

WORKING DRAFT 2\_July xx, 2010

Jon M. Capacasa, Director  
Water Protection Division  
U. S. Environmental Protection Agency Region III  
1650 Arch St.  
Philadelphia, PA, 19103-2029

Dear Mr. Capacasa,

I am writing to express the concerns of members of the Metropolitan Washington Council of Governments (COG) about the current process for producing the Bay-wide set of Total Maximum Daily Load (TMDL) regulations by Dec. 31, 2010, and to suggest several measures that will make it easier for local governments to fulfill their eventual implementation responsibilities.

Here at COG we recognize the unprecedented challenges posed by the effort to create an inter-related series of 92 TMDLs for the 64,000-square-mile Bay watershed and develop Watershed Implementation Plans (WIPs) for those TMDLs at the same time. Nevertheless, we think that EPA has unnecessarily complicated its task by agreeing to a Dec. 31, 2010, deadline for issuing the TMDLs, rather than taking full advantage of the later court-mandated deadline of May 2011.

As you know, COG coordinates a variety of policies for its 21 local government members in the Washington metropolitan region, which accounts for one-quarter of the population of the Chesapeake Bay watershed. Since its inception in 1998, COG's Chesapeake Bay and Water Resources Policy Committee has been supportive of the goals of the Bay Program and has often commented on plans and policies. Elected officials and staff from COG and its member governments have served on various Chesapeake Bay Program (CBP) committees and work groups working on numerous aspects of restoration, including the Blue Ribbon Finance Panel, the Local Government Advisory Committee, the Scientific and Technical Advisory Committee, the Point Source Work Group, the Middle Potomac Tributary Team and many others. And COG's member governments have been leaders in implementing limit-of-technology wastewater treatment and state-of-the-art urban stormwater programs. It is because of this region's long-standing leadership in implementing controls, and active involvement in the CBP's efforts, that we feel particularly obligated to bring our concerns and recommendations to EPA's attention.

**TMDL Process Concerns:**

- In striving to meet the Dec. 31 deadline, EPA has limited opportunities for stakeholders to understand the technical basis and policy choices on which the allocations are based. Further, the agency is providing inadequate time for public comment on the draft TMDL. As originally proposed, the TMDL process envisioned that EPA would provide the technical basis for the TMDLs, in the form of modeling data of pollution loads and their impact on water quality, by October of 2009; states would have issued their preliminary watershed implementation plans (WIPs) for addressing these loads by Jan. 1, 2010; and EPA would have issued draft TMDLs for public comment in May. Stakeholders would have had many months to understand the issues involved and to assess the potential impacts. By contrast, EPA only issued its nutrient targets on July 1; sediment targets are due by Aug. 15; and preliminary state WIPs, by Sept. 1. The proposed 45-day comment period from Sept. 24 to Nov. 8 is inadequate for stakeholders to provide informed comments and for EPA and the states to adequately address substantive comments.

- The ability to provide meaningful input is also hampered by the sheer scale and complexity of this TMDL and WIP process. For instance, in the COG region alone there are expected to be at least fifteen (15) different TMDLs that will apply to our members; and in Prince George's County eleven (11) of the TMDLs will apply to that county. What we are not sure of is whether there will be separate WIPs developed for each of those TMDLs or how those TMDLs will be translated to a local scale. An additional complicating factor is the fact that the TMDLs will be issued by EPA, while the WIPs will be issued by the states/District of Columbia. Further, it is not just local TMDLs and WIPs that will impact this region. Upstream TMDLs and WIPs and TMDL load allocation decisions being made Bay-wide also impact or influence Potomac River load allocations. Submitting TMDL comments to EPA versus WIP comments to the states and the District will also create an artificial distinction between what are essentially inter-related issues and assumptions. The result of these complexities and limited time for review will make it very challenging for COG's members to provide meaningful input and recommendations to ensure that the COG region's collective concerns are adequately addressed by the Bay Partners.
- Equally problematic, EPA continues to revise the land use assumptions and some other technical details underlying the watershed model even as the agency goes forward with a current, less accurate version to establish the overall allocations for the Phase I WIPs and the December TMDL. The resulting confusion and lack of reliable modeling results complicate local government efforts to understand what will be asked of them under the WIPs and will make it very difficult to provide meaningful comment on the TMDL as originally issued. These unresolved issues raise concerns that 'reasonable assurances' may not be adequate and that regulated sources, such as wastewater treatment plants, risk being mandated to make additional reductions while implementing current capital projects.

#### **COG's Recommendations:**

- We understand that EPA intends to work with the states to enable them to make TMDL revisions during 2011 as new modeling data and other information become available. We recommend that EPA clarify how this TMDL adjustment process will actually work, including a schedule and the potential implications for WIPs, NPDES permits and anti-backsliding requirements. We also recommend that all stakeholders in the TMDL, not just state governments, have the option to propose TMDL adjustments.
- We support the current Scientific and Technical Advisory Committee (STAC) review of the land-use estimation methodology employed by the watershed model, but note that STAC's current members lack expertise in land use planning and scientific analysis. Therefore, we trust that STAC will seek outside expertise in making this review. We also recommend that an independent panel, with members chosen by EPA, the states and local governments, be established to further review the version of the watershed model that will be used in 2011 during the development of the Phase II WIPs.
- As noted earlier, the compressed review period and modeling uncertainty has made it difficult for local governments to fully evaluate the programmatic and cost implications of meeting TMDL requirements. Therefore, we recommend that EPA and its Bay Program partners conduct an assessment of the cost implications and cost efficiencies related to implementation, with input from local governments and other stakeholders, as part of the process for developing the Phase II WIPs.

- Finally, we recommend that EPA and its Bay Program Partners make a concerted effort to fully integrate and to clarify exactly how stakeholders, especially those that actually implement load reductions, can provide meaningful input on all the TMDLs and WIPs without the need for submitting multiple and cross-referenced submissions during the public comment period.

In closing, I want to thank EPA for its ongoing willingness to listen to stakeholder comments upon important Bay Program policies and to express COG's willingness to continue to work with the agency and the other Bay Program partners as the TMDL process continues to evolve. If you wish to discuss or have any questions about our recommendations please contact Ted Graham at (202) 962-3352 or [tgraham@mwkog.org](mailto:tgraham@mwkog.org). We look forward to receiving your thoughts on these recommendations.

Sincerely,

Cathy Drzyzgula  
Chair, Chesapeake Bay and Water Resources Policy Committee

Cc: CBP's Principal Staff Committee Members  
COG's Chesapeake Bay and Water Resources Policy Committee Members  
COG's Water Resources Technical Committee Members