

March 17, 2014

Nicholas DiPasquale, Chair
Chesapeake Bay Program Management Board
U. S. Environmental Protection Agency
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**Adjunct Member*

Dear Mr. DiPasquale,

I am writing on behalf of the Chesapeake Bay and Water Resources Policy Committee of the Metropolitan Washington Council of Governments (COG), in consultation with other COG committees, to provide comments on the final draft of the proposed new Chesapeake Bay Agreement (dated January 29, 2014). These comments are in addition to those that we submitted to you on July 30, 2013 on the initial draft.

Reviewing this draft agreement has given us a chance to reflect on the significant water quality improvements that have been achieved in the COG region over the 30 years since the first Chesapeake Bay Agreement was signed. We have made and continue to make great strides in improving water quality in the Potomac River and its tributaries and to mitigate our region's impacts to the Bay. Our wastewater treatment plants continue to build and implement state of the art technologies to achieve significant nutrient reductions in the face of continued growth. Over the past three decades, these efforts have reduced the amount of phosphorus discharged to the region's waters by more than 90 percent and the amount of nitrogen by about two-thirds. And our local governments continue to upgrade and expand their stormwater management programs through the implementation of innovative practices including green streets, stream restoration, and retrofits. This represents billions of dollars in capital and operating expenses by COG's local governments and utilities. COG's members also actively pursue wise land use decisions to protect our own local streams and as part of our ongoing source water protection efforts.

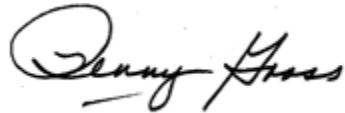
Our region's actions are illustrative of our members' commitment to the restoration of the water quality of the Bay and its tributaries. They also reflect the significant financial and programmatic investments that our members have made and continue to make to implement controls needed to reduce nutrients and sediments, as well as to address broader environmental goals.

You will note that our formal comments (attached) address not only some of the proposed Principles, Goals and Outcomes, but also on the development and implementation of the Management Strategies – a critical area of importance to COG’s members. As you are well aware, a significant amount of this implementation occurs at the local level and is carried out by local governments and utilities.

Should you have questions about these specific comments or COG’s Bay policies in general, please contact Tanya Spano of COG staff, tspano@mwkog.org or 202-962-3776.

I look forward to our continued dialogue with the Bay Partnership on these important issues, and recommend that we continue to discuss these matters in greater detail at our annual water quality forum this summer.

Sincerely,

A handwritten signature in black ink, appearing to read "Penelope A. Gross". The signature is fluid and cursive, with a horizontal line underneath the name.

Penelope A. Gross
Chair, Chesapeake Bay and Water Resources Policy Committee
Metropolitan Washington Council of Governments

cc: Members, COG Chesapeake Bay and Water Resources Policy Committee
Robert M. Summers, Maryland Secretary of the Environment
Joe Gill, Maryland Department of Natural Resources
Molly Ward, Virginia Secretary of Natural Resources
David Paylor, Virginia Department of Environmental Quality
Keith Anderson, District of Columbia Department of the Environmental



**Metropolitan Washington Council of Governments
Chesapeake Bay and Water Resources Committee
Formal Comments on New Draft Bay Agreement (January 29, 2014)**

Preamble & Vision

We are pleased to note: a) the recognition of local governments as ‘key partners; b) the acknowledgement that progress needs to be made in a ‘strategic manner focusing on efforts that will achieve the most cost-effective results; and c) the commitment to achieving restoration success “while maximizing the economic benefits to local communities across the region.” Given the specific and direct role that local governments and utilities have in implementation, beyond just being a stakeholder, **we recommend the following addition to the current**

Preamble text:

“Local governments are key partners as are individual citizens, businesses, watershed groups and other non-governmental organizations. Working together to engage, empower and facilitate these partners, especially local governments and utilities that implement many projects and programs, will leverage resources and ensure better outcomes.”

Principles

COG’s adopted Policy Principles for guiding regional water quality policies and programs are: 1) Holistic Requirements, 2) Equitable Responsibility, 3) Sound Science, and 4) Communication and Voice. So we are pleased to note that many Principles in the draft Agreement echo similar sentiments. We offer the following observations and suggested edits to several of the Principles.

- *“Utilize science-based decision making and seek out innovative technologies to support sound and holistic management decisions in a changing system that take into account all environmental impacts including energy, climate, air and water quality.”*
- *“Maintain and adequately fund a coordinated watershed-wide monitoring, modeling and research program to support decision-making and track progress and the effectiveness of management actions.”*
 - Funding for critical monitoring, modeling and research are all essential to ensure that the major capital and operating investments being made are achieving the desired results and to assess where strategies may need to be modified. **The Partnership needs to ensure that adequate funding from the states and federal government continues to be provided for all of these critical programs.** While local program may complement those programs, the cost of such fundamental monitoring, modeling and research provides multi-state benefits and cannot be effectively borne by local governments who already bear the cost of implementing controls.
- *“Acknowledge, support and ~~embrace~~ engage local governments and other entities in watershed restoration and protection activities.”*
 - As noted, local governments and utilities actively implement many activities.
- *“Anticipate and adapt strategies in response to changing conditions, including long-term trends in sea level, temperature, precipitation, climate, land use and other variables.”*
 - This Principle should be worded to be more consistent with the adaptive nature of the Management Strategies that are addressed later in the draft Agreement.
- *“Adaptively manage all levels of the Partnership to foster continuous improvement.”*
 - It will be critical for the Management Strategies to define processes for how such ‘adaptive management’ will be accomplished if this Principle to be met.

