Minimization Plan (PMP) Requirements for Point and Non-Point Source Dischargers of Toxic Pollutants Following Issuance of a TMDL or Assimilative Capacity Determination”.

Dr. Fikslin updated the TAC on actions related to the development of Pollution Minimization Plans that have occurred in the last month.

1. On May 18, 2005, the Commission amended the water quality regulations to include a section (Section 4.30.9) in the Water Quality Regulations entitled “Pollutant Minimization Plan for Toxic Pollutants”. The commission also indicated in the enabling Resolution that it desires to achieve a 50% reduction of aggregate point and non-point source loads within the next five years. TAC members discussed the technical basis for the 50% reduction.
2. As presented in the documents accompanying the establishment of the Stage 1 TMDLs for the Delaware Estuary, point source discharges were divided into Two groups based upon the average number of penta congeners detected in each discharge. If an average of 4 or more penta congeners of the 20 that were monitored were detected in each discharge sample, the discharge was placed in Group 1. Discharges that had less than an average of 4 penta congeners in each sample were placed into Group 2. Group 1 dischargers will be receiving a letter shortly.
3. The committee discussed how non-point sources will be identified. Dr. Fikslin noted the rule refers to an individual discharge or classes of discharges. Therefore, there could be a class of dischargers identified, as well as individual dischargers and that would include non-point sources. These rules can apply to any discharger or class of discharger that the Commission determines has an adverse affect on the water resources of the basin. The definition of adverse effect from Delaware River Basin Compact was stated.
4. Mr. Lubow questioned the definition of a discharge. Dr. Fikslin stated it is actually a point or non-point source and it does not say discharger. Mr. Lubow noted that it is under adverse effect and that the first paragraph limits it to dischargers. Discussion involved looking at the basin regulations and the definition of discharger. Dr. Fikslin noted that currently there is an expanded definition section in the upcoming revisions to the regulations. Dr. Fikslin and Ms. Bush will research these items further.
5. Mr. Aptowicz asked why there is non-point source language in this rules. Ms. Bush noted that the Commission wanted to leave room to add additional sources and those sources they contemplate will include non-points (in the future).
6. Subsection “D” of the PMP Regulations presented the procedures for submission, review, and implementation of the plan. Required elements of the plan that were highlighted including:
 - A good faith commitment,
 - Identification of a prime contact; identification of known and potential sources,
 - The measurement of progress which requires the discharger to establish a loading baseline and describe how they are going to do that as part of the plan,
 - Measurement of mass loadings on a minimum of every two years using Method 1668a, and
 - A requirement for identifying any additional measures of progress.

7. There is an annual reporting requirement one year from the date of the required initiation of the plan. The discharger is to submit the report to the DRBC and the State Agency, which includes reporting the incremental reduction in loadings and the cumulative changes from the loading baseline.
8. In terms of the relationship to the NPDES Permit, this particular part of the rule went through a number of revisions related to what happens when a NPDES permit is issued, re-issued, or modified.
10. The formal comment response document and the official version of the rule are located on the DRBC Web Site.
11. Dr. Fikslin informed the TAC that a workshop on PMPs would be held in July where dischargers will be invited that may fall under the rule to discuss approaches for these plans. The TAC members will be notified of the date of this workshop.

