



Working with community wastewater treatment and stormwater management agencies across the state to protect Oregon's water

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Paula Calvert, Willamette Basin Mercury TMDL Project Manager
Priscilla Woolverton, Upper Willamette Basin TMDL Coordinator
Andrea Matzke, Lower Willamette Basin TMDL Coordinator
Jennifer Wigal, Deputy Administrator,
DEQ Water Quality Division
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600

Sent via email

Subject: Willamette River Mercury Total Maximum Daily Load (TMDL) Advisory Committee Process

Dear Paula, Pricilla, Andrea and Jennifer:

This letter was written by and is being sent on behalf of the local government and associate members of the Association of Clean Water Agencies (ACWA) that are representatives to the Willamette River TMDL Advisory Committee, and the ACWA work group of local government and associate members in the Willamette Basin who are supporting this process. As you know, ACWA, is a private, not-for-profit professional organization of Oregon's wastewater treatment and stormwater management agencies and associated professional consulting firms. Our members are dedicated to protecting and enhancing Oregon's water quality. Our 125+ statewide members provide sewer and stormwater management services to 2.5 million Oregonians, serving 65% of Oregon's homes and businesses. This collective of stakeholders is writing to express serious concern and frustration regarding the path that the Willamette River Mercury TMDL Advisory Committee process has taken to date as well as the remaining schedule and process anticipated by DEQ at this time.

A significant number of ACWA members, which are DEQ's local government partners in this TMDL effort, will be affected by the update to the Willamette River mercury TMDL, including the cities of Portland, Gresham, Eugene, Salem, West Linn, Milwaukie, Oregon City, Wilsonville, Gladstone, Corvallis, Keizer, Springfield, Cottage Grove, McMinnville and Albany; Oak Lodge Water Services District; Clean Water Services; Water Environment Services; Multnomah, Lane, Clackamas and Marion Counties; and the Port of Portland. Again, these communities represent a significant percentage of the State's population.

We appreciate the efforts of DEQ to involve ACWA/local government representatives in the update of the mercury TMDL. However, we have a high level of frustration and a significant number of concerns with the process thus far. Our concerns relate to a deviation from the Advisory Committee Charter and

the ability of the Committee to provide any meaningful review and input on the TMDL development given DEQ's planned schedule to submit a revised TMDL to EPA in January 2019 and finalize the TMDL by April 5, 2019. Our frustration is that we do not perceive that DEQ is hearing or acknowledging our concerns.

The original schedule for the Advisory Committee included seven meetings. To date, four meetings have been held. The date and content of the meetings are summarized below:

- Meeting #1 – December 2017: This first meeting was introductory in nature and included background information regarding the history of the Willamette Basin mercury TMDL and general sources of mercury. At this meeting, Committee members requested additional details on the mercury modeling.
- Meeting #2 – February 2018: The second meeting included a general summary of the modeling approach provided by EPA's contractor Tetra Tech. However, this meeting did not include specific details regarding the data being used as model input for wastewater or stormwater point sources (i.e., sources regulated under an NPDES permit). In addition, we were told that stormwater would be modeled separately and that model had not yet been developed. DEQ stated that within the week, they would be requesting data regarding impervious areas from Phase I and Phase II MS4s and others to support this stormwater modeling effort. (Note: this data was not requested from MS4s until mid-May with a desired turnaround time by the end of May).
- Meeting #3 March 2018: Designated Management Agencies (DMAs) on the Committee (including ACWA) presented a summary of their respective programs to DEQ as they relate to mercury reduction efforts including descriptions of best management practices and monitoring conducted.
- Meeting #4 July 2018: DEQ facilitated a brainstorming session on potential mercury BMPs for nonpoint sources, suggesting we (the Committee members) should find ideas to improve upon what is already being done.

Both the scheduled April and June meetings were cancelled due to delayed progress on modeling.

The Charter for the Advisory Committee states that *"the committee's purpose is to provide input to the Oregon Department of Environmental Quality (DEQ) related to development of a revised Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WQMP) for mercury in the Willamette Basin".* The Charter goes on to state that *"...DEQ anticipates that the majority of the advisory committee's input will focus on source identification, allocations, and prioritization for implementation."* In addition, the Charter states that the Committee is slated to *"evaluate implications associated with modeling results and provide input to DEQ for development of an implementable WQMP to meet nonpoint source load allocations and waste load allocations assigned to point sources"* (underlines added for emphasis).

