



A legacy of regional cooperation, a commitment to a vibrant future

MEMORANDUM

To: COG Board of Directors
From: Cathy Drzyzgula, Chair *CD*
Chesapeake Bay and Water Resources Policy Committee
Date: March 20, 2009
Subject: Recommendation for Updating COG's Chesapeake Bay and Water Resources Policy Principles

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Montgomery County
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**Adjunct member*

Recommendation Summary

On behalf of the Chesapeake Bay and Water Resources Policy Committee (CBPC), I am recommending that the COG Board adopt Resolution RXX-09, which updates COG's "Chesapeake Bay and Water Resources Policy Principles." These principles will guide COG's policy development and engagement with the federal-state Chesapeake Bay Program, as well as provide the policy framework to guide other regional water resource policy development.

The new policy principles replace those adopted by the COG Board in 1997. Until recently, the 1997 principles were appropriate for framing COG's analysis and development of Chesapeake Bay and regional water quality programs and policies. However, changing conditions, particularly the increasingly regulatory nature of the Chesapeake Bay Program, have rendered some aspects of these principles out-of-date. At its meeting on March 20, 2009, the CBPC considered revisions proposed by staff and endorsed by the Water Resources Technical Committee (WRTC). The CBPC finds that these proposed revisions effectively address the changed conditions and also broaden their applicability. The CBPC recommends that the COG Board approve them by adopting the attached resolution.

Background

The U.S. Environmental Protection Agency (EPA); the governors of Maryland, Virginia, and Pennsylvania; the Mayor of the District of Columbia; and the Chesapeake Bay Commission (representing the state legislatures) established the Chesapeake Bay Program in 1983 to coordinate their efforts in restoring the Chesapeake Bay. Various studies in the late 1970s and early 1980s concluded that the water quality problems in the Bay and its tributaries, including the Potomac River, resulted from an excess of nutrients (nitrogen and phosphorus) from wastewater treatment plants, agricultural runoff, and urban stormwater runoff. Also identified as significant issues were high sediment loads, and in more recent years, the role of pollution from airborne deposition, including deposited air pollution produced by sources external to the Bay watershed. The governors of New York and Delaware committed to the Chesapeake Bay Program's water quality goals by signing a multi-jurisdictional Memorandum of Understanding (MOU) with the Executive Council in 2000 and the governor of West Virginia added his signature to the MOU in 2002.

Several voluntary agreements among the program partners have guided the program, including an agreement in 1987 that established a commitment to reduce nutrients to the Bay by 40 percent by the year 2000, and "Chesapeake 2000," or C2K, which was signed in June 2000. C2K identified a significant number of commitments to restore the Bay, central of which was a commitment to meet water quality standards throughout the watershed by 2010. COG actively commented on both the 1987 agreement and Chesapeake 2000, emphasizing the roles and responsibilities of local governments. The final agreements, which COG endorsed, included recognition of COG's perspectives.

COG's members and affiliated wastewater agencies have been in the forefront of taking action to restore the Potomac and Anacostia Rivers and other local streams, as well as the Chesapeake Bay. This has included implementation of state of the art wastewater control programs, advanced stormwater management, and air quality controls. The majority of these actions have taken place at local government or utility ratepayer expense. Significant progress in improving water quality has been observed, particularly in the Potomac, where a renewal of fish and other living resources has taken place.

COG Board Action in 1997

The COG Board adopted Resolution R25-97 on July 9, 1997, "Establishing Policy Principles on the Future Direction of the Chesapeake Bay Program." A copy of that resolution is attached. At the time, the Bay Program was focused on implementation of the water quality provisions of the 1987 Bay agreement which called for a 40% reduction of nutrient loads from 1985 levels by the year 2000. A key part of the agreement was the *voluntary* implementation of biological nutrient reduction (BNR) at the Bay watershed's wastewater treatment plants. In accepting that strategy at the local level, the COG Board determined that the strategy effectively was consonant with the four principles, which were entitled "Voluntary Status", "Equity," "Good Science," and "Voice."

