

AGENDA NOTE – HRPDC QUARTERLY COMMISSION MEETING

ITEM #16: CHESAPEAKE BAY TMDL: PHASE II WIP COMMENTS

SUBJECT:

Virginia submitted the final Phase II Watershed Implementation Plan (WIP) to the EPA on March 30, 2012. The plan is available (www.dcr.virginia.gov/vabaytmdl/index.shtml) for public comment until May 31, 2012. HRPDC staff has prepared a draft comment letter for the Commission's consideration based on input from the Regional Steering Committee.

BACKGROUND:

The Phase II Watershed Implementation Plan (WIP) is an amendment to the Phase I WIP. The plan describes the implementation strategies for all sectors: agriculture, urban stormwater, septic, wastewater, and forest. Information from local plans was incorporated into revised input files for the Bay model and in the appendices that cataloged types of implementation strategies.

This presentation will highlight concerns with the Phase II WIP. Key issues include:

- **Land Use:** Significant discrepancies between local land use and modeled land use. State and EPA have not identified a process and schedule for revising the data and evaluating the impact on local targets.
- **BMP baseline:** Virginia is using 2009 Progress as the baseline for urban nutrient reductions. Several localities determined that the State's model input for BMPs constructed pre-2006 overestimated the number of existing BMPs. These errors will effect model calibration, local targets, and MS4 permit requirements.
- **State-owned Lands:** The state owns about 5% of the land in Hampton Roads. Virginia's WIP does not provide detailed strategies to implement nutrient reductions on these lands.

The renewed MS4 permits will be used to enforce the urban stormwater requirements in the Chesapeake Bay TMDL. The State has released a template for renewing the Phase I MS4 permits and released the NOIRA for the Phase II MS4 general permit. The proposed method of incorporating the TMDL nutrient reductions into the MS4 permits is not consistent with the State's concerns about the Bay model's accuracy. The next focus of HRPDC's Stormwater program will be to evaluate the draft permit and coordinate with local stormwater staffs and legal counsel on the development of permit language.

A draft comment letter on the Phase II WIP is included in the packet. The Regional Steering Committee has been asked to provide any additional comments by May 4, 2012. The final comment letter will be emailed to the Commission to review between May 18-24, 2012.

Ms. Whitney Katchmark, Principal Water Resources Engineer, will brief the Commission.

RECOMMENDED ACTION:

Approve draft comments on Virginia's Phase II Watershed Implementation Plan.

Attachment: Draft comment letter on Phase II WIP

April 19, 2012 Draft

[HRPDC Letterhead]

May 25, 2012

The Honorable Doug Domenech
Secretary of Natural Resources
Commonwealth of Virginia
P.O. Box 1475
Richmond, VA 23218

Re: Comments on Virginia's Phase II Watershed Implementation Plan (WIP)

Dear Secretary Domenech:

The Hampton Roads Planning District Commission (HRPDC) appreciates the effort that Virginia committed to the development of the Final Phase II WIP for the Chesapeake Bay TMDL and the opportunity to submit these joint comments on behalf of the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the counties of Isle of Wight, Gloucester, James City, Surry, and York ("Hampton Roads Localities" or "Localities") on Virginia's March 30, 2012 Phase II Watershed Implementation Plan (WIP).

The local governments within Hampton Roads were pleased with Virginia's request to EPA to remove the individual waste load allocations for Phase I MS4 permittees in the TMDL and replace them with aggregate waste load allocations by segment shed. We believe that the aggregate waste load approach is reasonable given that boundaries for many Phase II MS4 permittees were not included in the model. We encourage Virginia to continue to work with the local governments and EPA to fully resolve this issue.

Hampton Roads localities were also pleased with the level of participation and commitment from federal facilities within Virginia. As a significant land holder in the Commonwealth, the participation and leadership of federal facilities is crucial to achieving the Bay TMDL pollution reduction goals. Hampton Roads localities appreciate Virginia's recent efforts to expand the Nutrient Credit Exchange to include MS4 permittees. We urge DCR to move quickly to establish clear regulatory standards for credit certification, establishment of baseline levels, and other factors necessary for the efficient operation of nutrient credit markets in Virginia.