As indicated in the list of meetings conducted to date, the Committee has not had opportunities to provide input as described in the Charter. In addition, we found the agenda and discussion facilitated for meeting #4 to be very frustrating, inappropriate, and wholly unnecessary in terms of moving the process forward. The Committee did not have the nonpoint source program details or background that would be necessary to provide meaningful input on nonpoint source BMPs in the timeframe provided. It was

not a fruitful or valuable discussion, and no valuable recommendations emerged from that meeting that would benefit either the DMAs or DEQ.

This lack of input places the ACWA members in a very awkward position. During the public process, we anticipate that DEQ will acknowledge the Committee and identify Committee members as having provided input. Any such acknowledgement would misrepresent our perspective making it awkward for us to respond to our member's questions and to the public in general.

With respect to future meetings, the DEQ stated during the July meeting that: 1) the modeling results should be available for discussion during the next Advisory Committee meeting scheduled on August 22nd; 2) the draft WQMP will be provided to the Committee for the September 19th meeting; and, 3) both the TMDL and WQMP will go out for public review in October. This implies that DEQ will have insufficient time to respond to comments that require complex additional data review or analysis, and Committee members will have no opportunity to review the responses made to their comments. We find this timeline to be accelerated to the point of being unaccommodating of any meaningful input from the Committee. It is very difficult, if not impossible, to provide meaningful feedback on technical or policy issues related to development of an updated TMDL when the Advisory Committee is not given access to the appropriate information and adequate time to review the information to provide effective feedback.

The models being prepared to develop load and waste load allocations are complex and their results will have significant consequences for agencies and permit holders when they are translated into permit limits. While we were told by DEQ that model review was beyond the purview of the Committee, providing input on issues such as source identification cannot be disconnected from such a review. As an advisory group, we need time to review the model input data, models, model results, and methods to translate the results into allocations. Committee members have requested model input data and information for review since the February meeting and again at our last meeting and still have not been given access to this information. If we find significant issues with the input data, modeling assumptions or modeling results, when would DEQ have time to address those issues or even respond to our questions? The same comment applies to the timeline for providing feedback on the WQMP. The schedule and process provided to date will not allow DEQ adequate time to solicit, consider or incorporate feedback from the Committee.

The Advisory Committee meetings should be used to discuss relevant topics and policy issues such as how the TMDL will incorporate multi-discharge variances, methodology for implementing stormwater wasteload allocations, characterizing various land use contributions, mercury transformation in the main stem of the Willamette River, issues with using sediments as surrogates, etc. We need the time to discuss these important issues. Importantly, we also seek an open discussion of how DEQ will address the significant and large uncertainties in the mercury modeling and how it will ensure that these uncertainties do not lead to unjustifiable discharge limits. We anticipate that important policy questions will surface during these discussions. Further, spending time now to identify and provide input on those questions will be more effective than an ad-hoc approach of dealing with such questions after they arise in individual permitting situations.

A meeting of the Advisory Committee should be devoted to a report from the EPA's model reviewers so that we can understand what limitations they see in the modeling approach used by Tetra Tech. We

acknowledge that DEQ has maintained from the outset that EPA is managing the modeling process, and that input from the Committee will not be taken on the modeling. However, failure to address the uncertainties, gaps and other shortcomings of the modeling that have become apparent through this process is most assuredly a recipe for a failed TMDL development process. DEQ needs to build into the schedule the time to discuss these important issues.

We request that DEQ revise and extend the schedule to allow for adequate input from the Committee and adequate time for DEQ to consider and address the Committee's input. Again, the implications of these results must be carefully reviewed, as they could result in unachievable requirements and/or significant costs for NPDES permit holders without associated environmental benefits. ACWA members have committed to this Advisory Committee process with the understanding that we would be advising DEQ and we need the time to do that in a meaningful way.

We would be glad to meet with DEQ to explain our concerns in greater detail and to work collaboratively to improve the TMDL development process and ensure that adequate resources are being dedicated based on sound science and effective planning.

Sincerely,



ACWA Member Advisory Committee Representatives

Raj Kapur, Clean Water Services

Kristin Preston, City of Albany

Matt Stouder, City of Springfield

Krista Reininga, Brown and Caldwell

Cc:

Justin Green, DEQ Water Quality Administrator