

**Chesapeake Bay Program
Principal's Staff Committee Briefing Paper on the
Bay Watershed TMDLs**

PRELIMINARY DRAFT-SUBJECT TO REVISION

Background

The Clean Water Act's (CWA) Section 303(d)(1)(A) and implementing regulations (40 CFR 130.7) require states to identify all waters within its boundaries for which the effluent limitations required by the CWA are not stringent enough to implement any water quality standard applicable to such waters. The CWA requires a list of these waters be submitted to EPA for review and approval from time-to-time. Federal Regulations at 40 CFR 130.7(d)(1) require these lists to be submitted initially by no later than October 22, 1992 and then by April 1 every even numbered year. EPA can either approve or disapprove these lists and, if disapproved, identify such waters and after opportunity for public comment, finalize the list of waters (herein referred to as the impaired waters).

The Clean Water Act (CWA) at Section 303(d)(1)(CA) and implementing regulations (40 CFR 130.7) require the states to develop total maximum daily loads (TMDLs) for the waters and pollutants identified under Section 303(d)(1)(A) – the impaired waters – at a level necessary to implement the applicable water quality standards. Federal Regulations at 40 CFR 130.7(b)(3) defines the applicable water quality standards as including numeric criteria, narrative criteria, waterbody uses and antidegradation requirements. The CWA requires the states to submit these TMDLs to EPA for review and approval. If EPA disapproves a TMDL then EPA must propose its own TMDL and following an opportunity for public comment, establish the TMDL.

Based on these Clean Water Act requirements, the following events in the past decade have led the Chesapeake Bay Program partners to the point. We must determine, individually or collectively, how to best proceed with addressing impaired tidal waters influenced by pollutant loads from the surrounding multi-jurisdictional watershed and airshed.

Virginia Listings, Lawsuit and Consent Decree

The Commonwealth of Virginia submitted a list of impaired waters in 1998. Upon review of the list and supporting documentation, EPA determined that the state failed to include the Chesapeake Bay and its major tidal tributaries, among other state waters, on the impaired waters list. EPA believed that sufficient data existed that showed that these waters were impaired for nutrients with respect to aquatic life. Therefore, EPA proposed adding these waters to the list of impaired waters, public noticed this proposal for comment and in May 1999, added the waters to the state's final list of impaired waters. These waters have remained on the state's impaired waters list since that time.

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In 1998, the American Canoe Association and the American Littoral Society filed suit against EPA (American Canoe Association and the American Littoral Society v. EPA) for failure to properly implement Section 303(d) in Virginia. This suit was settled on April 29, 1999 by Consent Decree (CD). This CD included a commitment that, if the state fails to complete TMDLs for all of the waters and pollutants identified on the state's final 1998 list of impaired waters, including those waters that were added by EPA, by May 1, 2010, then EPA must complete those TMDLs by May 1, 2011. There were provisions in the CD that allowed the removal of waters and pollutants from the list, without completing TMDLs, if it can be shown that applicable water quality standards were being met. The CD did not identify when TMDLs for specific waters and pollutants must be completed. It did provide a schedule that required a certain number of TMDLs to be completed by certain dates, i e., a pace of development schedule. The Chesapeake Bay and its tidal tributaries were part of the lawsuit settlement. These TMDLs must be completed by no later than May 1, 2010 by the state or by no later than May 1, 2011 by EPA.

District of Columbia Lawsuit and Consent Decree

In addition to the Virginia TMDL lawsuit against EPA, a similar suit was filed by the Kingman Park Civic Association et al. against EPA in 1998 and settled in June 2000 by Consent Decree. This CD included requirements that all TMDLs for the impaired waters and pollutants identified on the District's 1998 list of impaired waters be completed by no later than September 30, 2007. The Potomac River was one of the waters on the 1998 list of impaired waters. It was identified as impaired for pH, which was related to high nutrient levels. Under the CD, this TMDL was to be completed by EPA by September 2007 if the District failed to complete the TMDL. It has been proposed that this requirement be modified to allow the TMDL be completed on the same schedule as the Bay TMDL in Virginia (2011), using the analytical modeling tools developed for the Bay nutrient work.

