



Att. 5.a

Prepared by COG staff, May 8, 2013

COG-specific Discussion Points

- 1) Affordability is a concern even for relatively wealthy jurisdictions with high median household income levels (e.g. Fairfax County has 55,000 – 60,000 residents at or below the poverty level for whom higher wastewater fees and stormwater taxes could be a burden)
 - a. Variable rate structures or utility rate assistance programs may not be legal or may have other limitations that limit their usefulness in addressing the economic impacts of increased water-based regulations.
- 2) Based on both financial and capacity constraints, consideration should be given during the Bay Program's TMDL mid-course correction process to extending the current 2025 deadline for completing the implementation of pollution control measures needed to meet water quality standards.
- 3) Based on cost-benefit concerns, consideration should be given during the Bay Program's TMDL mid-course correction process to conducting a use attainability analysis of the Bay's water quality standards.
- 4) Specifically in regard to stormwater permitting, regulators should understand that considerable uncertainty remains about the costs, maintenance needs and public acceptance of the new paradigm practices known as environmental site design. Coupled with uncertainty on loading rates and the actual areas subject to permit requirements, these grey areas make the current imposition of numeric allocation in stormwater permits highly problematic and may bog down actual implementation progress in litigation.
- 5) For planning and financial capacity reasons, there is a need for regulatory stability over extended permit periods, 2-3 five-year permits.

National Organization Discussion Points (which are consistent with COG policy and member concerns)

- 1) EPA should assess ratepayer affordability by examining the income of water and sewer charges across the entire income distribution, and pay special attention to impacts on the lower end of the income spectrum within regulated communities.
- 2) EPA should include costs for providing drinking water and maintaining drinking water system infrastructure, not just wastewater and stormwater, in its integrated permitting framework and the affordability dialogue.
- 3) EPA should consider the costs that local governments face in replacing and maintaining existing water, wastewater and stormwater infrastructure. In some cases, where deferred maintenance can impact the safety or reliability of these systems, infrastructure replacement may be a higher priority than meeting new regulatory mandates.
- 4) EPA should consider a fuller analysis of local governments' ability to add additional debt to finance capital costs associated with regulatory requirements, including the cost of unfunded pension and health care commitments to retirees. As a whole, the federal government should preserve the tax-exempt status of municipal bonds.
- 5) EPA should conduct more robust cost-benefit analyses before taking regulatory action.

- 6) EPA should consider the rate at which established utility fees or other dedicated sources of revenue can reasonably be allowed to increase.¹
- 7) EPA should consider limitations on the extent to which system capacity -- for instance to design, build and finance significant amounts of stormwater retrofit infrastructure -- can increase over time²
- 8) EPA should establish a local government ombudsman position to serve as a focal point for tracking the impact of EPA regulations on local governments and for communicating local government concerns to EPA staff.

Context

The May 17 forum with EPA and state officials sponsored by COG's Chesapeake Bay and Water Resources Policy Committee will be the third such meeting in recent years to focus on local government issues with the Chesapeake Bay TMDL. This meeting, however, will have an added wrinkle that ties it into a developing national dialogue on the need for EPA to adopt more flexible regulations and to take greater account of local financial concerns.

Several national groups representing local governments, in particular, the U.S. Conference of Mayors (USCM), have been encouraging EPA to adopt greater flexibility in promulgating regulations and permits under the Clean Water and Safe Drinking Water acts.³ More recently, USCM, along with the National League of Cities and the National Association of Counties (NACO), has launched an "affordability dialogue" with EPA to highlight the challenges that local governments face in trying to pay for increased regulatory requirements.

Four COG Bay Policy Committee representatives, including committee chair Penny Gross of Fairfax County, representing NACO, attended a meeting with EPA officials led by Acting Administrator Bob Perciasepe April 29, the first in a series of meetings on affordability issues expected to occur over the course of 2013.

The dialogue is an extension of discussions on regulatory flexibility that have been going on for several years. EPA's Office of Water and its Office of Enforcement and Compliance Assurance have issued several internal memos providing general guidelines to EPA's regional offices regarding integrated planning, integrated permitting and assessing local governments' financial capacity to meet regulatory requirements. See <http://cfpub.epa.gov/npdes/integratedplans.cfm> for more details.

¹ According to the USCM, aggregate local government spending on water and wastewater services increased six percent a year from 2001- 2010. However, to meet Chesapeake Bay WIP requirements for stormwater by 2025, current stormwater fees may have to increase between 15 -20 percent a year for the next decade.

² Even if local governments can afford to pay for the necessary capital costs for stormwater improvements, it is not clear that programs can be expanded and outside resources mobilized fast enough to meet ambitious permit schedules.

³ COG's Chesapeake Bay and Water Resources Policy Committee received an introductory briefing on these issues at its November 16, 2012, meeting from Richard Anderson, Senior Advisor to the Mayor's Water Council at USCM. See https://www.mwcog.org/environment/committee/committee/documents.asp?COMMITTEE_ID=39.

EPA Response

At the April 29 session, EPA officials pointed to a number of new or revised CSO consent decrees with green infrastructure provisions as well as new integrated permits for a number of jurisdictions across the country as evidence for increased flexibility. They also cited their willingness to extend deadlines for CSO compliance.

On financial issues, they said they were receptive to some of the metrics proposed by the national groups for assessing affordability and that the much discussed affordability threshold of two-percent of median household income is simply another metric, not a hard and fast rule.

The EPA officials did not indicate a willingness to back off from 100 percent compliance with regulations to achieve water quality standards, but they noted that the Clean Water Act already includes, in its provision for use attainability analysis, a mechanism for adjusting water quality standards to address financial concerns.