

## **AGENDA NOTE - HRPDC EXECUTIVE COMMITTEE MEETING**

### **ITEM #26: CORRESPONDENCE OF INTEREST**

**A. Letter, Dolores Moore, Chesapeake City Clerk, to William E. Harrell, May 25, 2011**

Attached is a letter from Dolores Moore, Chesapeake City Clerk, to William E. Harrell, advising him of his reappointment to the Hampton Roads Planning District Commission for a term from July 13, 2011 to July 12, 2013.

**B. Letter, Dolores Moore, Chesapeake City Clerk, to Ella P. Ward, May 25, 2011**

Attached is a letter from Dolores Moore, Chesapeake City Clerk, to Ella P. Ward, advising her of her reappointment to the Hampton Roads Planning District Commission for a term from July 13, 2011 to July 12, 2013.

**C. Letter, Dolores Moore, Chesapeake City Clerk, to Amar Dwarkanath, May 25, 2011**

Attached is a letter from Dolores Moore, Chesapeake City Clerk, to Amar Dwarkanath, advising him of his reappointment to the Hampton Roads Planning District Commission for a term from July 13, 2011 to July 12, 2013.

**D. Letter from Nikki L. Tinsley to Jennifer Tribo, May 23, 2011**

Attached is a letter from Nikki L. Tinsley, Chair of the Citizens Advisory Committee to the Chesapeake Executive Council to Senior Water Resources Planner Jennifer Tribo thanking Ms. Tribo for her presentation at the May 5, 2011 meeting of the Citizens Advisory Committee.

**E. Letter from HRPDC Chairman Stan D. Clark to Mr. Jeff Corbin, EPA, June 3, 2011**

Attached is a letter from HRPDC Chairman Stan D. Clark to Mr. Jeff Corbin, EPA, raising follow-up questions on the Chesapeake Bay TMDL. This letter is in response to Mr. Corbin's letter of May 3, 2011.

**F. Letter from HRPDC Chairman Stan D. Clark to Mr. Anthony Moore, Assistant Secretary of Natural Resources, June 6, 2011**

Attached is a letter from HRPDC Chairman Stan D. Clark to Mr. Anthony Moore, Assistant Secretary of Natural Resources, Virginia, raising questions about the state's Watershed Implementation Plan – Phase II process. These questions follow-up to Mr. Corbin's letter of May 3, 2011 on issues specific to the Virginia process.

**G. Letter, Virginia Members of the Chesapeake Bay Local Government Advisory Committee to Mayors, Chairs and Chief Administrative Officers of localities in Virginia's Chesapeake Bay Watershed, June 1, 2011**

Attached is a letter from the Virginia Members of the Chesapeake Bay Local Government Advisory Committee (CBLGAC) to Mayors, Chairs and Chief Administrative Officers of localities in Virginia's Chesapeake Bay Watershed introducing the CBLGAC and its members and encouraging all localities to participate in the Chesapeake Bay Restoration effort.

May 25, 2011

Mr. William E. Harrell  
City Manager's Office  
City of Chesapeake  
Chesapeake, VA 23328

Dear Mr. Harrell:

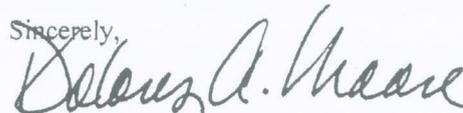
I am pleased to advise you that City Council, at its meeting of May 24, 2011, reappointed you to your third term on the Hampton Roads Planning District Commission. Your term will begin on July 13, 2011 and expires on July 12, 2013.

Your Certificate of Appointment is enclosed. As required by State law, you must take the Oath of Office prior to taking your voting position on the Board/Commission. Failure to be sworn in prior to taking your seat on the Hampton Roads Planning District Commission could result in all actions of the Board/Commission on which you participate as an active member being nullified. The oath is administered by Ms. Faye Mitchell, Clerk of the Circuit Court. Please contact Ms. Mitchell's office at 382-3022 to arrange to take your oath. Again, it is necessary to be sworn in before you take your position on the Board/Commission.

By copy of this letter, the chairperson/liaison will be notified of your appointment and will advise you of the next meeting date. In the near future, you will receive additional information regarding this appointment from the Office of the City Attorney. This information includes the Freedom of Information Act (FOIA) recently amended by the Virginia State Legislature. Section 2.2-3702 of the Act requires officials of any public body to read and familiarize themselves with the information contained in the FOIA. Additionally, Section 2.2-3701 of the Act defines a public body as "...any legislative body, any authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth ...supported wholly or principally by public funds." Carefully review the information contained in the FOIA when your package arrives from the City Attorney's office.

Should you have any questions, please call Sandy Madison, Deputy City Clerk, 382-6151.

Sincerely,



Dolores A. Moore, MMC  
City Clerk

DAM: sm  
Enclosure

cc: Faye Mitchell, Clerk of the Circuit Court  
Ronald S. Hallman, City Attorney  
Nancy G. Parr, Commonwealth's Attorney  
Kelly Peterson, Liaison, Hampton Roads Planning District Commission

**RECEIVED**

MAY 26 2011

**HRPDC**

May 25, 2011

Council Member Ella P. Ward  
1517 Pine Grove Lane  
Chesapeake, VA 23321

Dear Council Member Ward:

I am pleased to advise you that City Council, at its meeting of May 24, 2011, reappointed you to your fourth term on the Hampton Roads Planning District Commission. Your term will begin on July 13, 2011 and expires on July 12, 2013.

Your Certificate of Appointment is enclosed. As required by State law, you must take the Oath of Office prior to taking your voting position on the Board/Commission. Failure to be sworn in prior to taking your seat on the Hampton Roads Planning District Commission could result in all actions of the Board/Commission on which you participate as an active member being nullified. The oath is administered by Ms. Faye Mitchell, Clerk of the Circuit Court. Please contact Ms. Mitchell's office at 382-3022 to arrange to take your oath. Again, it is necessary to be sworn in before you take your position on the Board/Commission.

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Should you have any questions, please call Sandy Madison, Deputy City Clerk, 382-6151.

Sincerely,

  
Dolores A. Moore, MMC  
City Clerk

DAM: sm  
Enclosure

cc: Faye Mitchell, Clerk of the Circuit Court  
Ronald S. Hallman, City Attorney  
Nancy G. Parr, Commonwealth's Attorney  
Kelly Peterson, Liaison, Hampton Roads Planning District Commission

**RECEIVED**

MAY 26 2011

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Office of the City Clerk  
306 Cedar Road  
Chesapeake, Virginia 23322  
email: council@cityofchesapeake.net  
(757) 382-6151  
Fax (757) 382-6678

May 25, 2011

Mr. Amar Dwarkanath  
City Manager's Office  
Chesapeake, VA 23322

Dear Mr. Dwarkanath:

I am pleased to advise you that City Council, at its meeting of May 24, 2011, reappointed you to your fourth term on the Hampton Roads Planning District Commission. Your term will begin on July 13, 2011 and expires on July 12, 2013.

Your Certificate of Appointment is enclosed. As required by State law, you must take the Oath of Office prior to taking your voting position on the Board/Commission. Failure to be sworn in prior to taking your seat on the Hampton Roads Planning District Commission could result in all actions of the Board/Commission on which you participate as an active member being nullified. The oath is administered by Ms. Faye Mitchell, Clerk of the Circuit Court. Please contact Ms. Mitchell's office at 382-3022 to arrange to take your oath. Again, it is necessary to be sworn in before you take your position on the Board/Commission.

