Bay Harbor RSG Technical Work Group Meeting Summary for 12/10/09

Attending: Rick Gross (Walloon Lake Assn.), Ralph Dollhopf (EPA), Dean Branson (3 Lakes Assn.), Bob Walker (Bay Harbor Community Council), Bob Wagner (MDEQ), Steve Kircher (Boyne USA), Jennifer McKay (Tip of the Mitt WSC), Rachel Smolinski (LTBB), Tim Petrosky (CMS), Kevin Adler (EPA), Ray Bier (Friends of the Jordan River), Denny Brya (Bay Harbor Co.), Melinda Holland (E2), Tiffany Reed (E2)

The meeting began with a presentation by Bob Wagner explaining the Mercury Flux Protocol which was developed between EPA, DEQ and CMS in April 2009. The Protocol document was shared with the work group via email prior to this meeting. Main points of Mr. Wagner's presentation included:

- Purpose of the protocol is to estimate the amount of mercury not captured by the leachate collections systems, thus entering Lake Michigan
- The protocol includes mathematical calculations which estimate mercury flux through the groundwater into the lake
- Numerous groundwater monitoring wells have been installed and are sampled quarterly at different depths (lake level and 10, 20, 30 and 40 feet below lake level). Samples are taken from each well at each depth from well screens to determine the amounts of mercury in the groundwater
- Specific rectangular zones (or "windows") representing vertical areas along the lakeshore are determined by mid points of the sample wells, and for each zone, the flow of groundwater flux is calculated, and then mercury flux is calculated based on groundwater flow and concentration of mercury
- The sum of each discrete mercury flux for all zones ("windows") determines the total mercury flux for each geologic zone
- This data is combined to analyze the overall trends for release of mercury into the lake over time
- Three sets of quarterly mercury flux sampling data/analysis are available from East Park which show variability but fairly low numbers overall
- Data on mercury flux from the development side of Bay Harbor site are not as complete as East Park at this time (104 well screens vs. 55 at East Park)
- A work group member suggested that a statistician analyze the mercury flux protocol, sampling, and data to determine if enough data is being collected to be statistically valid given the variability in results
- After some discussion, the work group agreed that it accepts the mercury flux protocol process as a reasonable approach to address the release of mercury into the lake
- The work group requested the opportunity to review the mercury flux data and trends analysis
- Mr. Wagner explained the legal route for the mercury flux protocol results to become 'allowable' if the mercury amounts exceed the state's criteria. There is an existing administrative appeals process (Rule 716) which may be used to demonstrate that the criteria are not achievable. A combination of the EPA's Technical Impracticability process and the state appeal process may allow CMS to demonstrate that it cannot achieve the state's criteria and receive a variance.

Next, the work group discussed the windows of opportunity for the RSG to have input into the site decision process and the need to prioritize work group activities. Work group members noted the timing of the following key site studies and decision points:

- East Park Remedial Investigation and Alternatives Evaluation (RI/AE) – the agencies expect to formally 'accept' the RI/AE in January, 2010
- Development RI/AE – agency acceptance expected in the spring of 2010
- Technical Impracticability Study (TI) – Mr. Dollhopf mentioned that this study is in its early stages, and is not yet ready for RSG review
- The agencies shared what they view as the highest short-term priorities for the RSG to consider: East Park – especially mercury flux protocol and data, engineering controls, permit applications, and options for disposal of collected groundwater

Topics for the December 16th and future RSG meetings were discussed:

- Work group members agreed that Bob Walker would provide a brief overview of the mercury flux protocol discussion from this work group meeting
- Ralph Dollhopf and Bob Wagner agreed to provide an overview of the regulatory and legal framework for the site (at the request of the Policy/Legal Work Group and the Technical Work Group) and explain the Technical Impracticability and variance processes discussed earlier in the meeting
- The work group requested a review of the East Park RI/AE and CMS's offer to make the presentation was accepted

Melinda Holland gave an update on the status of work being done by E² Inc. for the RSG under the TASC contract. She explained that telephone interviews by E² Inc. senior staff of the top tier of possible technical advisors will occur next week, and that the Technical Work Group will be provided with information on the top candidates as soon as possible. Ms. Holland asked for work group feedback on the draft list of key site related documents prepared by E² Inc. staff. The work group suggested that Tim Petrosky and Jennifer McKay review the list and recommend a small number of documents for which E² Inc. will prepare executive summaries for the RSG.

The work group selected Bob Walker as its Chairperson and asked that he present the summary of this meeting to the RSG on December 16th. The next Technical Work Group meeting was set for January 20th from 1:00 – 3:00 p.m. at a location to be determined.

Possible topics which were raised for future work group or RSG meetings included:

- Technical Impracticability process and study
- Comparison of the mass of mercury going into the lake from the Bay Harbor site to other releases/sites, and other permits for discharge of mercury
- National Pollutant Discharge Elimination System (NPDES) permit process – Bob Wagner, MDEQ, offered to give a presentation to the RSG at its January 27th meeting on this topic
- A draft technical work group 'work plan' will be developed by volunteers from the group, and then reviewed and modified by the whole group

The work group discussed the request from an observer to attend work group meetings. Members concluded that in the near-term the group would prefer to include only work group members and invited technical advisors.