

DRAFT COG Talking Points for Bay TMDL Forum
Thursday, June 16th (1:00 to 3:00 pm)

There are four key points, each of which have sub-bullets with specific examples

(Note: the italic text provides additional reference for CBPC members)

1. FLEXIBILITY – EPA and the states should continue to provide local governments with as much flexibility as possible in developing Phase II WIPs

- a. We support Maryland’s proposal to allow local efforts to reduce nutrient, sediment loads (i.e. implementation) to initially focus on achieving the federal-state Bay TMDL targets. Doing so will also make progress toward local TMDL targets for the same constituents. EPA should encourage this approach and Virginia should adopt it as well.

(Unlike the Bay TMDL, which has 2020 and 2025 deadlines, local TMDLs for nutrient and sediment reduction do not have deadlines for implementation. An initial focus on the Bay TMDL will simplify local government planning and fits with an iterative approach to TMDL implementation that addresses the many uncertainties inherent in the TMDL process.)

- b. Local load allocations are too uncertain at this stage of the process to be used to establish quantitative reduction targets in MS4 permits; i.e. wasteload allocations for urban stormwater should remain as an overall statewide aggregate allocation (as they are in Maryland, but not in Virginia)

(Despite several planned improvements, the models EPA relied upon to set TMDL allocations are still limited in their ability to quantify loads at the smaller-scale levels now being used in the Phase II WIPs. These modeled load estimates are not accurate enough to support the establishment of specific wasteload allocations in urban stormwater permits.)

- c. EPA/states should allow localities the flexibility to address loads on a county-wide or jurisdiction-wide basis rather than at the smaller scales defined by the Bay Program’s watershed model segmentation.

(Load reduction impacts/effectiveness should not vary widely within a county’s boundaries just because of how the Bay models account for and sub-allocate loads.)

- d. EPA/states should encourage trading opportunities and allow local governments to incorporate trading options in their Phase II WIPs even if the states and EPA have not fully established their trading programs.

(Workable trading options will be critical to the eventual success of local TMDL implementation. The fact that such options are not yet available should not limit what local governments use in their WIPs.)

- e. Loads from Combined Sewer System flows should be estimated using the same hydrologic assumptions as are used under the TMDL to determine loads from other precipitation-driven processes (e.g., separate stormwater system flows); and the associated NPDES permit language and Phase II WIPs should be consistent with these same technical assumptions.

(Because loads from such systems vary with precipitation; the load estimates for these Combined Sewer Systems in the TMDL and the Phase II WIPs and the NPDES permit conditions must not be expressed as a hard load cap, but instead should be based on the same 1991-2000 hydrologic averaging period that was used in the watershed model for the TMDL – to ensure that the permittees are able to reasonably comply with permit conditions. This is important locally as well as Bay-wide, because these systems exist in the COG region - in the Blue Plains service area in the District of Columbia and in the Alexandria Sanitation Authority service area in northern Virginia.)

2. COST/BENEFIT ANALYSIS – EPA and the states should ensure that their proposed cost/benefit analysis study includes local data, local input, and be an iterative process

- a. We support what we understand to be a new commitment by EPA to gather cost/benefit information on the Bay TMDL in response to concerns raised at several recent Congressional hearings on the Bay TMDL. We have the following suggestions for the process:

- i. The study should concentrate as much on urban costs as on cost information from the agricultural sector. Urban cost data should include both wastewater and stormwater costs.
- ii. Local governments and other stakeholders should have the opportunity to provide their own cost data and be able to comment on the study (a process that worked well when it was used to develop wastewater treatment cost estimates).

(COG can serve as a conduit for providing EPA with cost information from our members.)

- iii. The cost/benefit information should be continuously refined and updated.

(Cost information on retrofitting, for example, should change significantly in the next few years as local governments gain more actual experience with these programs.)

3. SCHEDULE – EPA and the states should extend the deadline for Phase II WIP development past March 2012 and extend the deadline for partial TMDL implementation (70 percent in Maryland, 60 percent in Virginia, the District and other states) beyond 2017 to make up for the delays in providing up-to-date modeling information, viable trading options and other implementation components.

- a. If the WIP deadline is not extended, the Phase II WIP plans will be more general in nature and less robust than they otherwise could be. And there will not be enough time to reach the desired level of implementation by 2017.

(The current schedule for WIP Phase II development (3 ½ months from when new model output is available in July to a month before EPA is requiring draft state plans) is too short to allow adequate planning at the local level – and delays in planning will delay implementation efforts.)

(The extent of the effort required to meet TMDL implementation targets -- and the cost of doing so -- will still have significant uncertainties when the Phase II WIPs are finalized, which could significantly affect progress toward the interim milestone.)

4. ADAPTIVE MANAGEMENT -- EPA and the states should provide greater specificity on how “ Adaptive Management” – a process under which water quality improvement efforts are continuously refined to take advantage of new knowledge -- will be used in the administration of the TMDL and WIPs and as part of the re-evaluation process.

- a. For example, stormwater management implementation should include options other than environmental site design and low impact development techniques.

(The effectiveness of widespread use of ESD/LID techniques for stormwater management is uncertain.)

- b. Given the huge potential cost investments in retrofitting stormwater quality measures in older developed areas, EPA/states should devote more resources to monitoring water quality in smaller-scale urban watersheds.

(To justify the significant rate increases that proposed levels of retrofitting will require, local governments will need actual monitoring evidence to indicate that the control efforts they are funding are resulting in both local and Bay-wide water quality improvement.)

- c. During the mid-course evaluation process, EPA/states should consider results from its ongoing cost/benefit study as well as the amount of progress that has actually been made to determine whether a Use Attainability Analysis should be conducted for any Bay segments.