Goals and Outcomes

We recognize the desire to have Outcomes be specific, time-bound and measurable targets to achieve the stated Goals. However we also understand that the details for how these will be achieved will be defined in the Management Strategies that are to be issued a year from when this new Agreement is adopted (hopefully later this summer); and that there is no intention to provide additional/formal public comment on this draft Agreement. These Strategies are therefore critical to how the Goals and Outcomes will be achieved and need to be consistent with the Principles; so we offer the following comments and edits on the overall text and select goals.

- **No new or expanded goals should be added to this Agreement unless another public comment period is provided.**

- “The goals articulate the desired high-level aspects of our vision; while outcomes related to each goal are the specific, time-bound, measureable and sustainable targets that directly contribute to achievement of the goals.”
 - To ensure that the long-term gains from these efforts continue, it is imperative that these goals and outcomes can in fact be sustained over time. Adding that text acknowledges that key point.
- “As the Partnership identifies new opportunities and concerns, goals, ~~and~~ outcomes, and management strategies may be adopted or modified.”
 - These strategies must also be open to change if adaptive management is to be a reality, and the goals are to be sustained.
- We recognize the need to maintain flexibility and that not all stated goals are equally critical to all the Partners; but would note that the text that “each signatory may exercise its discretion to participate in the development and implementation of individual outcomes’ management strategies...” does not convey a robust commitment by all the parties to the overall restoration effort, and could lead to confusion with the Bay nutrient and sediment TMDLs and related Watershed Implementation (WIP) requirements. We would also note that if such flexibility leads to economic imbalances in the watershed, this could be an issue at local levels.
- **Vital Habitats Goal: Stream Health Outcome** – COG’s members need to be involved in any discussions with the designated Goal Implementation Team regarding stream health - given the direct role and responsibility our local governments have in addressing local water quality. (See also Health Watersheds Goal.)
- **Water Quality Goal:** Text should be added to reflect the intention to use the WIP process as the Management Strategies to meet these goals and to eliminate any ambiguities that somehow these TMDL-driven strategies are somehow subject to the ‘discretionary’ concept noted earlier.
 - “...across the region. The current nutrient and sediment Watershed Implementation Plan process will continue to be used to address these goals and outcomes.”
 - COG would also like to echo the Scientific and Technical Advisory Committee (STAC) comments that “numeric targets should be avoided since they suggest a definitive end point for management efforts,” when in actuality pollutant load management and ecological restoration must continue indefinitely. In this vein, the 2017 and 2025 outcomes noted under the Water Quality Goal should continue to be viewed as milestones along a long-term path towards restoration.
- **Healthy Watersheds Goal:** As noted above with the Stream Health Outcome, COG’s members need to be involved with the designated Goal Implementation Team on any discussions regarding watersheds that have local implications - given the direct role and responsibility our local governments have in addressing local water quality.
- **Land Conservation Goal:** Land use issues are addressed differently by states and localities, but in the end land use is a very local issue. Therefore, any Management Strategies for this goal will need clear and robust processes defined for how local governments will be involved in the development and review of the methods and metrics being developed and assessed.

Management Strategies

Multiple strategies will define how local implementation efforts are to be accomplished and will be of critical importance to COG’s members. However, the current text is not clear about how local governments and utilities can provide input on the development of and not just the review of these strategies; makes such input seem too discretionary; and does not indicate how the strategies relate to existing WIPs or to meeting other environmental objectives or reflecting funding limitations. Therefore we offer the following suggested edits.

Within one year of the Agreement, Goal Implementation Teams will develop..... Where appropriate, management strategies should describe how local governments, nonprofit and private partners-will be engaged; and identify where actions, tools, financial assistance or technical support are needed to empower and support local governments, utilities and others to do their part; and, what steps will be taken to facilitate greater local participation in achieving the outcomes.



Management strategies should take a holistic approach to meeting goals, consider multiple-benefits, feasibility and cost-effectiveness, and may address multiple outcomes if deemed appropriate. Goal Implementation Teams will reevaluate biennially and update strategies as necessary, with attention to changing environmental and economic conditions.

The Management Strategies will have-be developed through a defined process and schedule for providing that provides adequate stakeholder input will be incorporated into the development, review and reevaluation of each of the strategies. The Management Board will approve these strategies.

If the Management Board determines that any strategy or plan developed prior to the signing of this Agreement meets the requirements of a management strategy as defined above, no new strategy needs to be developed. This includes, but is not limited to, the Watershed Implementation Plan strategies and plans for implementing the Chesapeake Bay TMDL.