

MEMORANDUM



TO: CBP Water Quality Steering Committee Representatives

FROM: Christopher D. Pomeroy

CC: V/MAMWA CBP Team

DATE: December 11, 2008

RE: Representation of VA and MD POTW Loads in Model Scenarios

This memorandum provides the recommendations of the Virginia and Maryland Associations of Municipal Wastewater Agencies (V/MAMWA") on the municipal wastewater component of model scenario definitions to be used in the process of developing the Bay TMDL.

Many VAMWA and MAMWA member agencies are in the process of upgrading their POTWs with nutrient removal technology. In addition, Virginia has developed and implemented, on a regulatory and contractual basis, a comprehensive point source nutrient credit trading program involving over 100 participating facilities. Accordingly, we appreciate the EPA Regional Administrator's acknowledgement of:

. . . the large scale public investments (estimated at over \$4 billion) that are now being carried out throughout the watershed to upgrade and reduce nutrient discharges from point sources. A stable regulatory environment is a priority need for these facilities and a matter of fiduciary responsibility and public trust. Therefore, EPA considers requiring further point source upgrades to the limits of technology as an option of last resort and is avoidable if the Bay partners use our creative energies to deliver sufficient nonpoint pollutant reduction commitments.

Letter dated Sept. 11, 2008, from Donald S. Welsh, EPA Region III, to John Griffin, MDNR, Enclosure A at 4.

The fact that all across Virginia and Maryland major financial and construction decisions have recently been on the basis of existing wasteload allocations makes a stable regulatory environment an imperative for V/MAMWA members. The member agencies appreciate your sensitivity to this fact.

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We also note the 2008 USEPA Office of Inspector General Report (08-P-0049) stating that:

Although EPA and its Bay partners could obtain additional nutrient reductions from significant municipal wastewater treatment facilities ..., these additional reductions are not cost effective or practical. Obtaining these additional reductions would require justifying additional expenditures, recalculating wasteload allocations, and reopening and modifying permits already being put in place. At this point, EPA has no plans to require additional reductions from wastewater treatment facilities.

Also, it is our understanding from a recent meeting with Virginia officials that Governor Kaine recently expressed a concern about lack of cost-effectiveness of further point source controls.

V/MAMWA share these views and are writing to recommend how they should be incorporated in upcoming modeling activities. First, we note that the most recent Phase 5 modeling results indicate higher overall nutrient loadings than the Phase 4.3 model. Significantly, the simulated increase was driven by increases in loads from *nonpoint* sources such as agriculture, forest, and atmospheric sectors, not from municipal wastewater point sources. Consequently, the municipal wastewater point source sector now represents even a smaller relative portion of the total nutrient loading to the Bay than previously understood.

Accordingly, V/MAMWA recommend that the model scenarios currently under development (such as E3, maximum feasible, etc.) address municipal wastewater on the principle of regulatory stability. More specifically, all upcoming management and scoping scenarios should generally incorporate municipal wastewater point source allocations at their recently established (2005) allocation levels. Furthermore, consistent with EPA Region III's "option of last resort" approach, V/MAMWA further recommend that it is premature to consider modeling and evaluating further point source reductions.

Please contact me at (804) 716-9021 or chris@aqualaw.com if you have any questions or would like to discuss these recommendations.

C.D.P.