

## Preliminary COG Phase II WIP/TMDL Comments

### General comments regarding current status of EPA's TMDL implementation process and the draft Phase II WIPs of Maryland and Virginia

#### Introduction

(COG staff proposes transmitting these comments under a cover letter from Chair Penny Gross to Region III Administrator Shawn Garvin, with copies to the PSC members in Maryland and Virginia.

#### Recommendations & Comments

##### **1. EPA and the States should continue to improve upon and address financial considerations in the development of the WIPs**

We support Maryland's efforts to document the costs of TMDL implementation and to provide local governments and other parties with tools that they can use to estimate costs. Virginia should provide similar documentation. However, the Bay partner jurisdictions should realize that costs in areas such as implementation of stormwater retrofit practices are based on very limited experience to date and may deviate widely from current estimates. In particular, Maryland's current estimate that total stormwater costs to reach TMDL targets will total about \$6.1 billion for local governments based on an average cost of \$12,500/acre is much lower than our COG region experience with installing retrofit projects to date would suggest.

##### **2. Given the scope and complexity of the work to be done, and in the absence of supplemental funding support, local governments will find it difficult to meet current implementation deadlines; and the Bay Partners should be prepared to adjust the TMDL implementation deadlines in response to such legitimate constraints**

As we noted during our original comments on the proposed TMDL, existing funding mechanisms are insufficient to meet the proposed implementation schedules in most local jurisdictions, particularly in regard to urban stormwater. Since the promulgation of the Bay-wide TMDL in December 2010, no major new funding sources to assist local governments in meeting urban stormwater targets have arisen, although there are current discussions of new funding mechanisms in the Maryland General Assembly. In the absence of such supplemental funding support, it is likely that some of the major reduction targets cannot be achieved by 2025 and other constraints, such as insufficient time for planning, design and construction of new BMPs, also make meeting such a deadline unlikely. The Bay partner jurisdictions should be prepared to adjust their deadlines in response to these legitimate constraints.

##### **3. EPA and the States need to make more progress in developing viable trading and offset mechanisms and to allow the flexibility to achieve needed reductions from various sources**

We support current efforts in the Virginia General Assembly to expand that state's existing Nutrient Credit Exchange Program to provide local governments and other parties the flexibility to trade among different types of sources. We ask that Maryland give similar consideration to how its policies can allow for municipalities that have nutrient credits from their wastewater operations to use them to meet stormwater reduction targets. We also ask that the states continue current efforts to develop viable offset mechanisms for practices, such as new development, that might otherwise be limited by a strict interpretation of the need to not allow additional sources of nutrients and sediment in the watershed and that these policies should be subject to public review and comment. As long as the actions result in

achieving the necessary load reductions, the flexibility for how to accomplish this should be determined by those entities that are doing the actual implementation. This flexibility would be consistent with EPA's proposed 'Achieving Water Quality Through Integrated Municipal Stormwater and Wastewater Plans' (10/27/11 EPA memo).

#### **4. EPA should reopen the TMDL to correct errors and not wait until the 2017 mid-point assessment**

State and basin allocations for the Bay-wide TMDL promulgated in December 2010 were formulated using an older version of the Chesapeake Bay Program's watershed model that has since been succeeded by a more accurate version. Affected numbers in the TMDL should be adjusted accordingly. In addition, the current TMDL contains individual wasteload allocations for Phase I MS4 permittees in Virginia that are not accurate and cannot be justified. These should be removed.

#### **5. EPA should utilize every mechanism to require federal agencies to match or exceed the implementation requirements for local governments**

As we noted during our original comments on the proposed TMDL, the federal sector should "lead by example" and be held accountable to the highest overall reduction standards, consistent with the President's Executive Order. Our examination of the federal sector details available in the Maryland and Virginia draft Phase II WIPs indicates that federal agencies lag behind local governments in their commitment to installing new BMPs and taking other measures to meet their TMDL obligations.

#### **6. EPA should review and potentially revise its "E3" scenario for urban stormwater to reflect new and evolving information – consistent with Adaptive Management concepts**

During the extensive efforts that led up to the issuance of the TMDL, the Bay Program developed a set of assumptions to guide model estimates of watershed pollutant loads and water quality responses. One of these sets of assumptions, known as the E3 scenario, attempts to define the limits of what may ultimately be feasible to accomplish in the various categories of pollutant sources. These assumptions have become important at the federal and state level (notably Maryland) in determining how to allocate pollution reduction responsibilities by source sector.

We support Maryland's current request to EPA that the E3 definition for urban stormwater sources be re-examined, as we suspect that it may over-estimate how much is truly feasible to achieve in this source sector.

#### **7. EPA and the States should avoid linking stormwater permit requirements under the MS4 permit program too closely to TMDL reduction targets for urban stormwater, and strive instead for overall consistency**

While we acknowledge that stormwater permits are a means by which regulatory agencies can require progress toward TMDL reduction goals, the inability of the Chesapeake Bay Program's watershed model to accurately estimate nutrient and sediment loads at the level of individual counties precludes the imposition of defensible wasteload allocations for individual MS4 permittees. Instead, states and the EPA should continue to rely on overall consistency between TMDL targets and specific MS4 permit provisions and to allow the Maximum Extent Practicable standard to govern implementation rates.