Maryland Lawsuit and MOU

Similar lawsuits were filed against EPA for the failure to implement Section 303(d) of the CWA in Maryland. However EPA and Maryland had entered into a Memorandum of Understanding (MOU) concerning the scheduling of TMDL development in the state. The lawsuits were dismissed based, in part, on the strength of the MOU agreements. In the MOU, Maryland agreed to complete TMDLs for all of the waters on the state's 1998 list of impaired waters by 2011. In particular, they agreed to complete the TMDLs for 80+ tidal waters identified as impaired by sediment or nutrients according to the Bay TMDL schedule found in the Virginia CD and consistent with the Bay TMDL development approach. The mainstem of the Chesapeake Bay has been identified on the Maryland list of impaired waters as impaired for nutrients since 1996.

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Key Questions and Responses

Q1: Who will develop the TMDL?

In 2006, the Chesapeake Bay Program's Water Quality Steering Committee evaluated several options regarding the development of the Bay watershed TMDLs¹. At that time, there was general consensus that the Bay watershed TMDLs would be developed jointly between the six Bay watershed states, the District and EPA and then established by EPA. Beyond cap load allocations by major tributary basin by jurisdiction, the individual states would have responsibility for further assigning loads (waste load allocations and load allocations) to sources within smaller watersheds and localities. These state TMDLs would become part of the overall Bay watershed TMDLs report.

The final publication would contain all the required documentation supporting the EPA Bay watershed TMDLs in a single, integrated publication with extensive appendices.

EPA will provide the technical resources/analyses required to support development of the Bay watershed TMDLs through the Chesapeake Bay Program Office staff and EPA-funded contractor support.

Q2: What prep work is needed to advance the Bay Watershed TMDLs?

Several key technical and regulatory issues require resolution as we head toward the establishment of the Bay watershed TMDLs. Prep work is needed in the following areas directed towards answering the following example questions:

Regulatory:

- What waters are impaired and require TMDLs?
- What is the allocation distribution? – By watersheds, by county, etc?
- What water quality standards do we allocate to?
- How do we account for Margin of Safety?
- How do we address the requirement for reasonable assurance?

¹ The term "Bay watershed TMDLs" is specifically used throughout this briefing paper in recognition of the fact that we are really establishing multiple TMDLs across several jurisdictions that will require load reductions of nitrogen, phosphorus and sediment throughout the Bay watershed, all through a coordinated approach.

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- How do we identify sources of the pollutant contributing to the listed impairments?

Technical:

- Will the finalized calibrated models and scenario runs be acceptable to partners?
- How do we incorporate MS4's and other regulated sources into the waste load allocations?
- How do we incorporate local TMDLs into the Bay Watershed TMDLs?
- How do we allocate to non-regulated sources?

[Note: The regulatory issues are being discussed at the EPA HQ and Regional level while other technical issues are being discussed through various Chesapeake Bay Program subcommittees. Ideally, a reconvened state-EPA technical workgroup would be tasked with resolving many of these technical issues.]

Q3: Are there options for the timing of the TMDLs?

The timing for the EPA established Bay watershed TMDLs is subject to the terms of the Virginia and District of Columbia Consent Decrees and the Maryland/EPA MOU. As described in the background section, the Virginia CD included a commitment that, if the state fails to complete TMDLs for all of the waters and pollutants identified on the state's final 1998 list of impaired waters, including those waters that were added by EPA, by May 1, 2010, then EPA must complete those TMDLs by May 1, 2011. The Chesapeake Bay and its tidal tributaries were part of the lawsuit settlement. Therefore, the Bay watershed TMDLs must be completed no later than May 1, 2010 by the state or no later than May 1, 2011 by EPA.

Under that existing MOU between Maryland and EPA, Maryland committed to complete work on its Chesapeake Bay and tidal tributary-related TMDLs by 2011, consistent with the Virginia CD deadline.

The CD for the District of Columbia requires completion of a pH TMDL for the District's portions of the tidal Potomac River by 2007. EPA is working with the Plaintiffs to seek a change in the schedule to be consistent with the Virginia CD and the Maryland/EPA MOU given five watershed jurisdictions contribute to the quality of the District's tidal waters.

