

**DRAFT Comments from the Metropolitan Washington Council of Governments
Regarding the Proposed New Chesapeake Bay Agreement**

- 1. ADEQUATE TIME FOR COMMENT – COG supports a schedule for finalizing the new agreement that provides adequate time for local governments and other stakeholders to review, consider and provide input to the proposed language (e.g., goals and outcomes) of the new Chesapeake Bay agreement.**

We understand that the Bay Program is still considering the timing for public comment within the overall schedule for developing the new Bay agreement. Early plans for an official public comment period to be held within a 2-week period in mid-summer are clearly inadequate. At a minimum, local governments will need at least one month during a time when county officials regularly meet (September – June) to provide adequate input. Effort should be made to provide even more time, even if it means having to postpone the signing of the agreement by the Chesapeake Executive Council until sometime in 2014. – *supported by Communication and Voice Principle*

- 2. ROLE OF LOCAL GOVERNMENTS IN THE PROGRAM – COG believes that the agreement must do more to recognize local governments' unique role as the primary entity responsible for implementing restoration measures.**

Although the role of local governments in implementation is noted in Section 5: Principles and Section 6: Operational Commitments, it is not distinguished from that of other stakeholders. Experience over the first 30 years of the Bay restoration effort have shown that local governments and their associated wastewater utilities have, with some financial assistance from state and federal governments, been responsible for the greatest amount of progress in reducing excess nutrients flowing to the Bay. Local governments also are largely responsible for reducing pollution from stormwater and septic system sources. Local governments are not simply another group of stakeholders that have an interest in restoration activities or regulatory measures; they implement, they are the linchpin of progress toward the Bay Program's nutrient and sediment reduction goals, and are a key player in many other goals as well. This key role should be recognized explicitly in the agreement and the degree of partnership, financial and otherwise, between the Bay Program partner jurisdictions and local governments should be strengthened. The importance of recognizing this key role is especially important given that the metropolitan Washington region represents 30% of the Bay watershed's population. – *supported by Communication and Voice Principle*

- 3. BLURRING THE LINE BETWEEN VOLUNTARY AND REGULATORY ACTIONS – Under its Water Quality Goal, the agreement proposes to adopt the 2017 interim and the 2025 final end points for nutrient and sediment reductions under the Chesapeake Bay TMDL; such an adoption may limit the future need for regulatory flexibility in achieving allocation targets. COG believes that there should continue to be clear distinctions between this new agreement and regulatory requirements.**

In issuing a Total Maximum Daily Load Bay for the Chesapeake Bay in December 2010, EPA put in place a different process for achieving nutrient and sediment reductions than had existed under the various voluntary agreements for restoring the Bay. Under the Clean Water Act, that process will stay in place

until the waters of the Bay meet water quality standards. However, the timing and pace of the implementation actions required by the discharge permits and other regulatory actions driven by the TMDL is subject to regulatory flexibility mechanisms, such as maximum extent practicable and the extension of deadlines. Incorporating the current TMDL deadlines in a voluntary agreement may create conflicts and constrain that regulatory flexibility, and is unnecessary. – supported by *Holistic Requirements and Equitable Responsibility Principles*

4. **GREATER RECOGNITION OF AND DEFINITION FOR ADAPTIVE MANAGEMENT – COG believes that the agreement should recognize adaptive management as a key principle, not just an operational commitment.**

The idea that the Bay Program will continually refine its methods for achieving water quality and other goals and will use ongoing results to adjust regulatory actions, management plans, etc., should be a fundamental principle of the program and not merely an operational commitment. The Bay Program has and will continue to need to adjust to factors outside its control, such as climate change and fiscal environment. A clear and defined method for applying adaptive management techniques is the best way of addressing the evolving nature of these restoration efforts. – supported by *Sound Science Principle*

COG's Water Quality Principles (as adopted by COG Board, 4/8/09)

- I. **Holistic Requirements** – Programs and policies to restore and protect the Chesapeake Bay and its tributaries, whether regulatory or not, shall reflect a holistic, multi-sector analysis of environmental benefits, technical feasibility and costs before being established.
- II. **Equitable Responsibility** – Programs and policies to restore and protect the Chesapeake Bay and its tributaries shall strive for equity and cost-effectiveness in allocating responsibilities among regions, counties and municipalities and among the different sources of pollution.
- III. **Sound Science** – Programs and policies to restore and protect the Chesapeake Bay and its tributaries shall rely on a sound scientific foundation and shall be revised as needed, reflecting advances in that foundation.
- IV. **Communication and Voice** - Programs and policies to restore and protect the Chesapeake Bay and its tributaries, whether regulatory or not, should be developed through a cooperative process among stakeholders including local governments and wastewater utilities. Given their implementation responsibilities, local governments and wastewater utilities shall be engaged at the earliest stages of these development processes.