

Nutrient TAG Meeting 11

October 9, 2014

Ohio EPA Groveport

Attendance

Member/Alternates – Guy Jamesson, Beth Toot-Levy, Jason Tincu, Anthony Sasson, Adrienne Nemura, Mike Brom, Larry Antosch, Dale Kocarek, Kristy Meyer, Ron Wyss, John Lyons

Gary Sheely and Steve Samuels came at lunch break.

Observers – Chris Morgan, Bill Hall, Rob Brundrett, Todd Colquitt

Via conference phone –Bill Meinert, Doug McLaughlin

Ohio EPA – Dan Dudley, Bob Miltner, Chris Skalski, Gary Stuhlfauth, Melinda Harris, Pete Simcic, Brian Hall

- **Handouts** – Agenda

Meeting began at 10:08 a.m.

Introduction

Review of Agenda, Meeting Date and Misc Topics

Dan Dudley

- Today's Agenda
- Feedback on SNAP
- Additional meetings in 2015
- Outcome of implementation groups information

Feedback on SNAP

After Dan Dudley sent out email containing an attachment of 5 emails of support, he then received support from Ohio Water Environment Association, Ohio Environmental Council and Lake Erie Improvement Association. The County Sanitary Engineers Association and Ohio Municipal Association are currently reviewing. Beth Toot-Levy mentioned that AOMWA is also reviewing.

Additional Meetings in 2015

- Two more meetings are scheduled for this year, November and December. Dan Dudley needs to give Karl Gebhardt, Chief, Division of Surface Water, feedback on whether the Nutrient TAG group will stop meeting after December or the number of meetings needed in 2015.
- Beth Toot-Levy said she did not think implementation will be completed in the next two meetings. She asked Dan Dudley what is the Agency's expectation for the implementation group? Dan said he thinks the work provided by the implementation group will be a spring board for the Agency to use to draft rule

language, dos and don'ts. Guy Jamesson asked if they should be drafting rule language for parts of or entire rules. Dan replied that he is looking for short condensed points.

- Bill Hall asked about a few people giving agency input during the rule language drafting. Where we are with rule process? Next step would be draft rules.
- Jason Tincu asked about thoughts on holding off on some agency actions until TAG is finished? The Agency can't stop or put on hold our other actions – that is why we are working hard to wrap this up.
- Adrienne Nemura brought up an offer to have TAG members speak to others at the Agency. Brian Hall stated that we should just continue the process we have in place right now with communication with district staff. Adrienne thinks that putting nutrient impairment in context with other stressors is important and need flexibility in the rules. She thinks whole thinking on how to go after nutrients is still in the infancy – thinks step 8 of the Nancy Stoner memo (http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf) doesn't make sense holistically.
- Ron Wyss brought up when is done? The group still needs to address downstream issues. The Lake Erie Improvement Association can't be in support if the group does not address the downstream issues. If the Agency can't regulate nonpoint source – what is the TAG going to do? Make suggestions to get the authority to address nonpoint sources?
- Adrienne Nemura suggested that at the next TAG meeting, Larry Antosch could tee up a discussion on nonpoint sources since the TAG has not really discussed nonpoint sources in implementation. Larry is not available on the second Thursday of November (next scheduled meeting).
- Dan Dudley explained that the Agency is implementing an incremental approach – not done until worked through all the phases, inland lakes and how to do Total Maximum Daily Loads (TMDLs) for those lakes and then Lake Erie in which the Agency will take advantage of the current Great Lakes Water Quality Agreement Annex 4 work. Dan will be going to meeting soon on this. Once the targets are available for Lake Erie, the state can act.
- Dan Dudley said, in regards to nonpoint sources, that this group was not charged with making recommendations to regulating nonpoint sources, can't expect this group to do this.
- Kristy Meyer stated concern with the phased approach – phase 1 rules for streams and small rivers (low flow conditions), phase 2 rules for inland lakes, and phase 3 rules for Lake Erie. She is concerned with success of getting rules through the process, given the recent track record.
- TAG could stay together with hiatus in between rule efforts.
- Brian Hall brought up purpose of the group is to help support the Agency when we get to rulemaking.
- John Lyons asked about point sources being targeted to make reductions when nonpoint source is really the cause. Guy Jamesson answered that the point of the group was to make sure that this does not happen – that reductions are fair. This is where adaptive management comes in on a watershed level.
- Larry Antosch brought up back in 1980s, Section 319 documentation of nonpoint sources was incorporated into the 303(d) list and Nonpoint Source Management Plan created. This plan should have the most up to date practices to reduce/eliminate nonpoint sources of pollution. The plan was just updated this year (http://epa.ohio.gov/Portals/35/nps/NPS_Mgmt_Plan.pdf).
- Bob Miltner mentioned that he is working on a draft paper on conservation practices with a focus on sediment reduction. Bob observed that conservation practices that controlled particulate phosphorus contributed to the dissolved phosphorus issue – need to discuss new practices so that we don't undo the

good we have done by reducing sediment. Larry Antosch mentioned that we still do not know what the very best practices are to tell people to implement.