By copy of this letter, the chairperson/liaison will be notified of your appointment and will advise you of the next meeting date. In the near future, you will receive additional information regarding this appointment from the Office of the City Attorney. This information includes the Freedom of Information Act (FOIA) recently amended by the Virginia State Legislature. Section 2.2-3702 of the Act requires officials of any public body to read and familiarize themselves with the information contained in the FOIA. Additionally, Section 2.2-3701 of the Act defines a public body as "...any legislative body, any authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth ... supported wholly or principally by public funds." Carefully review the information contained in the FOIA when your package arrives from the City Attorney's office.

Should you have any questions, please call Sandy Madison, Deputy City Clerk, 382-6151.

Sincerely,

  
Dolores A. Moore, MMC  
City Clerk

DAM: sm  
Enclosure

cc: Faye Mitchell, Clerk of the Circuit Court  
Ronald S. Hallman, City Attorney  
Nancy G. Parr, Commonwealth's Attorney  
Kelly Peterson, Liaison, Hampton Roads Planning District Commission

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**MAY 26**

**HRT**



**Citizens Advisory Committee**  
TO THE CHESAPEAKE EXECUTIVE COUNCIL

*CHAIR*  
Nikki Tinsley  
Maryland

*VICE CHAIR*  
John Dawes  
Pennsylvania

Bill Achor  
Pennsylvania

Nancy L. Alexander  
Virginia

Nina Beth Cardin  
Maryland

Andrew Der  
Maryland

Jim Elliott  
Pennsylvania

Christy Everett  
Virginia

C. Victor Funk  
Pennsylvania

Rebecca Hanmer  
Virginia

Verna Harrison  
Maryland

Stella M. Koch  
Virginia

Patricia Levin  
Pennsylvania

Joseph Maroon  
Virginia

William D. Martin, Jr.  
Washington, DC

Karen McJunkin  
Maryland

Dan Milstein  
Washington, DC

Deborah Nardone  
Pennsylvania

Betsy J. Quant  
Pennsylvania

Angana Shah  
Washington, DC

Charlie Stek  
Maryland

Charles E. Sydnor, III  
Maryland

Neil Wilkie  
Maryland

*Young Delegate*  
Jess Cadwallender, VA

May 23, 2011

Jennifer Tribo  
Hampton Roads Planning District Commission  
723 Woodlake Dr.  
Chesapeake, VA 23320

Dear Ms. Tribo:

Thank you for meeting with the Citizens Advisory Committee (CAC) in Alexandria, VA on May 5, 2011. Your presentation on the HRPDC's plans and perspectives on Virginia's Watershed Implementation Plan was helpful for the CAC to hear and discuss. CAC believes the local governments in the Chesapeake Bay watershed are a key component to restoring and protecting local waterways.

Thank you for all you do for the Chesapeake Bay and your communities' rivers and streams.

Sincerely,

Nikki L. Tinsley  
Chair, Citizens Advisory Committee

**RECEIVED**  
JUN 03 2011  
**HRPDC**

MEMBER JURISDICTIONS

June 3, 2011

CHESAPEAKE

Mr. Jeffrey Corbin  
Senior Advisor  
Office of the Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20004  
[Corbin.jeffrey@epamail.epa.gov](mailto:Corbin.jeffrey@epamail.epa.gov)

FRANKLIN

GLOUCESTER

HAMPTON

ISLE OF WIGHT

Re: Chesapeake Bay TMDLs

JAMES CITY

Dear Mr. Corbin:

NEWPORT NEWS

Thank you for your May 3, 2011 letter and the attached responses to the Commission's questions. The Commission greatly appreciates the time and effort that you and your EPA colleagues devoted to preparing the responses.

NORFOLK

POQUOSON

Your responses have prompted the Commission to ask several follow-up questions, some of which are directed to EPA in this letter while others are directed to the Commonwealth of Virginia in separate correspondence on which you are copied.

PORTSMOUTH

SOUTHAMPTON

Before turning to the follow-up questions, I want to say that the Commission is encouraged by EPA's responses to questions A.6, B.1, and B.2 because together, they appear to state that EPA will not object if the Virginia Department of Conservation and Recreation (DCR) employs the Maximum Extent Practicable (MEP) standard when developing MS4 permit conditions based on the Bay TMDLs.

SURRY

VIRGINIA BEACH

This is an extremely important issue for MS4 jurisdictions because proper application of the MEP standard must necessarily take into account limits on the authority of local governments to require retrofits on private property. On average, the Hampton Roads localities own less than 10 percent of the impervious land within their jurisdictional boundaries. This is significantly less than the amount of impervious land that would have to be treated to achieve the Bay TMDL WLAs. The remaining impervious land is privately owned, and the Hampton Roads localities cannot compel private landowners to install retrofits in the absence of redevelopment requiring local land use approvals. Consequently,

WILLIAMSBURG

YORK

Attachment 26E

Mr. Jeffrey Corbin  
June 3, 2011  
Page 2

Bay TMDL-based permit conditions that incorporate fixed BMP retrofit schedules independent of the MEP standard would require the localities to acquire extensive retrofit easements through negotiation and condemnation. Easement acquisition, in turn, would not only add billions of dollars to the cost of compliance, but also expose the localities to enforcement for failure to comply with the BMP retrofit schedules because land acquisition, particularly condemnation, can be extraordinarily time consuming.

As you may know, we have been advocates for an MEP-based approach to MS4 permitting in Hampton Roads that would call for achieving the nutrient and suspended solids load reductions needed to attain the Bay TMDLs' MS4 WLAs using BMP retrofit targets tied to redevelopment rates. Although it would take longer to implement the needed retrofits under this approach, fixed impervious cover and BMP retrofit schedules are not feasible and most certainly do not reflect the MEP standard. While we acknowledge that MS4 permits employing this approach would have to be supported by appropriate documentation on a case-by-case basis, we understand from EPA's responses to questions A.6, B.1, and B.2, that it would not object to such an approach. Please let us know as soon as possible if we have drawn the wrong conclusion from your responses.

#### **Follow-up Questions for EPA**

1. In its response to Question A.1, EPA states that it did not include individual WLAs for the Phase I MS4s in the other Bay jurisdictions because they "included discussion of the more specific, anticipated permit requirements in their Phase I WIPs to explain how MS4s would meet aggregate WLAs, thus providing EPA with sufficient assurance that compliance with aggregate WLAs would be achieved". We have two follow-up questions based on this response:
  - (a) What discussions of more specific, anticipated permits requirements did the other Bay jurisdictions include in their Phase I WIPs that Virginia did not include in its Phase I WIP?
  - (b) Why does EPA believe that individual WLAs in the Phase I permits provide sufficient assurance that the WLAs will be achieved?
2. EPA's response to Question A.3.ii states that the individual WLAs for the Hampton Roads Phase I MS4s included urban stormwater loads from permitted sources within the boundaries of the MS4 jurisdictions. Although EPA goes on to state that it does not assume that the NPDES permit requirements for the Phase I MS4 jurisdictions will include any conditions or controls for regulating the activities of other NPDES permittees, the response suggests that the WLAs for these other NPDES permittees will need to be subtracted from the individual Phase I MS4 WLAs at some point in the future. Aside from appearing to acknowledge that the individual WLAs were established based

Mr. Jeffrey Corbin  
June 3, 2011  
Page 3

on incomplete data, EPA's response prompts us to ask whether EPA does, in fact, intend to subtract the WLAs for other NPDES permittees from the individual WLAs, and if so, when?

