Chesapeake Bay and Water Resources Policy Committee

Topics to be addressed by J. Charles Fox, Special Advisor to EPA Administrator Lisa Jackson At CBPC Meeting of November 20, 2009

(Draft for WRTC, 11/12/09)

Please comment on how EPA and the other Bay Program partners will address the following questions:

1. **What opportunities will local governments have to provide input to: (a) finalizing TMDLs and the accompanying watershed implementation plans (WIPs) – to be completed by December 2010; and (b) the local allocations and related implementation plans under more detailed WIPs – to be completed by November 2011?**

   Reference: COG Regional Water Quality Principles - **Communication & Voice and Holistic Requirements**

   Background:
   EPA will actually issue 92 separate TMDLs to address water quality issues in different parts of the Bay and its tributaries. Altogether, this is the most complex TMDL regulatory process ever undertaken by EPA and very different from the localized TMDLs that have been issued to date in this region. There have been delays in producing the modeling tools and data analysis necessary to support the overall TMDL process, but the Bay Program has retained the December 2010 deadline for issuing the Bay TMDLs and accompanying state WIPs. In an effort to meet this deadline, schedules are being compressed. For example, official public comment on the TMDL has been reduced from 90 to 60 days. The Bay Program and its state partners have backed away from issuing allocations for nutrient and sediment loads at the local level in the initial WIPs; and have proposed a Phase I and II approach for achieving 60 and 100% of the necessary load implementation goals by 2017 and 2025, respectively. Therefore, it will not be clear for at least several more years what actions may be required of local governments to meet these allocations, even as the TMDL itself is finalized.

   EPA Bay Program staff is working to supply COG staff with modeling data that can be analyzed to provide the region's local governments with a clearer idea of what nutrient and sediment reductions will be required to achieve TMDL allocations at a local level, but this process has been slowed by the many other priorities to which Bay Program staff must respond.

   Suggested Response:
   (a) We recommend that production of watershed modeling data at the individual jurisdiction and land-river segment scale be made a major Bay Program priority. We also recommend that wasteload allocations by sector and at the individual jurisdictional level be considered preliminary for several years until Bay Program, state and local government staff have sufficient time to thoroughly review and analyze the relevant watershed modeling data.

2. **How will EPA's "consequences" for states that do not demonstrate sufficient WIP implementation progress ensure that "good actors" (i.e. those achieving implementation goals on a local level) are not penalized?**

   Reference: COG Regional Water Quality Principle – **Equitable Responsibility**

Background:
EPA has begun discussions of the consequences that states will face if they fail to produce WIPs that meet their allocation targets or if they fail to reach the two-year milestones meant to match up with implementation under the WIPs. EPA has just issued their WIP Expectations Guidance, and is expected to issue a formal letter outlining these consequences by the end of November. Most discussion to-date of consequences for failure to meet TMDL/WIP goals has focused on the state level. Local governments are concerned that penalties imposed at the state level -- for example, restricting the issuance of new permits -- will penalize those who are making the effort to meet their Bay TMDL allocations, and likely limit local flexibility to implement the most cost-effective solutions.

Suggested Response:
(a) We recommend that "consequences" should be designed to link accountability with responsibility, from the standpoint of both geography and source specificity. For example, local governments in the Washington metro region should not be penalized for a failure to reach load targets in an agricultural watershed on the Eastern Shore (and vice versa).
(b) We recommend that just as the states are being allowed flexibility in how and where they are allowed to achieve nutrient and sediment reductions as long as standards are met, that local governments also be allowed that same flexibility.

3. How do EPA and the states envision linking Bay-wide goals to local water quality goals?

Reference: COG Regional Water Quality Principle – **Sound Science**

Background:
Meeting load allocations in the Washington metropolitan region is likely to involve a significant amount of retrofitting older neighborhoods with stormwater management practices, which is a very costly practice. In its draft 202a report in response to President Obama's Executive Order on the Bay, EPA estimated these retrofit costs at about $24,000 per pound of phosphorus and $3,000 per pound of nitrogen. These costs, which are much higher than the costs for reducing nutrients from other sectors could be a difficult "sell" at the local level. However, stormwater retrofits have other benefits and may be necessary to meet local water quality needs, so it would help to link the Bay goals as much as possible to local water quality goals.

Suggested Response:
(a) We recommend that the Bay Program and its state partners make every effort to integrate nutrient and sediment load needs among local and Bay-wide TMDLs such that local governments have a clear idea what is driving allocations in watersheds where there are both local impairments and contributions to Bay-wide impairments.

(b) We recommend that the Bay Program fund more research and publicize the results of studies on the local water quality benefits of actions being taken to improve Bay water quality.

Suggested CBPC Member Questions for Mr. Fox:
Question – How does EPA define METF versus MEP as proposed requirements for stormwater?

Comment – Federal funding for stormwater management (especially for redevelopment) is critical to successful achievement of water quality goals.