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The attached spreadsheet describes the recommended schedule, key decision points and related technical progress needed to meet the 2010/2011 deadline. (TMDL Development Gantt Chart). Please note that with EPA established Bay watershed TMDLs, May 2011 will be the operational deadline to meet.

Q4: What will the TMDL look like and how will be different from what is currently going on?

The reevaluation process in which we are currently engaged will inform the Bay watershed TMDLs. This reevaluation is necessary and advisable in light of new and/or more accurate data that will refine the inputs into and outputs from the Phase 5 Chesapeake Bay Watershed model and the new Chesapeake Bay water quality/sediment transport model. Similarly, since 2003, the States and the District have adopted new Bay water quality standards into state regulation. These changes combined with a changing bay landscape, newly promulgated and adopted policies and regulations at the federal, state and/or local levels which may affect nutrient and sediment loads, provide sufficient reason and opportunity to reevaluate the allocation process.

Once we have calibrated and run the appropriate scenarios with the linked Chesapeake Bay watershed, Phase 5 Bay Watershed Model, and Bay water quality/sediment transport models, we can review and revise the 2003 nutrient allocations, if necessary, to reflect the improved models and data. These new modeling tools, combined with more recent scientific findings, will enable the partners to develop new sediment load allocations. The sediment cap load allocations, adopted in 2003 by the partners, were recognized as still not sufficient to support restoration of underwater bay grasses to acreages contained within the states' water quality standards. The nutrient and sediment cap load allocations coming forth from this reevaluation will result in stronger, more legally defensible TMDLs; ones that will provide additional incentive toward accelerating strategies to reduce pollution, restore and protect the Bay from future impacts.

The final publication of the EPA established Bay watershed TMDLs would contain documentation of the results of the reevaluation for waste load allocations, load allocations, reasonable assurance and margins of safety at the scales required and agreed to by state and EPA partners. The single document will address all the regulatory requirements and provide detailed documentation on all aspects of the allocation process and all the data (e.g., nitrogen atmospheric deposition) and tools (e.g., the Bay models, BMP efficiencies) used in making those allocations.

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Beyond more accurate data and models, the sediment cap load allocations needed to support achievement of state standards and the level—by source and by geography—of the nutrient cap load allocations will differ significantly from the 2003 allocations. We plan to include the following land/water-based regulated sources as waste load allocations within the Bay watershed TMDLs:

- Municipal and industrial wastewater treatment facilities;
- Septic systems;
- Combined sewer overflows (CSOs);
- Sanitary sewer overflows (SSOs);
- Municipal separate stormwater sewer systems (MS4s);
- Construction sites; and
- Confined animal feeding operations (CAFOs).

We plan to include the following land/water-based non-regulated sources as load allocations within the Bay watershed TMDLs:

- Agricultural animals;
- Agricultural cropland;
- Non-MS4 regulated stormwater runoff; and
- Oceanic input of nutrients.

The plans for the sediment load allocations are the most tenuous at this time and will need further discussion and refinement as we move toward developing a TMDL. Potential sources of loads that may be simulated and/or modeled are listed below:

- Upland above fall-line sediment sources;
- Upland below fall-line sediment sources;
- Tidal shoreline erosion;
- Tidal nearshore erosion;
- Tidal shallow-water resuspension;
- Tidal deep-water resuspension;
- Tidal dead resuspended primary producers; and
- Oceanic input of sediments

Sources contributing to atmospheric deposition of nitrogen loads across the six-state watershed will be fully accounted for within the allocation process.

Q5: What are the implications to the state (local) partners?

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The Bay watershed TMDLs will strengthen the regulatory framework supporting implementation of the states' tributary strategies aimed at meeting the states' Chesapeake Bay water quality standards.

