

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 N. Capitol St., N.E.
Washington, DC 20002

RESOLUTION APPLYING COG'S PRINCIPLES FOR REGIONAL WATER QUALITY
POLICIES AND PROGRAMS TO THE CHESAPEAKE BAY TMDL

WHEREAS, the Metropolitan Washington Council of Governments (COG) has a long history of supporting policies and programs to achieve water quality goals for the Chesapeake Bay and the Potomac River; and

WHEREAS, local governments and wastewater utilities in the COG region are responsible for implementing policies and programs to restore and protect the water quality of the Chesapeake Bay and its tributaries; and

WHEREAS, in Resolution R20-09, the Board established four policy principles to guide COG's perspective on Chesapeake Bay programs and policies addressing: **(1) Holistic Requirements; (2) Equitable Responsibility; (3) Sound Science; and (4) Communication and Voice**; and

WHEREAS, on September 24, 2010, the Environmental Protection Agency published a Chesapeake Bay Draft Total Maximum Daily Loads (TMDLs) to set target nutrient (phosphorus and nitrogen) and sediment loads for 92 tidal segments over the entire 64,000 square mile Chesapeake Bay watershed in order to achieve water quality standards; and

WHEREAS, in early September, the Bay watershed states and the District of Columbia issued draft Phase I Watershed Implementation Plans (WIPs) to describe how each intends to achieve and maintain those targets and provide "reasonable assurance" that 60% of the implementation targets will be achieved by 2017, and 100% will be met by 2025; and

WHEREAS, the period to provide comments on the EPA TMDLs and state/District of Columbia Phase 1 WIPs extends through November 8, 2010; and

WHEREAS, final Phase I WIPs will be due by November 29, 2010, draft Phase II WIPs by 2011 (with local load sub-allocations), and final Phase III WIPs in 2017 (i.e., to achieve 100% implementation by 2025); and

WHEREAS, the potential program and cost implications for the wastewater, urban stormwater and agricultural sectors are significant and it is in the interest of the COG region, its member governments and utilities to help shape the final version of the TMDLs and the WIPs by providing detailed comments and recommendations;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS THAT:

1. The attached Policy Statement on the draft Bay TMDLs and WIPs ~~Watershed Implementation Plans~~ is hereby adopted; and
2. The Chesapeake Bay and Water Resources Policy Committee is authorized to prepare and submit comments and recommendations, taking guidance as appropriate from the Policy Statement, to EPA and the states.

**POLICY STATEMENT
ON THE
DRAFT CHESAPEAKE BAY PROGRAM TMDLs AND WATERSHED IMPLEMENTATION PLANS
Metropolitan Washington Council of Governments
DRAFT**

Background – On September 24, 2010, EPA issued draft pollution caps (the "Chesapeake Bay Draft TMDL") for 92 tidal segments of the entire 64,000 square mile Chesapeake Bay watershed. This Total Maximum Daily Load (TMDL) sets individual targets for nutrient (phosphorus and nitrogen) and sediment loads for each of the 92 tidal segments that EPA has determined are necessary to achieve water quality standards in the Bay as-a-whole and within each of the major tidal tributaries to the Bay – including the Potomac River. These loads come mainly from agriculture, wastewater treatment and urban stormwater. There is also nitrogen load allocation for air deposition to the Bay waters (approximately 5% of the overall TMDL total nitrogen load) that EPA is responsible for based on implementation of pending federal air regulations. In early September, the six states in the Bay watershed and the District of Columbia submitted their draft Phase I Watershed Implementation Plans (WIPs) describing how they intend to reduce their respective loads to meet the EPA-prescribed target loads. Phase II WIPs will need to be submitted in 2011 (with loads sub-allocated to a local scale) and define how the '60% of implementation goal by 2017' will be achieved. The final Phase III WIPs are due in 2017 and will need define how the states/District of Columbia will complete implementation beyond 2017, and therefore achieve the '100% of implementation by 2025' goal.

EPA has concluded that *"none of the draft [Phase I] WIPs provided full assurance"* that the target loads will be achieved *"in all respects."* The TMDLs and the companion WIPs have significant implications for all parties responsible for controlling loads, including local governments, wastewater and stormwater utilities, and agriculture.

COG's Four Policy Principles – On April 8, 2009, by the COG Board passed Resolution R20-09 adopting four "Principles for Regional Water Quality Policies and Programs." These are reproduced below to provide context for and to help guide the preparation of comments and recommendations related to the TMDLs and WIPs.

Themes for Comments and Recommendations – COG staff has drafted a set of "themes" based on an initial review of the draft TMDLs and WIPs. Each of these is a priority area for developing COG comments and recommendations.

Action - The Chesapeake Bay and Water Resources Policy Committee is hereby empowered to provide detailed comments and recommendations to EPA and the states in the interest of COG's member governments and the region's wastewater utilities to help shape the outcome of the Bay TMDLs and related WIPs. The due date for these comments is November 8, 2010. The final Phase 1 WIPs are due by November 29, 2010. The final Bay TMDLs are due by December 31, 2010.

