



Local governments working together for a better metropolitan region

Committee Review Draft July 23, 2010

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Manassas Park
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**Adjunct member*

Dear Mr. Capacasa,

I am writing on behalf of the Metropolitan Washington Council of Governments' (COG) 21 member local governments and affiliated water and wastewater utilities to express concerns of members about the current process for producing the Bay-wide set of Total Maximum Daily Load (TMDL) analyses by Dec. 31, 2010, and to suggest several measures that will make it easier for local governments to fulfill their eventual implementation responsibilities.

As you know, COG coordinates a variety of policies, including those related to the Bay restoration effort, for its 21 members and affiliated utilities in the Washington metropolitan region. With a current population of about 5.3 million, the COG region accounts for 30 percent of the population of the Chesapeake Bay watershed. As part of the Bay restoration effort, COG's members continue to implement state-of-the-art wastewater and stormwater technology. 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 committing to a Dec. 31, 2010, deadline for issuing the TMDLs, rather than taking full advantage of the later court-mandated deadline of May 2011.

TMDL Process Concerns:

- In striving to meet the December 31 deadline, EPA will not provide adequate time for public comment on the 92 draft TMDLs. 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. By contrast, EPA only issued its nutrient targets on July 1, 10 months later than originally promised. Sediment targets are not due until August 15; preliminary state WIPs, by September 1. The proposed 45-day comment period from September 24 to November 8 is inadequate for stakeholders to provide informed comments and for EPA and the states to adequately address substantive comments, especially given the scale and complexity of the 92 TMDLs and their associated WIPs. For instance, in the COG region alone, there are expected to be at least fifteen (15) separate TMDLs that will directly affect our members. The fact that EPA will issue the TMDLs while the states and the District issue the WIPs also complicates the stakeholder input process.

- Equally problematic, EPA continues to revise important land use assumptions and other technical details underlying the watershed model even as the agency goes forward with the current, less accurate version to establish the overall allocations for the Phase I WIPs and the December TMDLs. 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 make it difficult to provide meaningful comment on the TMDLs as originally issued. These issues raise concerns that 'reasonable assurance' may not be adequate and increase concerns that regulated sources, such as wastewater treatment plants, will face mandates to make additional nutrient reductions soon after they have completed costly capital projects to meet current TMDL allocations.

COG's Recommendations:

- While EPA has stated its commitment to meet the Dec, 31, 2010, deadline, 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 becomes available. We recommend that EPA clarify how this TMDL adjustment process will actually work, including a) a schedule for modifying the TMDLs and the WIPs; b) implications for NPDES permits; and c) how to do this without violating anti-backsliding requirements. We also recommend that all stakeholders in the TMDL, not just state governments, have the option to propose TMDL adjustments.
- Given the important changes being made to the watershed model, we support the current Scientific and Technical Advisory Committee (STAC) review of the land-use estimation methodology, but note that STAC's current members lack expertise in land use planning and related scientific analysis. Therefore, we recommend that STAC 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.

In closing, I want to thank EPA for its ongoing willingness to listen to stakeholder comments regarding Bay Program policies. COG hopes to continue working with the agency and the other Bay Program partners as the TMDL process continues to evolve. If you wish to discuss our recommendations, please contact Ted Graham at (202) 962-3352 or at tgraham@mwkog.org.

Sincerely,

Cathy Drzyzgula
Chair, Chesapeake Bay and Water Resources Policy Committee

cc: Chesapeake Bay Program Principals' Staff Committee members
COG's Chesapeake Bay and Water Resources Policy Committee members
COG's Water Resources Technical Committee members