Whereas the 2003 Bay allocations were agreed upon cooperatively under a voluntary program by the states and EPA, the Bay watershed TMDLs provide the official pollution caps under the CWA. The advantages of this regulatory backstop include:

- Provides clear caps and limiting liability of trading partners and increases stability of the trading programs;
- Compels quantifiable loads/performance measures for MS4 permits as they become part of the WLA;
- Provides stability and, thereby, an incentive to implement strategies to restore local watersheds and tidal waters;
- Provides a clear, legally binding requirement and, subsequently, a better defense for setting permit limits consistent with the WLAs for regulated wastewater dischargers (NPDES permits);
- Sources assigned to the LA, although not regulated, will also receive more attention and action if part of the TMDL as there will be clear identification of the sources and quantitative assignment of load reduction responsibilities within a source sector;
- Provides a broader, more formal and structured public review and participation process than the previous allocation process;
- Local governments—at the county and larger municipality scales—will get the specific pollution reduction objectives they have long requested from the Chesapeake Bay Program partnership;
- Local and regional TMDLs can be integrated within a basinwide context to ensure required and requested pollution reduction actions address local as well as downstream water quality impairments at the same time.

Q6: What are the PSC's options for proceeding forward from here?

The Bay watershed TMDLs must be established by EPA by May 1, 2011. To this end, the PSC can facilitate the allocation and TMDL process by ensuring that policy and technical issues are resolved in a timely manner by the partners.

- The PSC can declare *now* that the partners are working towards the Bay watershed TMDLs to support Bay restoration goals; or

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- The PSC can declare in May 2008 that the partners are working towards the Bay watershed TMDLs in response to the states' 2008 303 (d) lists describing attainment status of Bay waters.
- The PSC can ensure that the Bay watershed TMDLs provide the means to help accelerate state and local implementation of the jurisdictions' tributary strategies by:
 - 1) Reconvening the state/EPA technical workgroup, under the Water Quality Steering Committee; and
 - 2) Charging the workgroup with responsibility for resolving the existing technical issues in light of the desire to accelerate implementation at all scales.

DRAFT

COG Staff Comments on the
“PSC Briefing Paper on the Bay Watershed TMDLs”

September 7, 2007

General Comments

COG staff appreciates the opportunity to provide comments on the Bay Watershed TMDLs (BW-TMDLs) Briefing Paper being prepared for the PSC. The development of the BW-TMDLs is one of a critical set of “Bay Cleanup Milestones” that include several consent decrees in the late 1990s, signing of the C2K agreement in June 2000, and adoption of the tidal water quality standards for the Bay and its tidal tributaries. The BW-TMDLs will continue this trend toward a greater regulatory focus and will produce other milestones directed at helping to fulfill the C2K water quality goals.

To assist the review of these comments, we have organized them along the lines of the draft paper, i.e., focusing on each of the six questions. In general we have listed, as a separate bulleted item, each of the specific questions and comments we feel should be addressed in the final paper, either fleshed out, or acknowledgement that future work is needed.

Three areas are deserving of particular attention: Stakeholder Involvement, Reasonable Assurance, and Adaptive Management/Adaptive Implementation. Comments on these follow.

Stakeholder Involvement - The advent of the BW-TMDLs is likely to have a particularly significant impact on those dischargers subject to WLA limitations. The wastewater treatment plants in the COG region are on track to meeting stringent load limits for TN and TP; it's doubtful that the TMDLs will impose additional requirements, though they will strengthen the regulatory underpinnings of their NPDES permits. Jurisdictions with MS4 permits, however, may face a greatly changed set of requirements. To date, MS4 permits have generally not explicitly addressed requirements derived from downstream tidal water quality standards. This is likely to change as the link between WLAs and urban stormwater permits plays out. As this aspect of the program proceeds, it will be essential that there be adequate provision for stakeholder involvement in the TMDL development process. We recognize that the states have many public review requirements they will need to address; however, we believe it is important for the Bay Partners to clarify how they collectively intend to include stakeholder input within this regulatory framework. We hope these efforts will build upon the collaboration and active participation of local governments/agencies and their representatives in the WQSC and its workgroups, as well as the current state tributary strategies.

To bring this issue closer to home, please consider the following:

- How can the wastewater utilities and MS4 communities in the COG region (and elsewhere) best assist in the development of the BW-TMDLs?
- Localities should have a role in the verification of Land Cover used in the Watershed Model (WSM).
- There should be an opportunity for localities to weigh in on policy recommendations related to TMDL-MS4 linkages.
- Does the CBP anticipate revisions to the current state Tributary Strategies? If so, a role for localities should be identified.