Policy Principle #1 – 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 and costs, as well as technical feasibility, before being established.*

- **Policy Theme #1A: EPA & States Should Address Cost-Benefit and Feasibility Considerations** - Cost-benefit considerations, availability of necessary funding, and hence assessments of true feasibility, are largely absent from the WIPs and should be addressed. This is especially critical given that most implementation will occur need to occur at the local level, and the Bay Partners' agreement to achieve 100% implementation by 2025.

- **Policy Theme #1B: EPA & States Need to Allow Maximum Implementation Flexibility for Local Governments and Wastewater Utilities** - It is not clear how much flexibility that local stakeholders will have in developing implementation plans; such as the ability to reallocate among different source sectors (e.g., between stormwater, wastewater, and air loads) or to continue to manage growth in the region (i.e., to reallocate/transfer wastewater contributions from different jurisdictions amongst different plants).
- **Policy Theme #1C: EPA & States Need to Make Sure Growth Policies Support Infill Development** - We support elements of the WIPs that are designed to ensure that new development either does not increase loads or that the use of offsets does not work against smart growth policies. These growth policies will also need to provide local governments and utilities with the ability to manage wastewater loads at a local level in order to address the growth that will occur throughout the Bay watershed over the next few decades.
- **Policy Theme #1D: EPA & States Must Ensure that Efforts to Meet Bay Water Quality Standards are Consistent with Meeting Other Environmental Objectives.** This will be critical as the entire Bay region deals with growth, cap loads, technological limitations; as well as the explicit assessment of Climate Change impacts during the 2017 reevaluation (as required under the President's Executive Order 13508 (May 12, 2009).

Policy Principle #2 –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.*

- **Policy Theme #2A: EPA Needs to Confirm Ability to Revisit/Revise Deadlines and/or Allocations for WIPs & TMDLs if Needed Consistent with its Adaptive Management Principles** – We support Maryland and Virginia's intention to revisit the allocations during the development of the Phase II WIPs and EPA's willingness to change its TMDL numbers accordingly.
- **Policy Theme #2B: EPA & States Should Require Greater 'Reasonable Assurance' from Agricultural Sources** - State WIPs should provide more reasonable assurance that agricultural-based load allocations can be met so as to avoid federal imposition of backstopping measures on regulated sources such as MS4 stormwater permittees.
- **Policy Theme #2C: EPA & States' Plans Must Acknowledge Need to Enhance/Expand Funding if Current Deadlines Are to be Met** - Deadlines and timing to augment existing funding mechanisms are either not discussed or are unrealistically ambitious. This risks setting up local governments and utilities for failure if necessary funding for implementation and related support functions cannot be found. This also applies to state programs and funding assumptions. And, if EPA fails to meet its obligations under the current timeline, the deadlines for all other parties should adjusted accordingly.
- **Policy Theme #2D: EPA Needs to Require Federal Sector to Match or Exceed State Standards** – Consistent with the President's Executive Order, the federal sector should "lead by example" and be held accountable to the highest overall reduction efforts. This goes beyond the currently defined air reductions and is particularly critical for federal facilities in urban areas that contribute stormwater-related loads to local waters (e.g., while only 5% of the Bay watershed, federal facilities represent

30% of the land area in the District of Columbia). These implementation efforts should be part of the formal 2-year milestone reporting process.

Policy Principle #3- 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.*

- **Policy Theme #3A: EPA’s TMDL Should Clearly Portray Nonpoint Source Allocations as ‘Preliminary’**- Source allocations for nonpoint sources (particularly agriculture and urban stormwater) should be regarded as preliminary to reflect the uncertainty inherent in the current version of the Bay Watershed Model and questions about how loads were allocated among these sources. This will be a critical aspect of the Phase II WIPs when nonpoint loads are expected to be revised and sub-allocated to local (i.e., county) levels.
- **Policy Theme #3B: EPA’s TMDL & State WIPs Should Clearly Distinguish Between Achieving Water Quality Standards and Achieving the ‘60% & 100% of Implementation’ Goals** – It has been known for many years that actual water quality improvements can and will lag behind implementation, despite best efforts. This is due in part to the lag time between implementation of many land-based practices and actual groundwater impacts; and the variable flow conditions that naturally occur in tidal waters. The current language fails to make these distinctions clear. These distinctions are critical - so that expectations of ‘progress’ are realistic and fully transparent to citizens and ratepayers who ultimately fund the implementation.

Policy Principle #4 - 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.*

- **Policy Theme #4A: EPA & States Should Continue Outreach to and Involvement with Stakeholders through the Development of the Phase I, II and III WIPs and Beyond.** This will be especially critical as the Phase II WIPs are developed for submittal in 2011 because at that time sub-allocations at the local level are expected. Currently local governments and utilities cannot fully evaluate their potential impacts or funding needs because the draft Phase I WIPs only allocate to the state/major tributary level.
- **Policy Theme #4B: EPA & States Should Ensure that Local Governments and Utilities Have the Greatest Flexibility Possible to Achieve their Portion of the Implementation Goals.** This is necessary to ensure that local governments and utilities can pursue the most cost-effective solutions, effectively manage growth, and balance many competing funding needs – while doing their part to improve local, tidal tributary and Bay water quality. Options such as utilizing trading options and reallocation of loads at a local level should also be provided to local governments and utilities consistent with the options and water quality constraints that the states have.