



We are asking state and EPA representatives to address the following issues from the current national dialogue on affordability and flexible permitting within the context of the Chesapeake Bay TMDL and EPA Region III permitting experience.

Affordability

Member concern:

- 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 stormwater taxes and utility fees 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.

Question for EPA/states

Are variable rate structures a truly viable option for addressing the differential impact of increased wastewater, stormwater and drinking water fees? Are there examples of how this could work either within EPA Region III or elsewhere around the country?

Member concern:

- 2) We understand that EPA's flexibility in regard to reducing compliance requirements to meet water quality standards is limited under the Clean Water Act, but that use attainability analysis is at least one form of such relief.

Question for EPA/states:

Are there any examples of how use attainability analysis can be used to limit a community's financial burden for regulatory compliance either within EPA Region III or elsewhere around the country? In EPA Region III, does the decision to seek a UAA for Chesapeake Bay water quality standards rest solely with the states?

Flexible Permitting

Member concern:

- 1) 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.
 - a. We know that integrated planning and permitting is being used by communities facing consent decrees for controlling combined sewer overflows.

Question for EPA/states:

Are there any examples within EPA Region III of integrated plans/permits that do not involve CSO requirements, examples, for instance, that assess wastewater and stormwater requirements jointly or wastewater, stormwater and drinking water?

Member concern:

- 2) We understand that EPA has extended compliance schedules for CSO consent decrees for some communities because of affordability concerns. Because of 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.

Question for EPA/states:

Are there any examples outside of CSO-based consent decrees in which EPA has extended deadlines for meeting regulatory provisions, either within EPA Region III or elsewhere around the country?

Member concern:

- 3) EPA should consider the rate at which established utility fees or other dedicated sources of revenue can reasonably be allowed to increase. 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 time.
 - a. Current projections for urban stormwater costs to retrofit older developed areas to meet stormwater allocations for the Chesapeake Bay TMDL and potentially for more localized TMDLs may require local governments to raise dedicated taxes or stormwater utility rates beyond the historical rate of increase of water and sewer fees, which may not be sustainable or politically feasible.

Question for EPA/states:

Can local governments use rate of increase and capacity constraints as grounds for permitting flexibility, for instance, in "maximum extent practicable" analyses for stormwater permitting purposes?

Member concern:

- 4) Given the unlikelihood of new sources of federal funds to help the Bay restoration effort and the inadequacy of current state funding to meet local government stormwater funding needs, EPA and the states need to promote more cost effective methods for meeting Bay TMDL requirements.

Question for EPA/states:

What are EPA and the states doing to establish viable trading programs? Will permitting agencies allow trading to meet wasteload allocations in NPDES permits?

Member concern:

- 5) EPA should conduct more robust cost-benefit analyses before taking regulatory action.

Question for EPA/states:

What is the status of EPA's cost-benefit analysis for the Bay? Will EPA be accepting comments on this analysis?