Reasonable Assurance - Another area that will need careful attention is the "Reasonable Assurance" section of the TMDLs. In many TMDLs prepared over the last several years, the Reasonable Assurance section has often been among the weakest parts. The BW-TMDLs should include a frank and forthright discussion of the prospects, impediments and opportunities to meet both the WLAs and the LAs. They should reflect a timeframe for achieving the projected load limits and assurance that progress made in one sector won't be offset by backsliding in another. This kind of assessment can only be accomplished if there are load projections that extend for several years beyond the date that the TMDLs are to be completed.

- We recommend that modeling be used to project Reasonable Assurance that progress will be maintained as implementation proceeds. To accomplish this, there should be WSM runs that address conditions in, say, 2015, 2020, 2025 and 2030.
- The Reasonable Assurance section of each of the TMDLs should also candidly address barriers and potential solutions to implementation. Maryland's Tributary Strategy Statewide Implementation Plan, dated August 2, 2007 provides a model for this type of discussion.

Adaptive Management/Adaptive Implementation – We believe that the tremendous scale of this TMDL effort and its implementation challenges; along with the ongoing efforts to update modeling tools, land cover/land use, and BMP assumptions, will inherently require an iterative process. As outlined in the recent EP-funded WEF Nutrient TMDL Development Workshop (Sept. 5th & 6th), the use of adaptive management and adaptive implementation have been successfully used elsewhere and seem particularly appropriate for this Bay TMDL effort.

- We recommend that these two concepts be specifically articulated in this TMDL policy, and used to reflect the necessarily iterative nature of this effort. A general timeframe that anticipates revisions/updates at some agreed up interval(s) would ensure progress can be measured while allowing phased implementation.
- A clear process needs to be developed to allow local government and utilities sufficient time to plan for and fund implementation of any TMDL allocations – especially since many projects are already underway based on existing

The rest of these comments are framed in the context of the background section and the six questions that comprise the Briefing Paper. Any comments or questions should be directed to Ted Graham [202-962-3352 / tgraham@mwkog.org] and Tanya Spano [202-962-3776 / tspano@mwkog.org].

Comments on the Background Section

1. Ensure that the TMDL Development Process is clear - This section is quite helpful to provide an overall orientation to those trying to understand the transition of the Bay Program to a more regulatory framework. Among other things, it makes it clear why the (non-EPA) completion date for the BW-TMDLs is May 1, 2010.
 - When complete, the Briefing Paper should make it clear to all interested parties just how the Bay Program Partners will be proceeding in the development of the BW-TMDLs.
2. Clarify the status of the DC Consent Decree. Regarding the DC section, it indicates that the DC Consent Decree provides for TMDL completion by September 30, 2007.
 - What is the status of modifying this schedule to be in conformance with the overall Bay TMDL?
 - What are the consequences if this is not resolved?

Comments on Question 1: Who will develop the [Bay Watershed] TMDL[s]?

1. Clarify the status of the previously agreed-to allocations (by state & major tributary) documented in the 2003 paper written by Batiuk, Koroncai, et al. Specifically, there are 20 distinct "tributary-state" combinations. Each of these has a load for TN and TP that were developed by an "equity" approach that suballocated the Baywide total TN and TP loads. In addition, for TN, an 8 million pound per year (Mlbs/yr) allocation to EPA's 'Clear Skies' initiative was required to reach get down to the 175 M_lbs/yr total.
 - It is our understanding that on June 20, 2007 the WQSC reaffirmed that these are the loads that are to be used as the basis for the BW-TMDLs and that no reallocation is contemplated. Is this correct? Does this mean that the existing agreed to state/tributary allocations would be preserved for at least the initial TMDL assessment?
2. Explain and justify the number of TMDLs to be developed. As the development of TMDLs is a generally a state responsibility and as each major tributary represents a distinct set of conditions, it seems reasonable that there should be a distinct TMDL for each of the 20 tributary-state combinations.
 - The Briefing paper should clearly spell out the geographic unit for which there will be a TMDL.
 - Will there also be individual TMDLs for TN, TP and TSS? Or will they be integrated?
 - It should also spell out how the 8 Mlbs/yr Clear Skies deduction will be addressed for TN.
3. Clarify the role of stakeholders. Many entities have a stake in the outcome of the BW-TMDLs. As advocates for local governments and utilities, we advocate a very open process for the development of the TMDLs - similar to the successful stakeholder participation used in the WQSC's original 2003 allocation process and state Tributary Strategy processes. The Briefing Paper should clearly spell out just what public involvement process is envisioned.
 - What opportunities will stakeholders have to provide input and comment?
 - Will this be consistent from state to state?