3. Thank you for your response to Question A.7. Section 4.5.4 of the TMDL says that "Although the Bay Watershed Model does not specifically account for SSOs, the nitrogen and phosphorus load contributions from SSOs are part of the background conditions incorporated into the Phase 5.3 watershed model and, therefore, such loads are accounted for in the data used for calibration of the Bay Watershed Model. Because SSOs are illegal, however, the Chesapeake Bay TMDL assumes full removal of SSOs and makes no allocation to them." Since the SSOs were included as part of the nutrient load for urban lands when the model was calibrated, how will the EPA account for improvements to the sanitary sewer systems and their impact on water quality in future model revisions?

We ask that EPA respond to these questions in writing within 30 days of the date of this letter. I look forward to receiving EPA's response to the follow-up questions, and please do not hesitate to contact the Commission's Deputy Executive Director, John Carlock at 757.420.8300 or [jcarlock@hrpdcv.gov](mailto:jcarlock@hrpdcv.gov) if you wish to discuss this matter further.

Sincerely,



Stan D. Clark  
Chairman

SDC/kp

copy: Anthony Moore, Assistant Secretary Chesapeake Bay Restoration, Office of the Secretary of Natural Resources  
David A. Johnson, Director, Virginia Department of Conservation and Recreation  
Dwight L. Farmer, Executive Director, Hampton Roads Planning District Commission  
John M. Carlock, Deputy Executive Director, Hampton Roads Planning District Commission

**MEMBER  
JURISDICTIONS**

June 6, 2011

CHESAPEAKE

Mr. Anthony Moore  
Assistant Secretary  
Chesapeake Bay Restoration  
Office of the Secretary of Natural Resources  
Patrick Henry Building  
1111 East Broad Street  
Richmond, VA 23219

FRANKLIN

GLOUCESTER

HAMPTON

Re: Chesapeake Bay TMDLs

ISLE OF WIGHT

Dear Mr. Moore:

JAMES CITY

This letter is a follow up to EPA's May 3, 2011 responses to the Hampton Roads Planning District Commission's March 31, 2011 questions related to the potential impacts of the Chesapeake Bay TMDLs on the Hampton Roads MS4 localities. Although you were copied on both the questions and the responses, I am including copies for your convenience.

NEWPORT NEWS

NORFOLK

As you can see from its responses, EPA appears to be giving the Commonwealth of Virginia a number of opportunities to mitigate the impacts of the Bay TMDLs on the Hampton Roads MS4 localities. I am writing to request that the Commonwealth provide answers to the following questions so that the Commission's assessment of the likely impacts of the Bay TMDLs is based on the most complete and accurate information possible.

POQUOSON

PORTSMOUTH

SOUTHAMPTON

**Questions of the Commonwealth**

SUFFOLK

1. In its response to HRPDC Question A.1, EPA states that it did not include individual WLAs for the Phase I MS4s in the other Bay jurisdictions because they "included discussion of the more specific, anticipated permit requirements in their Phase I WIPs to explain how MS4s would meet aggregate WLAs, thus providing EPA with sufficient assurance that compliance with aggregate WLAs would be achieved". Does the Commonwealth intend to provide EPA with the more specific, anticipated permit requirements provided by the other Bay jurisdictions so that the individual WLAs for the Virginia Phase I MS4s can be removed from the TMDL at the conclusion of the Phase II WIP process?

SURRY

VIRGINIA BEACH

WILLIAMSBURG

YORK

2. EPA's response to HRPDC Question A.3.ii states that the individual WLAs for the Hampton Roads Phase I MS4s included urban stormwater loads from permitted sources within the boundaries of the MS4 jurisdictions. Although EPA goes on to state that it does not assume that the NPDES permit requirements for the Phase I MS4 jurisdictions will include any conditions or controls for regulating the activities of other NPDES permittees, the response suggests that the WLAs for these other NPDES permittees will need to be subtracted from the individual Phase I MS4 WLAs at some point in the future. If the WLAs for the Phase I MS4s cannot be removed from the TMDL, does the Commonwealth intend to delay renewal of Phase I MS4 permits until this issue is addressed?
3. EPA's response to HRPDC Question A.5.c related to distribution of the TSS load reserve for the James and York river basins states that Virginia may propose reallocations of the load reserve and that EPA will rely heavily on Virginia's proposals. Does Virginia intend to redistribute some or all of the James and York TSS load reserves to the MS4 localities in these basins? If so, what criteria and/or formulae will the Commonwealth use in making the distribution?
4. EPA's responses to HRPDC Questions A.6 and B.2 appear to state that EPA will not object if the Commonwealth employs the Maximum Extent Practicable (MEP) standard when developing MS4 permit conditions based on the Bay TMDLs. As explained in the enclosed follow-up letter to Mr. Corbin, this is an extremely important issue for MS4 jurisdictions. Will the Commonwealth exercise the discretion accorded by EPA and employ the MEP standard when developing MS4 permit conditions based on the Bay TMDLs?
5. In its response to HRPDC question A.7 related to credit for boat no-discharge zones and oyster restoration, EPA indicates that although these practices have not been approved, it is willing to work with Virginia to consider crediting them as placeholder BMPs. Is Virginia committed to working with EPA to credit boat no-discharge zones and oyster restoration as placeholder BMPs, and if so, what is the timing and extent of such a commitment? If not, why?
6. EPA's response to HRPDC Question A.8 indicates that Virginia can count nutrient load reductions from the fertilizer ban when they are reported and verified by the Commonwealth in annual progress reports. Does Virginia intend to report and verify nutrient load reductions from the fertilizer ban in its annual progress reports? If so, how does the Commonwealth propose to verify the nutrient reductions achieved by the fertilizer ban, and when will the Commonwealth provide estimates of those reductions by locality?

Mr. Anthony Moore  
June 6, 2011  
Page 3

7. EPA's response to HRPDC Question A.9 states that EPA will accept Virginia's BMP efficiencies only where they have been approved by the Chesapeake Bay Program Water Quality Goal Implementation Team. Is the Commonwealth committed to seek approval of its BMP efficiencies so that they can be used to assess compliance? If so, what is the timing and extent of such a commitment? If not, why?

We ask that you respond to these questions in writing within 30 days of the date of this letter. Thank you for your consideration of this request and we look forward to hearing from you at the earliest opportunity. Please contact John Carlock at 757.420.8300 or [jcarlock@hrpdcva.gov](mailto:jcarlock@hrpdcva.gov) if you have any questions about this request.

Sincerely,



Stan D. Clark  
Chairman

SDC/kp

Enclosures (2): Letter from HRPDC to Mr. Jeffrey Corbin, dated March 31, 2011  
Letter from Mr. Jeffrey Corbin to Mr. Stan Clark, Dated May 3, 2011

copy: Mr. Jeffrey Corbin, Senior Advisor to the Regional Administrator  
David A. Johnson, Director, Virginia Department of Conservation and Recreation  
Dwight L. Farmer, Executive Director, Hampton Roads Planning District Commission  
John M. Carlock, Deputy Executive Director, Hampton Roads Planning District Commission  
Hampton Roads State Delegation

MEMBER JURISDICTIONS

March 31, 2011

CHESAPEAKE

Mr. Jeffrey Corbin  
Senior Advisor to the Administrator  
U.S. Environmental Protection Agency, Region III  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
[Corbin.jeffrey@epamail.epa.gov](mailto:Corbin.jeffrey@epamail.epa.gov)

FRANKLIN

GLOUCESTER

HAMPTON

RE: Chesapeake Bay TMDLs

ISLE OF WIGHT

Dear Mr. Corbin:

JAMES CITY

Thank you for attending the March 31, 2011 special meeting of the Commission's Executive Committee and for presenting EPA's perspective on the Chesapeake Bay Total Maximum Daily Loads (TMDL).

