



Oregon

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October 29, 2001

Re: Guidance for Interpretation of the Tualatin Subbasin TMDL in Renewal of Permits

Dear Mr. Gaffi:

This letter is to provide some clarification on several issues that have recently been raised related to how we intend to interpret the Tualatin Subbasin Total Maximum Daily Load (TMDL) and its Waste Load Allocations (WLAs) when renewing Clean Water Service's (CWS) permits and how we would refine and modify the TMDL, if needed.

Adaptive Management and Modification of the TMDL: The Department has a continuing commitment to a watershed permitting approach where we plan to review and, if needed, modify TMDLs prior to renewing permits on a 5-year cycle. If new information becomes available indicating that the TMDL should be modified prior to that time, the Department would make changes in a timely manner, subject to sufficient resources. DEQ will accept cooperation from CWS in the form of receipts authority to create sufficient resources, either within DEQ or from outside experts, if not otherwise available.

The Department designed the TMDL with the intent of encouraging adaptive management of the resource. We did so to insure that the river benefited from the most accurate and current information available, thus minimizing the risk of inadequate protection or of wasting scarce financial resources. We must be able to adapt rapidly to emerging information. Complete and conclusive science is rarely available and delaying TMDL development awaiting such science would greatly jeopardize progress of the program and indefinitely delay implementation of needed pollution controls. That is not acceptable. So, it is our intent to proceed to develop TMDLs with readily available science, encourage further monitoring and analysis and make timely changes in load allocations and control programs.

WLAs in Permits: In some cases, a tension will exist between the above goal and that of providing TMDLs that contain unequivocal and rigid pollution reduction goals. The TMDL envisioned adjustments in the WLAs and load allocations (LAs) to account for new information or different management approaches. For example, the TMDL states:

"These effluent temperatures and WLAs were based on calculating no measurable increase above system potential using the flows, temperatures and equations in Table 9 which shows loadings and effluent temperatures under one set of conditions. However as

the permits are renewed, WLAs may be recalculated using the equations if flow rates or effluent temperatures differ. Also, a maximum allowable discharge temperature will be included that will ensure incipient lethal temperatures are not exceeded. Therefore, the maximum temperature allowed in the permit may be different from the values expressed here and will be determined at the time of permit renewal to determine no measurable increase above system potential using the equations in Table 9."

DEQ has consistently taken the position that LAs and WLAs are not separately enforceable. Once a WLA is placed in the permit, the permit condition is enforceable in the same manner as any other permit condition. DEQ must ensure that water quality-based effluent limits are consistent with the assumptions and requirements of the WLAs (CFR 122.44(d)(1)(vii)(B)). DEQ commits to insure that the assumptions and requirements, which underlie the WLA and LA's, are credible and sound. The WLAs outlined in the TMDL are not limited to specific numbers. As discussed in the TMDL, adaptive management and regulatory flexibility are key components of the WLAs included in the TMDL. Through use of these components, DEQ will continue to look for and implement the most effective environmentally beneficial ways to meet the water quality goals.

DEQ understands the challenges and variability associated with managing MS4 discharges. Neither the Clean Water Act nor the TMDL implementing regulations require numeric "end of pipe" limitations be included in the MS4 permits to implement WLAs. DEQ believes that a WLA does not need to be, and DEQ has not pursued or intends to pursue at this time, a numeric "end of pipe" effluent limit. However, the "gross" WLA for CWS needs to be incorporated explicitly in the permit. There may be several ways to then link the management practices described in the MS4 permit to the WLAs. The Department has proposed and recently received funding for a workgroup to discuss and address these issues prior to modifying the MS4 permits in the basin.

Credit for Flow Augmentation: DEQ intends to work through options and provide credit as appropriate to Clean Water Services (CWS) for temperature decreases caused by flow augmentation when renewing its municipal permits. This flow augmentation would include CWS's purchase of water from upstream reservoirs as well as from its wastewater treatment plants' effluent discharges. The technical derivation of system potential that was in the TMDL included a portion of CWS flows and associated cooling, potentially resulting in the appearance that DEQ would not allow credit for such flows. Recent modeling by USGS suggests that both flow restoration water and the reduced travel time resulting from flow addition of effluent combine to significantly increase the stream miles meeting the standard, as compared to those meeting it without CWS operations. The Department has initially reviewed this analysis but a more detailed review will be needed. In the TMDL document (Section 4.1.4.3), the Department presented a methodology for providing credits for flow augmentation that could be incorporated into permits or through other implementation methods such as pollution trading. In addition, as cited above, the Department referenced the equations in Table 9 as the means for calculating WLAs based on differing assumptions. The Department would work through these methodologies in renewing the permit and utilize the public process for the permit renewal.



Calculations and Assumptions in the TMDL models: As implementation of the TMDL progresses, it is possible that concerns about the validity of calculations, assumptions or other methodologies may arise. DEQ intends to work closely with CWS and others to address these concerns. We believe that most of these concerns can be worked out through the implementation process and normal review cycle. As stated previously, the DEQ is committed to a watershed permitting approach whereby we plan to review and, if needed, modify TMDLs prior to renewing permits on a 5-year cycle. If new information becomes available, indicating that the TMDL should be modified prior to that time, the DEQ would make changes in a timely manner, subject to sufficient resources. DEQ will accept cooperation from CWS in the form of receipts authority to create sufficient resources, either within DEQ or from outside experts, if not otherwise available. We believe that an active public involvement process must go along with any significant review and modifications to the TMDLs. In the case that there is significant disagreement related to concerns in the TMDL, the DEQ is willing to explore various means to address these concerns including formation of advisory committees, use of expert panels, etc.

Guidance to Permit Writers: Given the large numbers of TMDLs that DEQ is developing statewide, DEQ will be adding guidance to its Permit Writers Manual on how to incorporate WLAs into permits. This guidance will describe the intent of and direction contained in TMDLs to allow sufficient flexibility to enable incorporation of evolving science and knowledge. The Tualatin TMDL will provide a strong basis for this guidance. It is expected that permit writers for sources in the Tualatin will be directed by guidance in this letter as well.

DEQ recognizes that CWS is under an obligation to resubmit revised draft municipal waste permits by December 14, 2001. CWS may submit draft permits that incorporate refinements and corrections that CWS believes are consistent with the stated intent of the TMDL and will strengthen its technical integrity. The final permits will reflect any of the refinements and corrections agreed upon by DEQ.

In summary, it is the Department's intent that full and proper credit be given to CWS for beneficial effects of its operations on the river and to incorporate new information and correct any technical deficiencies that may exist in the TMDL and its allocations in a timely manner. We look forward to the continuing cooperation of CWS and others in the subbasin as we work together to sharpen our focus and build upon the many successes we have achieved together. The Tualatin is a much healthier river today as a result of that collaboration.

Sincerely,

Andrew Z. Schaedel

for Neil Mullane
Northwest Regional Administrator

Cc:

Andy Schaedel
Bob Baumgartner