Comments on Question 2: What prep work is needed to advance the BW-TMDLs?

1. Clarify the purpose of the "prep work" and make sure it's clear what is considered given and what has yet to be developed. In its simplest form, a TMDL is defined by the equation:
$$\text{TMDL} = \text{WLA} + \text{LA} + \text{MOS}.$$
 - The prep work should make it quite clear just what comprises each of these three elements in each of the individual TMDLs.
 - We would recommend that the Bay Program Partners adopt a common and consistent approach for developing WLAs, LAs & MOSs.

- Scale of these WLA and LA's is critical. Jurisdictions would like to maintain as much flexibility as possible to address allocations within their political boundaries.
2. Clarify how and when sediment load allocations are to be determined. This is of particular concern to MS4 program managers as a significant amount of sediment is attributable to streambank erosion. Any WLA for sediment is likely to be reflected in future MS4 permits. Any such requirements need to reflect solid scientific analysis.
 - How will the timing of the current sediment model upgrades be integrated into this TMDL effort?
 - Please ensure that the allocation approach for sediment loads in urban areas is clearly defined and that localities have an opportunity to review this.
 3. Clarify the role of the Watershed Model (WSM) and the need for "scenario runs." During the WQSC conference call on August 27, 2007, it was stated that the allocation of loads that were agreed to in 2003 had been reaffirmed on June 20, 2007. Presumably this means that the updated WSM V. 5.0 will NOT be used for any reallocations. However, the states will be required to determine WLAs and LAs for each of the individual BW-TMDLs in order to develop or modify implementation management strategies. They also should be thinking ahead to the Reasonable Assurance section of the BW-TMDLs such that any progress made in one sector will not be offset by backsliding in another. Accordingly, the states may wish to run various scenarios to help assess what might be coming from point sources (PS) and nonpoint sources (NPS) both at the time of the analysis and at select milestones in the future.
 - This raises the issue of what land cover scenario is to be used and to what planning horizon. We recommend that the WQSC endorse a "Trend Scenario" (now being prepared and subject to review and approval) that provides land cover projections in 5-year increments through 2030.
 4. Clarify how MS4s are to be addressed. In general, the MS4 permits issued to date in the Bay watershed are based on Maximum Extent Practicable (MEP) and are not directly tied to specific TMDLs or resolving specific impairments. At the WEF Nutrient TMDL Development Workshop on September 5, 2007, an EPA presenter's slide stated that, "EPA regulations require that a TMDL include WLAs, which identify the portion of the loading capacity allocated to existing and future point sources" and that "Wasteload allocations must be assigned to each point source discharging the pollutant of concern."
 - It should be made clear whether there will be an explicit link between MS4 permits and WLAs and how this will be approached. Arguably, this is an implementation issue, but it is critical if the Reasonable Assurance section is to be sound.
 - Localities, those with MS4 permits, will want a clear opportunity to address this topic.

Comments on Question 3: Are there options for timing of the TMDLs?

1. Provide clear interim milestones for the development of the TMDLs. Presuming that the schedule will play out for TMDL completion by May 1, 2010, it would be prudent and also helpful to stakeholders to provide intermediate milestones to be met along the way.
 - Provide a schedule/milestone chart with explicit provisions for stakeholder review and comment.

Comments on Question 4:
What will the TMDL look like and how will it be different from what is currently going on?