IV. Toxics Criteria Subcommittee Report on Revised PCB Criteria for Human Health (Dr. Fikslin)

1. There have been some developments regarding the Stage 2 TMDLs for PCBs that were discussed at the May Commission Meeting, as well as at a recent meeting of the Implementation Advisory Committee (IAC). This purpose of this presentation is to update the TAC on Stage 2 PCB TMDLs developments, as well providing an update on the water quality criteria for PCBs.
2. As part of the Stage 2 implementation, discussions have occurred for a number of months between the States and EPA regarding implementation of Stage 2. The recommendation is that again in Stage 2 there will still be non-numeric limitations unless the permittee demonstrates bad faith in attempting to reduce PCBs loads.
3. The current recommendations of the group (States & EPA) are as follows:
 - A court deadline for Zone 6 that is in the settlement agreement with EPA Region 3 and DNREC that requires a TMDL for PCBs for Zone 6 be established by December 2006. The Commission Staff will be meeting next week with New Jersey and Delaware representatives to discuss some of the tasks required to meet this particular deadline.
 - The TMDL for Zone 6 will be developed by December 15, 2006 in order to meet the deadline. Stage 2 TMDLs for Zones 2-5 are targeted for development by December 2008.
 - Models are being revised to enable DRBC to do the Stage 2 TMDLs. Information from some of the additional monitoring will be available for use in developing these TMDLs.
 - A recommendation that adaptive management provisions also be included as part of Stage 2 to insure continuous progress in reducing PCBs loads. There is general agreement among the States and EPA that this is the desired approach.
4. Dr. Fikslin reviewed and updated the TAC on revised water quality criteria for PCBs at the last meeting. This was also discussed extensively this morning during the discussion of the minutes from the April 7 meeting. Dr. Fikslin reviewed some of the history regarding the technical work for developing the new numerical value. The feeling of the subcommittee was that this was extensively done and that they have evaluated all the various parameters and issues related to a revised criterion. A value of 16 pg/l was the value that the subcommittee recommended for the new criteria.
5. Dr. Fikslin noted that the TAC made the motion to forward the issue of variances to the Water Quality Advisory Committee (WQAC). Dr. Fikslin and Mr. Ruiter were directed to attend the WQAC meeting to discuss variance language, which they did on April 14.

6. Mr. Ruiter stated that he is not in agreement with the revised water quality criterion and noted his concerns. (to be reviewed by Tom)

7. The Water Quality Advisory Committee agreed to review variances from water quality criteria as part of the overall revisions of the Commission's Water Quality Regulations. It was noted, that Pennsylvania does not have variance language in their standards, so they are less concerned about any variance language in DRBC's regulations. Part of the discussion at the Water Quality Advisory Committee Meeting was that it's needed where a state that has variance provisions (i.e., DE and NJ) gets a request for a variance from a DRBC criterion.

8. The Commission directed the TAC in March 2003 to begin development of site-specific wildlife criteria for the estuary and bay, (which is being worked on). Dr. Kubiak has been asked to make a presentation on wildlife criteria at the next subcommittee meeting. Informal discussions suggest that the same the same process that was used to update the human health criteria will be used for the wildlife criteria.

9. Discussion after lunch will include whether to do a motion recommending the adoption of a revised human health criterion of 16 pg/l and whether to vote on that motion today.

V. DELEP Update – Delaware Estuary Science Conference 2005 “Linking Science and Management for the Delaware Estuary, Sessions 8-11 May 10-11, Newark, DE

1. Dr. Kreeger noted that the May Science Conference focused more on basic science including what we need to know, how the system works, and what are the issues in the system. Toxics and water quality were identified as the main issues.

2. The goals for these conferences included:

- To take stock and assess the current state of knowledge (a long time since this has been done).
- To look forward, chart needs and agree on what are the fundamental challenges.
- The need for more linkages between physical, biological, and chemical processes.

3. Another goal is building a community that is able to provide a point of contact for when an incidence occurs (e.g., Athos I spill) including the need to identify local resource specialists.

4. Information from these conferences is still being processed. Dr. Kreeger wants to work with DRBC to try to draw 5-10 key messages from the Science Conferences. This includes doing periodical state of the estuary reports, looking at monitoring needs, research needs, restoration activities, prioritization, and giving this to the public.

5. Dr. Kruger noted that she would like to repeat the process of having a Science Conference and re-visit where they are every two years so that the needs prioritization that comes out of the Science Conference will be refreshed and adaptably managed.
6. The science agenda for the program is moving forward having a science coordinator and a restoration coordinator on staff, as well as developing new funding mechanisms.

LUNCH

Dr. Hemmett returned to the pre-lunch discussion involving criteria.