NEWPORT NEWS

NORFOLK

POQUOSON

PORTSMOUTH

SOUTHAMPTON

SUFFOLK

SURRY

VIRGINIA BEACH

As you know from recent reports in the media, the Commission has been evaluating the potential impacts of the TMDL on its member localities that operate Municipal Separate Storm Sewer Systems (MS4s) together with legal options for addressing any flaws in the TMDL that could cause adverse socio-economic impacts on the Hampton Roads region without providing any meaningful water quality benefit. Based on that evaluation, we have concluded that there are legitimate reasons to be concerned about the potential impacts of certain aspects of the TMDL. Those concerns, however, largely reflect uncertainty about the outcome of the Phase II Watershed Implementation Plan (WIP) process now underway as well as EPA's intentions with respect to the way in which the Hampton Roads region's MS4 permits must be written to be consistent with the assumptions and requirements of the TMDL. Therefore, the Commission wishes to know EPA's answers to the following questions so that we can make the best informed assessment of the TMDL's likely impact on the region's MS4 localities. The Commission has decided to defer further consideration of its legal options pending receipt of EPA's response.

WILLIAMSBURG

To put the questions in context, the Commission wishes to make clear that it and its member MS4 localities are supportive of the TMDL's goals as reflected in their ongoing commitment of significant resources to implementation of the

YORK

Hampton Roads region's MS4 programs. No other region of Virginia has a greater stake in a clean Bay than Hampton Roads, and as stated in the Commission's comments on the draft TMDL, the region's MS4 localities are prepared to commit more money and resources to their storm water programs where needed to help restore the Chesapeake Bay and protect the James and York rivers. However, the Commission and its member MS4 localities believe that a clean Bay can be attained without wasting scarce resources or exposing the MS4 localities to enforcement actions for failing to achieve unrealistic and unattainable TMDL-derived compliance obligations. Unfortunately, it appears that these may well be the consequences of several flaws in the TMDL as reflected in the following issues of greatest concern to the Commission and the MS4 localities. I want to emphasize that the Commission and the MS4 localities believe the TMDL is flawed in other respects, but they are most concerned with the following issues because they are likely to have the greatest impact on the MS4 localities.

## **I. Issues of Greatest Concern**

### **A. Land Use Data Used to Derive the MS4 WLAs**

The waste load allocations (WLAs) in the TMDL are based on land use data, specifically the amount of impervious area within the locality. An analysis of representative Geographic Information System (GIS) land use data shows that the satellite imagery used by EPA for its land use inputs to the watershed model underestimates the extent of imperviousness in the Hampton Roads region by an average of approximately 48 percent. Locally developed imperviousness data is more accurate than the satellite imagery relied on by EPA, but EPA did not take the time to work with the Hampton Roads' localities to collect this information and use it in the model. EPA has acknowledged that the land use data used to develop the TMDL is inaccurate and has stated that it plans to develop revised load reduction estimates based on revised imperviousness data. However, we understand that EPA intends to continue using satellite imagery rather than local GIS data.

The implications of underestimated imperviousness are significant because it means that the Hampton Roads localities, including those with MS4 permits, will have to reduce their urban runoff loads based on modeling data which assumes that they are less impervious than they actually are. In other words, the urban land area that will have to be treated in order to attain the WLAs would be greater than the land area assumed in the TMDL. This has potentially serious implications for not only the ultimate cost of compliance, but also the ability of the MS4 localities to achieve their WLAs by the TMDL's 2025 deadline.

B. Establishment of Individual WLAs for the Hampton Roads Phase I MS4s

EPA should not have included individual WLAs for Virginia's Phase I MS4 localities (including the six Phase I MS4 localities in Hampton Roads) in the final TMDL. The individual WLAs were not included in the draft TMDL, so there was no notice of or opportunity to comment on the WLAs before they were established in violation of the Administrative Procedures Act. We are also troubled by the fact that Virginia's Phase I MS4s were singled out for individual WLAs as well as EPA's failure to provide any justification for adding the individual WLAs or explanation of how they were derived.

As you know, EPA and the Bay states agreed that not enough information was available during the TMDL development process to generate individual WLAs for MS4s, and therefore, agreed to defer dividing aggregate point source targets to a finer scale until the Phase II WIP process. Accordingly, we suspect that the individual WLAs are based on the same inaccurate land use data that was used to derive the proposed aggregate WLAs in the draft TMDL, but we have no way of knowing whether this is, in fact, the case or whether other errors are built into the WLAs because EPA has not explained how the individual WLAs were derived. In particular, we strongly suspect that the individual WLAs for Total Suspended Solids (TSS) are inaccurate because in addition to the use of inaccurate land use data, the TSS WLAs were derived using a model that EPA has acknowledged could not be calibrated for sediment.

The potential consequences are far reaching because the Phase I MS4 localities would be at significant risk of federal, state, and citizen enforcement for failure to comply with their permits if EPA proceeds with TMDL implementation using individual Phase I MS4 WLAs derived from erroneous land use data.

C. 2025 Deadline

As explained in the Commission's comments on the draft TMDL, we do not believe EPA has the authority to establish a deadline in the TMDL. MS4s are uniquely affected by the 2025 deadline because they are regulated as point sources, but face far greater implementation challenges than any other source sector, point or non-point. The MS4 WLAs will require widespread implementation of storm water retrofits on private property in a heavily urbanized region. The MS4 localities could implement these retrofits cost effectively through their land use approval process as redevelopment occurs, but the 2025 deadline will make it impossible for the MS4s to achieve their WLAs in this fashion because the average rate at which land is redeveloped will

not allow it. Instead, the MS4 localities will be forced to not only install and operate storm water retrofits on private property, but also to acquire retrofit easements by purchase or condemnation. Again, the potential consequences are far reaching. Aside from the cost, easement acquisition takes time, making it highly unlikely that the MS4s could achieve their WLAs by 2025, thereby exposing them to federal, state, and citizen enforcement despite their best efforts to comply.

## II. Questions for EPA.

While the Commission and the MS4 localities believe their concerns are well founded, they wish to hear from EPA. Therefore, it will be greatly appreciated if EPA will answer the following questions.

### A. Hampton Roads MS4 WLAs

1. Why does the final TMDL include individual WLAs for the Phase I MS4s in Virginia, but not the Phase I MS4s in the other Bay states?
2. Why weren't the individual WLAs included in the draft TMDL?
3. How did EPA derive the individual WLAs for the Hampton Roads Phase I MS4s?
  - i. What MS4 boundaries were used?
  - ii. Did the WLA calculations for the Phase I MS4s include areas in the Phase I boundaries that are covered by other permits held by private companies, the state, or federal agencies?
4. Is EPA prepared to work with the Hampton Roads localities during the Phase II WIP process to ensure that the urban runoff WLAs reflect the most accurate land use data available, including the available GIS data?
5. Under what circumstances will EPA modify the WLAs at the conclusion of the Phase II WIP process?

Specifically:

- a. The EPA has agreed to run the Bay model with revised land use data in 2011. Will the WLAs be revised if the WLAs increase for some Phase I MS4s?