Concerns with the WIP

Local BMP and Land Use data:

In its November 2011 letter to locality Chief Administrative Officers, Virginia requested that local governments provide locally verified BMP and land use data for use in the Phase II WIP process. Localities expended considerable effort to generate

this data in the short timeframe provided, and were disappointed that this data was not summarized in the final Phase II WIP document. HRPDC encourages Virginia to include a summary and discussion of this important local data in its revised Phase II WIP following the current public comment period. HRPDC also requests that Virginia include a schedule and process for addressing the impact of land use corrections on target loads in the final Phase II WIP.

Use of '2009 Progress' loads as baseline for urban stormwater reductions:

Localities found significant errors in the developed acres treated by BMPs used to calculate the '2009 Progress' loads. This data was not reviewed or verified by local governments prior to being submitted to EPA. During the Phase II WIP process, many local governments in Hampton Roads discovered that DCR's estimate of the developed acres treated by BMPs used in the model calibration for 2005 dramatically overestimates the actual developed acres treated by BMPs. Using this data as the baseline for MS4 permit reductions perpetuates these errors. HRPDC recommends that '2010 No Action' loads be used as the baseline from which local governments will calculate their reductions. Credit for any BMPs installed from January 1, 2006 through present would then be applied towards local government reduction goals. Errors in the '2005 Progress' BMP data must be addressed in the recalibration of the model.

State-owned lands:

HRPDC is concerned with the absence of a discussion in the Phase II WIP on the management actions that will take place on State-owned lands. When calculating the Regional Preferred Scenario, HRPDC assumed that developed lands owned or operated by State agencies would achieve the L2 load reductions described in the Phase I WIP. HRPDC would like Virginia to identify strategies and resources to implement these load reductions .

Credit for Statewide Fertilizer Restrictions

HRPDC was encouraged by Virginia's request that EPA determine how to credit elimination of phosphorus in retail fertilizer in the milestones and Phase II WIP input decks. However, we urge Virginia and EPA to reach an agreement on this issue prior to the reissuance of Phase I MS4 permits. Permittees need to be aware of how this action will impact their load reduction targets.

Recommendations

While HRPDC appreciates Virginia's work to date on the Chesapeake Bay TMDL and Implementation Plans, we urge Virginia to continue working with local governments and EPA to improve the quality of data used in the Models and communication of the appropriate use of model outputs. The conclusion of the Phase II WIP process is merely the beginning of the Chesapeake Bay TMDL implementation process and there are still many issues to resolve. For example:

April 19, 2012 Draft

- Virginia will need to work closely with local governments and EPA during the planned 2017 model recalibration process in order to avoid the data quality issues in model version 5. If Virginia decides to continue to use the implementation team outreach approach moving forward, HRPDC requests that all teams distribute the same quantity and quality of information to localities. Localities also need to receive confirmation and feedback on data and strategies submitted to Virginia.
- Virginia will need a structured system and effective outreach approach in order to incorporate locality data and comments into the next iteration of the Bay Model. Localities request that Virginia develop a long-term schedule and identify the steps necessary to fix data quality issues in the model, credit all BMPs employed by local governments, recalculate target loads, and report progress.
- As referenced in the Phase II WIP, MS4 permit holders will be particularly affected by the pollutant reduction requirements in the Bay TMDL. While HRPDC agrees with the general approach outlined in the Phase II WIP and appreciates the fact that Virginia recognizes that localities will need time to ramp up their programs, we still have considerable questions and concerns regarding specific details of the permits. For example, it is unclear how the five percent reductions will be calculated and the degree to which the Model will be referenced in the permit as well as which existing BMPs count towards the five percent reduction in the first permit cycle.

In light of the many challenges that lie in the path of Chesapeake Bay TMDL implementation, HRPDC would like to encourage the State to take a leadership role in filling data and resource gaps. HRPDC strongly recommends that Virginia and EPA consider the number and magnitude of these gaps and dedicate more staff and funding resources to the Chesapeake Bay TMDL implementation. As noted in many local government submittals, localities simply do not have the financial resources to fully implement their responsibilities under the TMDL. HRPDC will continue to work with the Commonwealth to support increased budgets for key program areas and the expansion of the Chesapeake Bay Preservation Act to all localities within the Chesapeake Bay watershed.

Thank you for the opportunity to submit these comments, and please do not hesitate to contact me if you have any questions.

Sincerely,

Cc: Mr. Anthony Moore, Assistant Secretary of Natural Resources
Mr. David Johnson, Director, Department of Conservation and Recreation
Mr. David Paylor, Director, Department of Environmental Quality