- Dan will get back to the TAG with ideas on what the implementation products should look like.
- Group to get back on number of months to work in 2015. Beth asked that maybe the TAG stops when there is no more work to do. Tony Sasson asked if the time worth the investment. Dan Dudley will lay a path forward and get expectations from Ohio EPA's Director. Bob Miltner brought up that the TAG should get the hard nuts to crack identified and worked on – sooner the better.
- Jason Tincu stated that the TAG can't just look at point sources or the member are doing who they represent a disservice – thinks this will not solve the problem. Guy Jamesson stated the Jason's point was taken but the TAG has to live within constraints of law.
- Date of next meeting – Guy Jamesson will send out an email to the TAG requesting preference of November 17, 10, 12 for the date of the next meeting. Larry Antosch will be on the agenda to give an overview of nonpoint source issues.

5 min break

Report from Implementation Groups

Need to move on – 20 minutes each issue instead of 25

- Issues 4 & 20 Translating SNAP to Stream Segments; Downstream Attainment – Adrienne Nemura
 - When Adrienne is looking at downstream impairment – looking more local not necessarily at sinks like Lake Erie
 - Watershed plan could be developed instead of a TMDL; 303(d) list Category 4b. Six elements are required to be in plan. Hard part would be determining when water quality standards would be met. Level of effort for 4b might be greater than doing a TMDL. Might not work best for nutrient issues. Trinka Mount and Jeff Deshon with Ohio EPA, Division of Surface Water can be contacted for additional information. Agency typically uses this option when issue is clear or maybe already in the works – when it would be a waste of time for Agency to do a TMDL.
 - Ron Wyss asked if TMDLs are enforced upon by other agencies. Larry Antosch mentioned that other agencies use the 303(d) list to prioritize and direct funding.
 - Targets for TMDLs – model dissolved oxygen and benthic algae, could be phosphorus targets. Guy Jamesson asked what good would the dissolved oxygen and benthic algae targets be? Is it realistic to do all this modeling? Adrienne said this would be an option. Overall goal is happy fish and bugs. What if you meet phosphorus or dissolved inorganic nitrogen targets and the receiving stream is still impaired – then what? Continuous reductions? This leads to Jason Tincu's point about wanting to know ultimate goal so resources can be wisely spent.
 - Guy Jamesson brought up that the rule has to say something clear about how to terminate effluent limits that are based on TMDLs when attainment achieved.
 - John Lyons brought up MS4s being required to reduce nutrient loads in TMDLs.
 - Dan Dudley mentioned that we need to be progressive ... deal with issue that right now all sources get same level of reduction requirements.
 - Protection of downstream uses – Florida has narrative statements in rules to address this. Dan Dudley brought up downstream protection tool box that U.S. EPA is creating (<http://water.epa.gov/scitech/swguidance/standards/narrative.cfm>). Dan will update on status.

They are getting input from states on this. Wisconsin has technology based effluent limits for all but small dischargers. Adrienne Nemura liked the Florida approach. Guy Jamesson suggested looking into it further.

- Issues 5 & 7 SNAP Determines Nutrients Not Problem but Existing TMDL or Permit has Phosphorus Limits, Threatened Status Implementation Strategy – Beth Toot-Levy
 - 2 issues – if permit limit recommendations in TMDL but not in permit then, maybe have chance to redo TMDL. If limits permit, have to look at whether permittee is meeting permit limit. If not – then it should be ok to remove the limits. If meeting, then look at antibacksliding. If current limit is reason for attainment – then limit would need to stay.
 - Implementation if threatened – different than impairment? Is threatened waterbody improving and if improving why? Guy Jamesson stated that this condition would likely not be threatened in the SNAP. More than one kind of threatened – handled case by case?
 - We need a plan to deal with implementation once we adopt the SNAP into rule.

- Issue 10 Criteria for Allocating Nutrient Reductions Among Contributing Sources – Tony Sasson
 - Growth should be considered in the TMDL.
 - Allow flexibility, alternative allocation options, technical and economic considerations
 - Slide on what nitrogen limits would mean (from Bill Meinert) will be rare in Ohio. Phosphorus is typically the limiting nutrient.
 - Small sources – financial issues, little benefit?
 - Nonpoint source dominated watershed – perhaps technology limit of 1 mg/l for point sources?
 - Guy Jamesson will send Kristy Meyer a link to petitions to U.S. EPA for nutrient technology limits.
 - Industries should be looked at on case by case basis. Guy discussed the technology limit of 1 mg/l for phosphorus – not much lost, could still use for polishing if required to treat to a lower limit in the future, idea of first level of treatment of 1 mg/l phosphorus is not unreasonable.
 - Gary Stuhlfauth clarified that the Agency considers small wastewater treatment plants to be 50,000 to 100,000, not minor facilities – maybe should include size in rule.
 - Questions – likelihood of upper Scioto TMDL being achieved? Reasonable assurances required. What regulation over the nonpoint source exists to get the load reduction?
 - John Lyons made the point that the TAG needs to stop using point source and POTW interchangeably.
 - Small sources – should there be exemptions and should some cut-off level be defined, maybe based on flow? Question for group.
 - Might need to update TMDL rule as part of this rule package.
 - Point sources will be treated differently than nonpoint sources. In regards to nonpoint sources, Tony Sasson mentioned the 4R certification program in the western basin of Lake Erie that The Nature Conservancy is involved in. Also there are voluntary implementation programs under the United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS) and Ohio Department of Natural Resources (ODNR). There has been water quality trading programs, Ohio River, Alpine Cheese, and Great Miami River. Ohio Department of Agriculture (ODA) has the new fertilizer certification program. Ban on the winter application of manure is being discussed.