- b. Why were Total Suspended Solids (TSS) WLAs included in the TMDL given EPA's acknowledgement that the Bay model could not be calibrated for sediment?
  - c. Does EPA intend to distribute any of the 9.5 percent TSS load reserve in the James River Basin or the 9.2 percent TSS load reserve in the York River Basin to Hampton Roads MS4s as part of the Phase II WIP process?
  - d. Can all of the MS4 sector WLAs be revised as part of the Phase II WIP process if the basin allocations are met?
6. How can the Hampton Roads region follow the Phase II WIP process when the Department of Conservation and Recreation (DCR) has already started writing permits based on the individual Phase I MS4 WLAs? EPA's Phase II WIP Fact Sheet states as follows:
- “EPA expects the Bay jurisdictions to develop Phase II WIPs that further divide final nonpoint source and aggregate point source target loads for the 92 303(d) segment drainage areas using a finer geographic scale such as counties, conservation districts, sub-watersheds, or, where appropriate, individual sources or facilities. EPA expects the local targets to be used for planning purposes and does not intend to establish local targets as separate allocations within the Bay TMDL.”
7. The Hampton Roads localities are already investing in programs that will reduce nutrient loads. Existing EPA documentation indicates that the localities cannot count these programs as efforts to meet the TMDL. How can localities get credit for investments that reduce Sanitary Sewer Overflows (SSOs)? Implementing no discharge zones for boats? Increasing oyster restoration?
  8. Will EPA count nutrient load reductions from non-structural BMPs like nutrient management and the fertilizer ban as MS4 reductions or treat them as nonpoint source reductions?
  9. Virginia's BMP efficiencies and EPA's model BMP efficiencies are not equivalent. Will EPA defer to Virginia's BMP efficiencies to assess compliance?

B. 2025 Deadline

1. Will EPA expect DCR to include compliance schedules designed to meet the applicable WLAs by the 2025 deadline in the Phase I MS4 permits when they are reissued and in the Phase II MS4 general permit when it is reissued?
2. NPDES (MS4) permits will be the enforcement tool to implement TMDL-based storm water nutrient reductions. NPDES storm water permits are based on the "maximum extent practicable" (MEP) standard. The evaluation of the MEP standard includes technical and economic achievability. Will the EPA consider adjusting the timeline for storm water load reductions in the TMDL if the existing timeline is not reasonably achievable?

We ask that EPA respond to the questions in writing within 30 days of the date of this letter. Should EPA choose not to answer the questions, we would appreciate knowing that as well within the next 30 days. EPA's responses to the questions may well lead to additional questions so it would be helpful to arrange a meeting as soon as possible to discuss the questions and answers before EPA responds in writing.

Thank you for your consideration of this request and we look forward to hearing from you at the earliest opportunity. Please contact the Commission's Deputy Executive Director, John Carlock at 757.420.8300 or at [jcarlock@hrpdcva.gov](mailto:jcarlock@hrpdcva.gov) if you wish to discuss this matter further.

Sincerely,



Stan D. Clark  
Chairman

copy: Douglas Domenech, Secretary of Natural Resources  
Anthony Moore, Assistant Secretary for Chesapeake Bay Restoration  
David A. Johnson, Director, Virginia Department of Conservation and Recreation  
David K. Paylor, Director, Virginia Department of Environmental Quality  
Hampton Roads General Assembly Delegation  
HRPDC Commissioners  
Dwight L. Farmer, Executive Director, Hampton Roads Planning District Commission  
John M. Carlock, Deputy Executive Director, Hampton Roads Planning District Commission  
David E. Evans, McGuireWoods, LLP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 3, 2011

Mr. Stan D. Clark  
Chairman, Hampton Roads Planning District Commission  
The Regional Building  
723 Woodlake Drive  
Chesapeake, Virginia 23320

Dear Chairman Clark,

I want to thank you for the opportunity to appear before the Hampton Roads Planning District Commission when they met in special session on March 31<sup>st</sup>. It was a privilege to speak about EPA's Total Maximum Daily Load (TMDL) for the Chesapeake Bay and the critical role that Virginia's Watershed Implementation Plan (WIP) will play in restoring the health of Virginia waters.

As I said at the beginning of my remarks, while I can't guarantee that EPA's responses will alleviate every concern expressed by Commission members, I feel very strongly that continued, open, frank dialogue between all parties is essential – and can only help to resolve conflicts.

I believe that Commission members, as stated at the meeting and in your follow-up letter, are committed to protecting and restoring waters in the Hampton Roads region. In an effort to answer questions that the Commission has submitted to EPA, clarify remaining uncertainties, and correct any misinformation that may exist, please find attached a detailed response to your letter dated March 31<sup>st</sup>.

This response represents input from many EPA experts who have been involved with the development of the TMDL, evaluation of the states' WIPs, and implementation of Bay

restoration efforts for many years. I trust that you will find this response helpful as the Commission continues to work with the Commonwealth of Virginia on development of its Phase II WIP and implementation of necessary restoration activities.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Corbin', with a stylized flourish at the end.

Jeff Corbin  
Senior Advisor

Attachment

Cc:

Lisa P. Jackson, Administrator

Robert Perciasepe, Deputy Administrator

Shawn Garvin, Regional Administrator

Douglas Domenech, Secretary of Natural Resources

Anthony Moore, Assistant Secretary for Chesapeake Bay Restoration

David A. Johnson, Director, Virginia Department of Conservation and Recreation

David K. Paylor, Director, Virginia Department of Environmental Quality

Dwight L. Farmer, Executive Director, Hampton Roads Planning District Commission

II. Questions for EPA.

A. Hampton Roads MS4 WLAs

1. Why does the final TMDL include individual WLAs for the Phase I MS4s in Virginia, but not the Phase I MS4s in the other Bay states?

**Response:** The Commonwealth of Virginia's final WIP submission and discussions with the Virginia Department of Conservation and Recreation (DCR) in the fall 2010 were the basis for EPA's inclusion of individual WLAs in the final TMDL. Other jurisdictions included discussion of more specific, anticipated permit requirements in their Phase I WIPs to explain how MS4s would meet aggregate WLAs, thus providing EPA with sufficient assurance that compliance with aggregate WLAs would be achieved. After EPA established the TMDL, VA DCR expressed some concerns about individual WLAs. We are currently in discussions with DCR to explore options for proposed refinements to the VA WIP and TMDL in Phase II and will stay in touch with the MS4 jurisdictions.

2. Why weren't the individual WLAs included in the draft TMDL?

**Response:** The draft TMDL proposed aggregate "backstop" WLAs for urban stormwater in which EPA assumed different retrofit and redevelopment standards than what the Commonwealth proposed in its draft Phase I WIP. Based on Virginia's final WIP submission and discussions with VA DCR to remove the draft "backstop" WLAs, EPA established final WLAs that assumed the same stormwater management actions as Virginia proposed in its final Phase I WIP. In order to increase EPA's assurance that Phase I MS4 jurisdictions would achieve these WLAs, EPA established individual WLAs for Phase I MS4 jurisdictions as described in the previous response.

3. How did EPA derive the individual WLAs for the Hampton Roads Phase I MS4s?  
i. What MS4 boundaries were used?

**Response:** EPA used the boundaries illustrated in Figure 4-12 of the Chesapeake Bay TMDL to define the boundaries for the 11 Phase I MS4 jurisdictions in Virginia. These boundaries align with the boundaries of MS4 jurisdictions.

- ii. Did the WLA calculations for the Phase I MS4s include areas in the Phase I boundaries that are covered by other permits held by private companies, the state, or federal agencies?