In 1998 the Board established the Chesapeake Bay Policy Committee (expanded to Chesapeake Bay and Water Resources Policy Committee in 2005) to have the lead role on behalf of COG's members and affiliated wastewater utilities in developing and advocating policy positions relative to Chesapeake Bay and regional water resources issues.

Changed Conditions

The framework for planning and implementing regional water quality policies and programs has become much more regulatory since 1997. During the 1990s a series of lawsuits brought attention to the "Total Maximum Daily Load" (TMDL) requirements of the Clean Water Act. A TMDL is, in effect, a pollution budget for water bodies that do not meet water quality standards. The TMDL has particular significance for wastewater treatment plants and urban stormwater programs that are regulated by federal and state discharge permits. In 1997, the connection between TMDL and permits for urban stormwater programs was still being defined. A TMDL lawsuit covering the Commonwealth of Virginia was settled in 1999 and, arguably, was the signature event that defined the compliance timetable reflected in the C2K agreement. The advent of TMDLs eliminated the prospect that a voluntary approach could be completely compatible with achieving water quality goals. In 2009, TMDLs are a key component of water quality management programs and are important aspects of both wastewater and urban stormwater permitting. This development argued for revisiting each of the four COG policies. CBPC members also recognized that these principles were applicable to regional programs and policies that have the potential of affecting local water quality programs.

Proposed Revisions to COG Chesapeake Bay and Water Resources Policy Principles

Given the significant change in the regulatory environment, the first policy, "Voluntary Status," needs the greatest change. It is recommended to substitute a policy calling for a comprehensive "holistic" assessment of any proposed program or policy. Thus, before implementation, any proposed program or policy should be assessed in terms of a full range of environmental benefits, costs and effectiveness. Accordingly, the first principle is referred to as "Holistic Requirements." The proposed language is:

“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.”

This policy reflects the importance of looking beyond traditional water quality measures, such as monetary costs and pounds of pollutants reduced. In light of many competing environmental demands, such as climate change, energy consumption and resource availability, as well as funding constraints, there should be full recognition of environmental benefits and costs and multi-media implications in developing all policies, regulations and programs.

The other three policies carry forward the intent of the earlier policies with some refinements to reflect experience in applying the principles since 1997. Accordingly, “Equity” has been recast as “Equitable Responsibility;” “Good Science” as “Sound Science,” including recognition that science changes over time; and “Voice” as “Communication and Voice,” stressing the importance of two-way communication between different levels of government. Each of the three is presented and discussed below:

“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.”

Local governments and utilities recognize their responsibility to implement policies, programs and projects to help improve and protect water quality. It is critical that the sources of pollution from all sectors be adequately addressed so that water quality is improved and the investment produces tangible results through the equitable sharing of the overall responsibility.

“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.”

Even when sound science does provide the basis for programs and policies to protect water quality, that basis will and should change as new information becomes available. Accordingly, water quality programs and policies should be open to adaptation to reflect new scientific findings.

“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.”

Local governments and wastewater utilities are the primary implementers of wastewater and urban stormwater management projects. Not only do they have substantial financial obligations, they also have extensive expertise and experience to offer. Their input early in the processes is critical to ensure that effective and realistic programs and policies are developed.

Broader Applicability - The other change contained in the proposed resolution is to broaden the applicability of the proposed principles so that they go beyond the Chesapeake Bay Program to also cover regional water quality programs and policies in general. The Bay Program focuses on the conditions in the Bay itself and its tidal tributaries caused by excessive nutrients and sediment. However, regional water quality issues are not confined to tidal waterbodies and encompass pollutants other than nutrients and sediment. Concerns about toxic pollutants in the Potomac watershed have already triggered the development of TMDLs and more are likely in the future. One example is the TMDL for PCBs in the Potomac watershed, which was approved by EPA in 2007. It's reasonable to assume that TMDL implementation plans will continue to place requirements on local governments and utilities in the COG

region. These four principles will provide a framework to help articulate local perspectives and shape the outcome.

Attachments:

- Resolution R25-97, "Establishing Policy Principles on the Future Direction of the Chesapeake Bay Program"
- Resolution R18-09, "Revising COG's Principles for Chesapeake Bay and Regional Water Quality Policies and Programs"