1. Mr. Sandeen noted that this item was not on the agenda for a vote today, and he suggested that someone be assigned the task of developing a document that gives the background and basis that can be submitted to the Commissioners
2. Dr. Fikslin noted that a paper was prepared for the TMDL conference to be held in a few weeks and was sent to the subcommittee and to the TAC as part of this discussion. Dr. Fikslin stated that as part of the public participation this document would be expanded into a basin and background document. Dr. Fikslin noted that the reason why DRBC did not go forth on public participation in 2003 was that there was no firm criterion value since there were a couple things that the subcommittee needed to review which subsequently was done. Dr. Fikslin noted that the TAC actually took several votes on some of the key elements of the criteria back in February.
3. Mr. Sandeen requested time for further review of recommendations to the Commissioners.
4. Mr. Ruiter made the following points:
 - Wanted to see how the BAF was calculated so that they can re-create the calculation.
 - The issue of implementation and variance involving the Water Quality Advisory Committee needed further discussion.
5. Dr. Fikslin noted that the WQAC has finished working on the criteria revisions of the Commission's water quality regulations. The commission staff has made those changes recommended by the TAC, and at the next meeting they will be coming back to discuss the final revisions. Dr. Fikslin stated that any additional changes would have to be done at that time.
6. Dr. Fikslin recommended going forward with a recommendation that the TAC has looked at the actual numerical value, there has been extensive evaluations and this value should be publicly-participated. The TAC may further recommend that implementation language accompany it as being considered by the WQAC. This potentially moves it out of the TAC and presents it to the WQAC in terms of moving forward and the Commissioners knowing that the WQAC committee is the one that is going to be weighing in on the implementation language
7. Dr. Hemmett asked the committee for recommendations on the value for the criteria. Committee members each expressed their opinions in regards to voting today on this issue or deferring voting until the next meeting. Dr. Hemmett offered the solution of developing a resolution today and to vote at the next meeting. Steve Lubow noted that the next meeting should be scheduled soon.
8. Dr. Fikslin suggested having a committee member volunteer to draft some language or the committee could utilize language that Mr. Greene had drafted as a strawman motion regarding the numerical criterion value for the Toxics Criteria Subcommittee. Dr. Fikslin told the committee that Mr. Ruiter also drafted a motion for the subcommittee, but it was specifically with regard to variances. If the committee can have alternative motions that can be sent out prior to the next meeting that would provide a basis for action at the next meeting. Motions could include the point that variance language should be considered by the WQAC. Mr. Greene noted that he would send

his motions for distribution to DRBC, noting that his motion was to take the criteria from the Toxics Criteria Subcommittee to the TAC for full consideration.

9. Dr. Hemmett stated that the recommendation is for a revised human health criterion of 16 picograms per liter for Zones 2 through 6. Dr. Fikslin noted the one motion is to go ahead with public participation of that particular aspect. Mr. Greene will provide a draft motion on the numerical value. Dr. Fikslin suggested that Mr. Ruiter might want to broaden his draft motion on the variance issue to include the referral to the WQAC, and that the TAC would like an alternative motion overall generally moving forward. Mr. Rutier committed to send this to Dr. Liao or Dr. Fikslin. Dr. Fikslin noted that DRBC would send the draft motions to the TAC for their comments, coordinate responses from members, and prepare a consensus motion for consideration at the next meeting. DRBC will also send out any comments that members submit individually to the TAC members. The consensus was that a resolution be developed and passed out to everyone and to hold a discussion at the next meeting.

VI. Update from Data Quality Subcommittee (Michael Web, PA DEP)

1. Dr. Hemmett noted that there has been a change in the Chairmanship of the Data Quality Subcommittee. Mr. Webb noted the departure of Mr. Wetherington.

2. Three primary areas were discussed today including:

- The status of the PCB TMDL database and electronic data deliverables,
- Tributary sampling recommendations that have been made to date, and
- A discussion of future work products.

3. Revisions were made to the existing database. Location types were expanded. A suggestion was made to add a new column called source category that would include all of the Stage 1 PCB TMDL loading categories. In addition, it was agreed to add four fields to the main result table for validated results, validated EDL, validated minimum level, and validated qualifier. In addition, the subcommittee is planning to include separate criteria for these validated results. At this point, those validation results will be probably coming from a consortium (at least for the coalition).