**Response:** Yes. EPA identified all loads associated with urban stormwater within each Phase I jurisdiction as currently regulated and included them within the individual WLA for the Phase I MS4. EPA did not have sufficient data to assign separate aggregate or individual WLAs for urban stormwater to sources subject to construction or industrial stormwater permits, or other NPDES permits for urban stormwater within the Phase I jurisdictions. Accordingly, loads associated with urban stormwater discharges that are regulated under separate permits were included in the individual WLA associated with the MS4 jurisdiction. However, by including such loads in the MS4 WLA, EPA does not assume that the NPDES permit requirements for the Phase I MS4 jurisdictions include any conditions or controls for regulating the activities of other NPDES permittees. EPA expects Virginia to continue to issue urban stormwater permits to other non-Phase I MS4 sources within Phase I jurisdictions, and that those permit conditions and controls are consistent with assumptions for nitrogen, phosphorus and sediment reductions and stormwater management actions associated with the Bay TMDL WLAs and Virginia's Watershed Implementation Plan.

4. Is EPA prepared to work with the Hampton Roads localities during the Phase II WIP process to ensure that the urban runoff WLAs reflect the most accurate land use data available, including the available GIS data?

**Response: Yes. EPA will work with the Commonwealth and the localities during the Phase II process to ensure that the latest GIS and other data are factored into the “data input deck” of practices that will be implemented on urban lands in the Hampton Roads region. The primary role for preparing a Phase II WIP rests with the Commonwealth’s environmental agencies.**

**EPA is not making additional modifications to the data used in Phase 5.3.2 of the Watershed Model in 2011 beyond the updates to address the land cover and nutrient management changes agreed upon by the Chesapeake Bay Principals’ Staff Committee. The agreed-upon land cover update, which will be used for the Phase II WIPs, is more consistent with local land use data where such data are available. If there are additional suggestions for simulating urban land uses in the Hampton Roads region or elsewhere in the watershed, EPA will work with localities and the Commonwealth to evaluate these options as part of the model reviews that will be happening in advance of the Phase III WIPs in 2017.**

5. Under what circumstances will EPA modify the WLAs at the conclusion of the Phase II WIP process?

Specifically:

- a. The EPA has agreed to run the Bay model with revised land use data in 2011. Will the WLAs be revised if the WLAs increase for some Phase I MS4s?

**Response: Yes. As described in the *Guide for Chesapeake Bay Jurisdictions for the Development of Phase II Watershed Implementation Plans*, one purpose of the Phase II WIPs is for the 7 Bay jurisdictions, in consultation with their local partners, to propose refinements to the TMDL allocations based on the agreed upon Chesapeake Bay Watershed Model updates. Following the Phase II WIP process, EPA intends to make revisions to the TMDL and WLAs if necessary and appropriate. In doing so, EPA will rely heavily on what the Commonwealth of Virginia proposes as modifications to its Phase II WIP, assuming the changes are designed to implement water quality standards.**

- b. Why were Total Suspended Solids (TSS) WLAs included in the TMDL given EPA’s acknowledgement that the Bay model could not be calibrated for sediment?

**Response: EPA disagrees that the Bay models are not calibrated for sediment. The Watershed Model Phase 5.3 and the Water Quality Sediment Transport Model of the Bay are calibrated for sediment. The number of sediment calibration stations increased from approximately 15 in the Watershed Model Phase 4.3 to 200 in Phase 5.3 used for the TMDL. The Water Quality Sediment Transport Model also provides a better calibration of sediment than previous model versions.**

- c. Does EPA intend to distribute any of the 9.5 percent TSS load reserve in the James River Basin or the 9.2 percent TSS load reserve in the York River Basin to Hampton Roads MS4s as part of the Phase II WIP process?

**Response: EPA will rely heavily on what the Commonwealth of Virginia proposes as modifications to its Phase II WIP, assuming the changes are designed to implement water quality standards. Virginia may propose reallocations of the load reserve. The Phase II WIP process allows Bay jurisdictions, working with their partners, to propose to EPA how to divide the nitrogen, phosphorus and sediment allocations for each major basin among the pollutant sources - including any reserves. This is first and foremost a state decision, with EPA providing oversight to ensure that pollutant discharges are consistent with TMDL and NPDES**

requirements and that water quality standards are attained in all tidal segments of the Bay and its tributaries.

- d. Can all of the MS4 sector WLAs be revised as part of the Phase II WIP process if the basin allocations are met?

**Response: Yes. Through the Phase II WIPs, Virginia and the other six Bay jurisdictions may propose refinements to the TMDL wasteload and load allocations. EPA will determine appropriate revisions to the WLAs based primarily on whether: 1) such proposed refinements would meet water quality standards in all tidal segments of the Bay; and 2) the jurisdiction has demonstrated assurance that these allocations will be achieved and maintained.**

6. How can the Hampton Roads region follow the Phase II WIP process when the Department of Conservation and Recreation (DCR) has already started writing permits based on the individual Phase I MS4 WLAs? EPA's Phase II WIP Fact Sheet states as follows:

“EPA expects the Bay jurisdictions to develop Phase II WIPs that further divide final nonpoint source and aggregate point source target loads for the 92 303(d) segment drainage areas using a finer geographic scale such as counties, conservation districts, sub-watersheds, or, where appropriate, individual sources or facilities. EPA expects the local targets to be used for planning purposes and does not intend to establish local targets as separate allocations within the Bay TMDL.”

**Response: Full achievement of the TMDL WLAs for urban stormwater may occur over multiple permit cycles so long as there is a demonstration that controls are being carried out to the Maximum Extent Practicable. Virginia's Phase I WIP commits to full conformance with the TMDL WLAs over 3 permit cycles, or 15 years. According to the WIP, the first permit cycle focuses on institutional changes necessary to achieve stormwater reductions and only assumes a 5% reduction in loads. As a result, some refinements can be made in the TMDL WLAs before the final compliance dates come due with little risk that permits issued this year would ‘overshoot’ reduction targets contemplated in VA’s Phase II WIP.**

**EPA will continue to work closely with VA DCR on both the content of permit proposals and their linkage to the current TMDL and any refinements resulting from the Phase II WIP process. EPA will consider MS4 jurisdictions’ input as it reviews individual permits and, working with DCR, will help explain permit and fact sheet provisions issued by DCR. EPA believes that through compliance staging, allocation refinements can be accommodated without further delaying the reissuance of MS4 permits in the Tidewater region which expired in 2006.**

7. The Hampton Roads localities are already investing in programs that will reduce nutrient loads. Existing EPA documentation indicates that the localities cannot count these programs as efforts to meet the TMDL. How can localities get credit for investments that reduce Sanitary Sewer Overflows (SSOs)? Implementing no discharge zones for boats? Increasing oyster restoration?

**Response: EPA acknowledges the important actions of HRSD to reduce nutrient loads including those efforts to address SSOs under the recently entered Consent Decree between EPA, Virginia and HRSD. *US & Virginia v HRSD*, Civil Action No. 2:09-cv-481 (E. D. Va). Under the CWA, SSOs are unauthorized discharges and therefore are not assigned a permit number or WLA in the TMDL. Therefore no additional credit can be given for removal of such SSOs, even though it is an important regulatory requirement and a component of restoring the local water quality and protecting public health. EPA looks forward to continued progress on reduction of SSOs under the framework of the consent decree.**

EPA will give credit in the Phase II WIPs and annual progress assessments for practices that 1) have been approved through the Chesapeake Bay Program Partnership's protocol; and 2) were implemented in 2006 or later, after the Watershed Model calibration time period. Partners may initiate a Chesapeake Bay Program review of practices at any time through the Chesapeake Bay Program Water Quality Goal Implementation Team (WQGIT) and the relevant WQGIT sector workgroup.