1. Clarify what is meant by the “reevaluation process in which we are currently engaged.”
 - Is there a possibility that the TP and TN loads – currently being implemented based on existing Tributary Strategies; will be changed, either for Baywide totals or the individual state-tributary suballocations?
 - Clarify when sediment allocations are anticipated.
 - Include any pertinent milestones in this process to the milestone schedule referred to above.
2. Clarify the intent with respect to considering new allocations (alluded to in the second paragraph), especially with respect to current TN & TP state/tributary allocations.
 - Clarify the role of WSM V. 5.0 and what land cover is to be used and against what timeframe.
 - Why is it necessary to state that “The nutrient and sediment cap load allocations coming forth from this reevaluation will result in stronger, more legally defensible TMDLs?” This suggests that, at least in the case of TP & TN, that the 2003 allocations are somehow flawed.
 - It also unclear how such allocations will ‘provide additional incentives towards accelerating strategies...’, as current Tributary Strategies do not have implicit timelines in them.
3. Define the anticipated steps and expected timing to develop sediment loads.
 - Will they be for the same 20 tributary-state combinations that apply to the TN & TP loads?
4. Explain how the WLAs and the LAs are to be determined. By explicitly listing the sources that contribute to WLAs and LAs, the text suggests that the WLAs and LAs may be developed from the ground up, presumably through application of the WSM V. 5.0.
 - Assuming this is the case, clarify the land cover to be used and for what planning horizon. [As noted above, work is proceeding to develop “Trend” land cover projections through 2030.] If 2010 is chosen, the WLAs are likely to be understated for future years in areas with high growth.
 - As noted under Question 2, above, we recommend that the Bay Program Partners adopt a common approach for determining WLAs, LAs & MOSSs.
5. Explain what will occur if the WLA and LA analyses add up to levels different from those adopted in 2003. Per the August 27 conference call, the 2003 tributary-state allocations were reaffirmed.

6. Explain how the “sources contributing to atmospheric deposition of nitrogen loads across the six-state watershed will be fully accounted for within the allocation process.”
 - How will this be reconciled with the existing “Clear Skies” Bay-wide allocation of 8 Mlbs/yr?

Comments on Question 5:
What are the implications to the state (local) partners?

1. Elaborate for each of the eight bullet statements on p. 7 just how the BW-TMDLs provide “advantages” as a “regulatory backstop.”
2. Explain what is envisioned for MS4 permits. As noted above, there has generally been limited connection between TMDLs and MS4 permits. The statement that the TMDL “[c]ompels quantifiable loads/performance measures for MS4 permits as they become part of the WLA.” implies changes to current protocols.
 - Explain what is envisioned here as this suggests a substantial change of direction and underscores the need for a robust stakeholder participation process so that MS4 permittees have every opportunity to have their perspective heard.
3. Explain what’s envisioned by the statement that “[l]ocal governments – at the county and larger municipality scales – will get the specific pollution reduction objectives they have long requesting (sic) from the Chesapeake Bay Program partnership.” While the localities in the COG region are prepared to support this goal, it seems to be more of an implementation than a TMDL issue.
 - Do the Bay Program Partners envision preparing local jurisdiction-specific loads as a part of the BW-TMDLs?
 - Does the WSM V. 5.0 have the resolution to achieve this or will other tools be needed?
 - What land cover assumptions and for what time frame are to be used?
 - It will also be necessary to address how this effort will be reconciled or integrated with Virginia’s efforts to develop local load allocations.
 - Some sort of decision rules will need to be developed for WWTPs that serve multiple jurisdictions. (E.g., there is not a specific Blue Plains allocation for Montgomery County and for Prince George’s County, but only for the Washington Suburban Sanitary District; and Fairfax County residents are served by six WWTPs of which only one is county-run).
4. Address how land cover is to be agreed on and approved – At whatever detail of analysis (state-tributary segment or local jurisdiction or WSM segment), there will have to be some agreement on land cover and WWTP loads to determine WLAs & LAs that are supported by modeling results.
 - If so, what’s the planning horizon? 2030?
 - How do we reach closure on the approved land cover?
 - Will there be an opportunity for local governments to “ground truth” this? If so, when?

Comments on Question 6:
What are the PSC's options for proceeding from here?

1. From the perspective of local governments, it would be most helpful if the PSC, by spring 2008, were to:
 - a. Provide a clearly defined process for the development of the BW-TMDLs;
 - b. Include interim milestones with clearly defined responsibilities for achieving those milestones with a presumed completion date of May 1, 2010;
 - c. Endorse a robust stakeholder involvement process; and
 - d. Ensure that the issues and questions raised above are clearly addressed.

COG Staff Comments and Questions on the PSC TMDL Briefing Paper Final_090607.doc