**Proposed strawman for comments on federal “Stormwater Rulemaking Related to the Chesapeake Bay”**

COG staff draft

November 5, 2010

Overall comment: Do we support the premise of this potential rulemaking, i.e. that there should be separate, specific Chesapeake Bay provisions within the proposed national stormwater rule?

COG staff recommends that we do not necessarily answer yes or no to this question, but that the comments express concerns about the rulemaking, such as the need to avoid contradictory federal and state stormwater regulations and the need to provide a level playing field for development on a national, not just regional, basis. One reason for supporting this rulemaking would be to bring a minimum level of stormwater regulation to urban areas outside this region and in Bay states other than Maryland and Virginia and the District of Columbia.

EPA has requested that comments focus on the following specific details:

Option 1: Designate Additional Discharges to be Regulated

Support the proposal that EPA consider regulating MS4s that are currently not part of MS4 regulation. (Do we have a proposal for how to do this specifically, i.e., size of urban area to be regulated, whether to do so on the basis of jurisdictional boundaries or not, etc. ?)

Option 2: Require Additional Chesapeake Bay-only MS4 Provisions

Support the proposal that EPA establish a minimum standard for buffer widths in regulated areas. Do not support EPA’s proposal that it set minimum standards for measures relating to turfgrass management, pesticide use and fertilizer use as these programs are better addressed through state programs rather than MS4 provisions.

Option 3: Require Retrofitting of Stormwater Management Controls with Improved Stormwater Control Measures

Support the proposal that EPA establish a minimum requirement for areas subject to MS4 permitting to establish a retrofit program. However, make it clear that the level of retrofitting to be accomplished shall be established by negotiation between the state and local permittee and take account of fiscal and physical constraints. There should not be a one-size-fits-all approach to the amount of retrofit to be required.

Option 4: Establish New and Redevelopment Standards.

Support the proposal that EPA establish a minimum post-construction performance standard on new and redevelopment sites on a nationwide basis. However, make clear that this standard should not be the METF standard defined by the Energy Independence and Security Act and that redevelopment standards must be less rigorous than new development standards so as not to impede smart growth efforts. Also note concerns about requiring LID/ESD practices as the only way to comply with the standards.