Jurisdictions may include "placeholder BMPs" in their Phase II WIPs for practices that have not yet been approved so long as they 1) submit supporting documentation; 2) EPA agrees to nitrogen, phosphorus and TSS reduction values; and 3) the practice is reviewed and approved through the Chesapeake Bay Program protocol prior to reporting in an annual progress assessment. EPA is willing to work with Virginia to consider crediting oyster restoration and no-discharge zones as placeholder BMPs.

8. Will EPA count nutrient load reductions from non-structural BMPs like nutrient management and the fertilizer ban as MS4 reductions or treat them as nonpoint source reductions?

**Response: Yes.** EPA can count nutrient load reductions from non-structural BMPs when they are reported and verified by the state in annual progress reports. If Virginia reports urban nutrient management and fertilizer bans within MS4 jurisdictions where the loads from urban stormwater are included in the Bay TMDL WLAs, those MS4 jurisdictions will receive credit toward meeting TMDL WLAs.

9. Virginia's BMP efficiencies and EPA's model BMP efficiencies are not equivalent. Will EPA defer to Virginia's BMP efficiencies to assess compliance?

**Response: No.** As discussed above, EPA will only use BMP definitions and efficiencies approved by the Chesapeake Bay Program Water Quality Goal Implementation Team for annual progress assessments. While EPA doesn't "defer" to the efficiencies used by Virginia, there is an established process in place for Virginia to propose a revision to the efficiencies currently used in the Bay Watershed Model. Additionally, in their Phase II WIPs, Virginia and other jurisdictions may take credit for nitrogen, phosphorus and sediment reductions resulting from "placeholder BMPs" so long as Virginia 1) submits supporting documentation; 2) EPA agrees to a nitrogen, phosphorus and sediment reduction value; and 3) Virginia commits to have the BMP reviewed and approved through the Chesapeake Bay Program protocol prior to reporting it in an annual progress assessment.

B. 2025 Deadline

1. Will EPA expect DCR to include compliance schedules designed to meet the applicable WLAs by the 2025 deadline in the Phase I MS4 permits when they are reissued and in the Phase II MS4 general permit when it is reissued?

**Response: Yes.** The Chesapeake Bay Executive Council, comprised of governors of the Bay states, the Mayor of the District of Columbia, the Chair of the Chesapeake Bay Commission, and the Administrator of EPA, set a goal that all practices necessary to restore the Bay be in place by no later than 2025. EPA referenced this goal in the Chesapeake Bay TMDL, and jurisdictions set strategies to meet this goal in their Phase I WIPs. EPA assumes that jurisdictions will use their permitting and other authorities to ensure that practices to reduce loads from point and nonpoint sources are in place as soon as possible but not later than 2025 as part of their efforts to meet this shared commitment. EPA will assess progress toward this goal.

May 3, 2011

**At the present time based on the information at hand EPA believes the existing timeline should be adequate to achieve the necessary reductions. However, the crafting of an appropriate compliance schedule for each permit will be governed by Clean Water Act regulatory requirements, e.g., 40 CFR 122.47, as well as state regulations governing NPDES permits. The schedules would be proposed by DCR in a public process and be subject to EPA review on a facility-by-facility basis.**

2. NPDES (MS4) permits will be the enforcement tool to implement TMDL-based storm water nutrient reductions. NPDES storm water permits are based on the “maximum extent practicable” (MEP) standard. The evaluation of the MEP standard includes technical and economic achievability. Will the EPA consider adjusting the timeline for storm water load reductions in the TMDL if the existing timeline is not reasonably achievable?

**Response: Yes. On a case-by-case basis EPA would consider a request to adjust the timeline, although at the present time based on the information at hand EPA believes the existing timeline should be adequate to achieve these reductions.**

**Of course, the state NPDES authority has discretion to consider a number of factors in determining an appropriate compliance schedule. The determination of what is appropriate for each permit will be determined at the time of permit renewal.**

**MS4 permits are not the only avenue for achieving stormwater nutrient reductions. The Virginia Phase I WIP proposed to achieve significant urban nutrient reductions through a state-wide program to restrict turf grass fertilizer use. Other turf grass fertilizer restriction programs around the country have demonstrated very rapid nutrient reductions in receiving streams. As discussed above, if adopted, such reductions could be counted towards achieving the jurisdictions’ WLAs or LAs.**



# Chesapeake Bay Local Government Advisory Committee - Virginia Representatives

June 1, 2011

**REPRESENTATIVES**

Name  
Address  
Address  
Address

**TANGIER ISLAND**  
James Eskridge

Dear Name:

**FAIRFAX COUNTY**  
Penelope A. Gross

The members of the Virginia Delegation to the Chesapeake Bay Local Advisory Committee (LGAC) are writing to you today to make sure that you, and your local jurisdiction, have every opportunity to fully participate in the process of setting policy and finding reasonable and cost effective solutions to meet the EPA mandated pollution reduction goals for the Chesapeake Bay and its tributaries.

**YORK COUNTY**  
Shella S. Noll

As Virginia's local Government Advisory Committee representatives, we know that we cannot achieve our goal of a clean Chesapeake Bay without the help of every member of local government within the Chesapeake Bay Watershed. The rigorous pollutant reduction goals will require all sources of nitrogen, phosphorus, and sediment to do their fair share to make reasonable reductions. A healthy Chesapeake Bay relies on a bottoms up locally based implementation effort with broad based grassroots participation. We encourage you to partner with Virginia and your local Planning District Commission to analyze the pollutant loadings attributed to your local government and to develop a feasible and cost effective strategy to reduce those loadings.

**CITY OF CHESAPEAKE**  
Debbie S. Ritter

**NORTHAMPTON COUNTY**  
Larry Trala

**CITY OF VIRGINIA BEACH**  
Rosemary Wilson

The Chesapeake Bay Local Government Advisory Committee (LGAC), established in 1988, is a body of officials appointed by the Governors of Maryland, Pennsylvania, Virginia, and the Mayor of the District of Columbia to improve the role local government plays in Bay restoration efforts and develop strategies to broaden local government participation in the Chesapeake Bay Program. LGAC has actively supported local government participation in the Chesapeake Bay Program. Quarterly meetings of LGAC provide the forum for policy development and periodic adjustment to programming functions and organizational direction. Improving communication, supplying technical assistance to local governments, and providing a local government perspective on policy development within the greater Chesapeake Bay Program are the chief means by which LGAC works to enhance the participation of local governments in the Bay restoration effort.

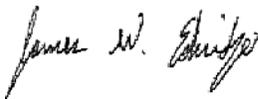
Mr. Name  
June 1, 2011  
Page 2

As advisors to the Chesapeake Bay Executive Council, the members serve as a conduit for local governments to communicate concerns and potential solutions to EPA, the Mayor of the District of Columbia, the Governors of Virginia, Pennsylvania, and Maryland, and the Chairman of the Chesapeake Bay Commission. Your LGAC members are your advocates.

We will continue to raise issues deemed critical to local government. There must be clear expectations, consistent regulations, and committed funding during the continued development of restoration strategies for the Chesapeake Bay.