- Septic systems should be included as a contributing source.
- Reasonable assurances – state directs funding into priority areas through Ohio EPA’s Section 319 program and USDA-NRCS programs.
- Kristy Meyer asked if a TMDL was ever disapproved by U.S. EPA because of nonpoint sources. Not that the Agency can think of, the Agency typically works with U.S. EPA to address their concerns.

Lunch from 1:00 to 1:30 p.m.

- Issue 22 Considerations for Drinking Water Related Issues – Jason Tincu and Dale Kocarek
 - Issue covers how everything fits together – direction setting
 - Downstream sources issues play into SNAP? SNAP does not address the far field impacts. This issue is more basin-wide and maybe requires a different tool than the SNAP. Would expect a lot of the things we are talking about doing will help with far field impacts.
 - Dale Kocarek is part of a Water Environmental Federation (WEF) committee and learns about what other states are doing. Iowa – optimization programs, point sources monitoring results. Dale will send link to information to the TAG group.
 - If near field impacts not resolved after initial reductions, then consider far field impacts with equal and fair reductions? Want to work within current rules and guidelines but don’t want to misapply the SNAP to something that should be handled some other way.
 - Ron Wyss addressed the bridge from SNAP to far field. Don’t have several permit cycles to take action in some areas of the state like Grand Lake St. Marys and the western basin of Lake Erie.
 - SNAP cannot say anything about drinking water or recreation and really can’t say anything about blue green algae. Can’t expect more from SNAP than what it was designed for. Implementation will benefit downstream but cannot promise that it will be able to do everything.
 - Steve Samuels was hoping that this question would lead to discussion on whether nutrients could be having other impacts and how to look at implementation or controls looking at all these issues. Larry Antosch sees it as a marriage of two programs Clean Water Act (CWA) & Safe Drinking Water Act (SDWA). The implementation phase is where you could see benefits.

- Issue 27 Margin for Future Growth – Dale Kocarek
 - As part of TMDL process, permittees already provide information on future growth – no need for anything different to be added to the current regulations. Guy Jamesson noted no new rule or guidance necessary.
 - Discussion on how cities need to plan for future growth. Dale gave the example of the City of Mason’s comprehensive land use planning.
 - Discussion on growth in nonpoint source sector – how to account for that?

- Issue 19 Data Requirements – Adrienne Nemura
 - SNAP defines data type, Ohio EPA guidance on data quantity, data quality – enough to make good management decisions.
 - Look at data required in SNAP, tables and flow charts. More than 2 years of data, samples downstream – already required in SNAP. Ohio EPA has existing protocols and standard operating procedures (SOPs).

- If insufficient data, then can't calculate SNAP. There are no defaults. These waters should be prioritized for analysis.
- Tony Sasson mentioned that current basin rotation is not sufficient. Bob Miltner mentioned that we usually do monitoring for 2 years so if we don't get it one year we will get it the next. The Agency has staff but overtime budget got smaller.
- Guy Jamesson brought up if the permittee believed there would be insufficient data, there should be a provision to allow their data to be deemed credible under the Credible Data program. Discussion on credible data requirements. Benthic algae data – Ohio EPA needs to look into this.
- Larry Antosch questioned why would a permittee want to collect data to run the SNAP? Guy Jamesson said that maybe they would want to collect data during adaptive management.
- John Lyons brought up that maybe one option would be that all POTWs go to 1 mg/l phosphorus within a reasonable time – then continue to do monitoring to see if additional controls are necessary. Discussion on why SNAP is needed. Dischargers to Lake Erie basin already at 1 mg/l phosphorus. Concern that Agency would be forcing controls on facilities that don't need it – like in Ohio River basin since Gulf of Mexico issues are really with nitrogen.
- Steve Samuels asked about how the Agency is doing right now with data collection. Bob Miltner said that the Agency is getting pretty good coverage right now.
- Adrienne asked Bob Miltner to review the flow chart in her presentation “Suggested Minimum Data Requirements for Performing SNAP Analyses” for accuracy.
- For dissolved oxygen, morning and afternoon grab samples for 5 consecutive days in a row.

Wrap up

- Next meeting scheduled for November, look for an email from Guy Jamesson to determine the day.
- Need to start talking about nonpoint sources and look at the rest of issues on the list.