4. It is the subcommittee's intention that this database design will be given to Greg Cavallo by June 6th and Greg has agreed to do a final review on all of the fields to insure consistency. Once this is completed, the subcommittee will be creating a separate data validation package that would be available to go on the DRBC's web site by June 17. This would provide all of the point source dischargers and/or their laboratories a means to pre-validate their electronic data before submitting them to DRBC.

5. Another decision that was made in regards to data deliverables is that corrections needed in the case data will be returned to the source for correction. DRBC is not going to be doing corrections. Explanation was presented on how this decision was derived. One item of importance is to date all of the submitted EDDs that have had problems in one source or another. Mr. Cavallo has been working with the laboratories to iron out these problems.

6. In terms of tributary sampling recommendation, some very specific field blank requirements /recommendations were made including requiring a field blank for each tributary sample, and that the field blank should be extracted and analyzed with the associated sampling in order to be able to QC the sampling effort, and to make sure that there was not a contamination issue. Another strong recommendation included using dedicated sampling equipment.

7. Mr. Yagecic requested clarification on the use of dedicated sampling equipment. As he understands the recommendation, a person could use one piece of equipment for multiple tributary

sampling as long as the decontamination of that piece of equipment occurs in a controlled environment. Mr. Webb noted the meaning by his statement was that “using a dedicated sampling process is that one didn’t use the same sampler on the same day with some sort of field decon”. Mr. Yagecic requested that this slide presentation be clarified because these slides will become part of the meeting minutes.

8. Mr. Aptowicz questioned if the above statement would impact DRBC. Mr. Yagecic stated that DRBC has submitted a purchase order for three Niskin bottles and discussed the volumes (later in this presentation), but essentially it will have an impact in that DRBC will be limited to no more than three samples collected on a dry day. For wet weather sampling, this probably wouldn’t be a problem. Discussion involved impacts with the number of samples, funding, and cost etc.

9. Mr. Webb stated what the recommendations are for blanks for the two types of sampling that are going to be done: grab samples and where a Teflon churn is being used. Additionally, the subcommittee’s recommendation was that the tributary data should be treated in the same manner as the point source data in term of analytical data quality and analysis requirements. The subcommittee recommended that it be stored in the same database, and that the full 209 congeners be analyzed until enough data is gotten to recognize that some of the congeners do not occur in the samples.

VII. Loadings Subcommittee Update on Tributary Monitoring

Mr. Blair stated that the subcommittee has not met since the last TAC meeting. The revised spreadsheet that prioritized the tributaries (draft given at the last meeting) will take a little bit longer to get out.

VIII. Update of Chronic Toxicity Workgroup Report on Candidate Test Species Selection

Dr. MacGillivray will present the update for this workgroup at the next meeting of the Toxics Advisory Committee.

IX. Update of TAC Membership and Terms

1. Drs. Liao and Fikslin presented some issues regarding the membership of the TAC. Discussion involved TAC membership (list was given out) which is a 3 year term to all members other than the States and EPA members.

2. After three years, DRBC will notify that member and thank them for their service. The concept was not to make the member feel obligated to continue another three years, so if they were interested they could contact the Executive Director. If there was anyone else interested in serving on the committee, the Executive Director could also consider them as well as any recommendations of the DRBC Commissioners.

3. Discussion included vacancies and opportunities for membership on the Toxics Advisory Committee. Dr. Fikslin suggested that at the next meeting in the fall sending letters out to the top three people and then have re-appointments and appointments that would put us back on schedule.

4. In addition, he suggested that when the TAC changes chairman in January that membership changes be done at the same time. Dr. Hemmett noted at the next meeting the TAC needs to elect a vice-chair for the Toxics Advisory Committee who then can take over the chairmanship in January.

X. Adjourned

Mr. Lubow motioned to adjourn the meeting. Dr. Aufdenkampe seconded and the motion carried unanimously. The meeting was adjourned at 2:55 p.m.

The next meeting of the TAC will be held on July 7th.