LGAC is currently preparing its annual "Report to the Chesapeake Bay Executive Council" that will be submitted in June. The report will lay out LGAC's key principles and concerns as well as outline its significant activities. The annual report will be made available to you as soon as it is finalized. The next LGAC quarterly meeting is scheduled for August 4-5, 2011 in Pennsylvania. Please contact any of the Virginia representatives if you have questions or concerns about the Chesapeake Bay Total Maximum Daily Load (TMDL) and Implementation Plan process. Please find attached a FAQ sheet developed by the Hampton Roads Planning District Commission (HRPDC) on the Chesapeake Bay TMDL.

Sincerely,



James Eskridge  
Tangier Island



Penelope A. Gross  
Fairfax County



Sheila S. Noll  
York County



Debbie S. Ritter  
City of Chesapeake



Larry Trala  
Northampton County



Rosemary Wilson  
City of Virginia Beach

Attachment

JMC/jcc

# CHESAPEAKE BAY TMDL FAQ SHEET

On December 29, 2010, the U.S. Environmental Protection Agency (EPA) established the Chesapeake Bay Total Maximum Daily Load (TMDL), a “pollution diet” to initiate actions to restore water quality in the Chesapeake Bay and the region’s streams, creeks and rivers. This FAQ sheet is the compilation of information adapted from EPA, Virginia Department of Conservation and Recreation, and Chesapeake Bay Foundation websites.



## SIGNIFICANT DATES

### 2011

- EPA completes TMDL and model revisions
- States submit Phase II Watershed Implementation Plans (WIPs) detailing actions proposed at a local scale.

### 2017

- States submit Phase III WIPs.
- EPA modifies TMDL allocations

### 2025

- States complete implementation actions.

## TMDL Background

### Q. What is a TMDL?

A. The Clean Water Act (CWA) sets an environmental goal that all waters in the United States be “fishable” and “swimmable.” It requires states to establish appropriate uses for their waters and adopt water quality standards that are protective of those uses. Every two years, states are required to develop a list of waterways that are impaired by pollutants and do not meet water quality standards. For those waterways identified on the *303(d) list* of impaired waters, a TMDL must be developed. A TMDL is essentially a “pollution diet” that identifies the maximum amount of a pollutant the waterway can receive and still meet water quality standards.

### Q. Why was a TMDL developed for the Chesapeake Bay and its tidal tributaries?

A. Despite extensive restoration efforts during the last 25 years, the Bay TMDL was prompted by insufficient progress and continued poor water quality in the Chesapeake Bay and its tidal tributaries. The TMDL is required under the federal Clean Water Act and responds to consent decrees in Virginia and the District of Columbia from the late 1990s.

### Q. How large is the Chesapeake Bay? How big is the watershed that drains into it? How many people live within the watershed?

A. The Bay itself is about 200 miles long, home to more than 3,700 species of plants, fish and other animals. The Bay watershed totals about 64,000 square miles, stretching from Cooperstown, New York, to Hampton Roads. The Bay TMDL and its implementation plan will be enacted throughout the entire Chesapeake Bay watershed.

### Q. What is the Chesapeake Bay Program?

A. The Chesapeake Bay Program includes the signers of the original 1983 Chesapeake Bay Agreement –Maryland, Virginia, Pennsylvania, and the District of Columbia; EPA, representing the federal government; and the Chesapeake Bay Commission, representing Bay jurisdiction legislators. It also includes the U.S. Department of Agriculture and the headwater jurisdictions of Delaware, New York and West Virginia. The Program is led by the Chesapeake Executive Council, which includes the EPA Administrator, the governors of Maryland, Pennsylvania and Virginia, the mayor of the District of Columbia, and the chair of the Chesapeake Bay Commission. The Principals’ Staff Committee, which includes the EPA Region 3 Administrator, state secretaries and others, serves as an advisory body to the Executive Council.

### Q. How long has the Bay TMDL process been underway?

A. Since 2000, the seven jurisdictions in the Chesapeake Bay watershed (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia), EPA, and the Chesapeake Bay Commission, have been planning for a Chesapeake Bay TMDL. During the October 2007 meeting of the Chesapeake Bay Program’s Principals’ Staff Committee, the Bay watershed jurisdictions agreed that EPA would establish the multi-state TMDL.

## Additional Information:

[http://www.dcr.virginia.gov/soil\\_and\\_water/baytmdl.shtml](http://www.dcr.virginia.gov/soil_and_water/baytmdl.shtml)

<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/index.html>

<http://www.cbf.org>



## Water Quality

### Q. What water quality problems affect the Bay?

A. Nitrogen and phosphorus pollution are the most serious problems facing the Bay. Too much nitrogen and phosphorus cause algae blooms that block sunlight to underwater grasses. When the blooms decompose, they create “dead zones,” where dissolved oxygen levels are too low to sustain fish and shellfish. Excess sediment also degrades water quality. Poor water quality results in the loss of habitat for aquatic species throughout the Bay and its tidal and free flowing rivers.

### Q. How do activities on the land impact Chesapeake Bay water quality?

A. At its healthiest in the early 1600s, the Chesapeake watershed was mainly comprised of forested buffers, wetlands, and resources lands (open space and farmland) that absorbed and filtered nutrients. As development occurred throughout the watershed, farms, factories, cities, and suburbs have replaced natural wetland filters and forested buffer areas, resulting in the increased flow of nutrients into waterways.

### Q. How are the TMDL pollution limits set?

A. EPA utilized a modeling tool called the Bay Watershed Model to determine nitrogen, phosphorus, and sediment load caps for each state and the District of Columbia. These pollution limits are expressed as allocations by “segment-shed” (sub-basins of major rivers) and by the larger river basins. Within each basin, allocations are identified for the following source sectors: wastewater, onsite/septic, agriculture, urban stormwater, and forest.

### Q. Will the Bay TMDL have benefits for waterways throughout the watershed?

A. The pollution controls employed to meet the TMDL will have significant benefits for water quality in the streams, creeks and rivers throughout the region, improving waterways that support local economies and livelihoods, provide for fishing, swimming, and boating opportunities, and often serve as sources of drinking water.

## Sources of Nitrogen, Phosphorus and Sediment:

- Agricultural operations
- Urban and suburban runoff (runoff from roadways, development, residential and commercial lawn fertilizers)
- Wastewater facilities
- Septic systems
- Air pollution (from vehicle exhaust, power plants)

## TMDL Implementation

### Q. How will the Bay TMDL be implemented? What is the relationship between the TMDL and the Watershed Implementation Plan (WIP)?

A. The accountability framework includes Watershed Implementation Plans (WIPs) developed by the states, two-year milestones identified in the WIPs, EPA’s tracking and assessment of restoration progress and, as necessary, specific federal actions if jurisdictions do not meet their commitments.

### Q. What are the expected consequences if a segment or basin fails or exceeds an assigned loading level, or if two-year milestones are not met?

A. If state actions fall short, EPA is prepared to impose consequences to assure progress. For example,

- Expand stormwater permit coverage to currently unregulated sources
- Object to stormwater permits and increase program oversight
- Require additional reductions of loadings from point sources

### Q. When does the TMDL anticipate the Bay will be restored?

A. All pollution control measures will be in place by 2025. While it will take years after 2025 for the Bay to fully heal, EPA expects some areas of the Bay will recover before others and there will be gradual improvement in water quality as controls are put in place around the watershed.

### Q: How will the TMDL implementation be funded?

A: Virginia has increased funding to support agricultural management practices. Wastewater and stormwater system upgrades will be funded primarily by ratepayers. Virginia’s Water Quality Improvement Fund may provide loans to some systems. An expanded nutrient trading program may allow sectors to trade credits and reduce nutrient loads more cost effectively.

