

## **AGENDA NOTE - HRPDC QUARTERLY COMMISSION MEETING**

### **ITEM #5: STORMWATER UPDATE**

#### **SUBJECT:**

At the March 21, 2013 HRPDC Executive Committee Meeting, the Chairman requested an update on Virginia's response to the HRPDC's comments on the incorporation of Bay TMDL requirements in Phase I and Phase II Municipal Separated Storm System (MS4) permits.

#### **BACKGROUND:**

Virginia DCR is currently working to incorporate Chesapeake Bay TMDL requirements into Phase I and II MS4 permits through the renewal process. The HRPDC has repeatedly expressed concerns about the use of the referenced model run to set the baseline for reductions, since this baseline does not accurately reflect stormwater BMP implementation in Hampton Roads.

Ms. Whitney Katchmark, HRPDC Principal Water Resources Planner, will provide a brief update on any correspondence received from Virginia regarding this issue and also discuss any response to the letter of concern sent to Governor McDonnell from the Hampton Roads appointees to the Chesapeake Bay Program Local Government Advisory Committee.

Attachment 5-A

Attachment 5-B

Attachment 5-C

#### **RECOMMENDED ACTION:**

For discussion and informational purposes

March 29, 2013

MEMBER JURISDICTIONS

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SURRY

VIRGINIA BEACH

WILLIAMSBURG

YORK

Mr. David C. Dowling  
Director, Policy and Planning  
Virginia Department of Conservation and Recreation  
203 Governor Street  
Richmond, Virginia 23219

RE: Recommendations for MS4 Outreach Advisory Group

Dear Mr. Dowling:

The Hampton Roads Planning District Commission appreciates the Department of Conservation and Recreation's willingness to work with local government stakeholders who have requested the Department assemble an MS4 Outreach Advisory Group. The purpose of the Advisory Group will be to work collaboratively with the Department and provide meaningful input as it develops guidance regarding "Compliance Strategies for Meeting Urban Stormwater Total Maximum Daily Load Allocations."

We have worked with the Virginia Association of Municipal Stormwater Agencies to develop a list of local government stormwater experts who are willing to serve on the Department's MS4 Outreach Advisory Group. The list below reflects a geographic mix of MS4 Phase I and Phase II communities.

|                 |                         |
|-----------------|-------------------------|
| Jason Papacosma | Arlington County        |
| Betsy Smith     | Fairfax County          |
| L. J. Hansen    | City of Suffolk         |
| Weston Young    | City of Hampton         |
| Chip England    | Hanover County          |
| Grace LeRose    | City of Richmond        |
| Trafford McRae  | City of Waynesboro      |
| Dan Frisbee     | City of Charlottesville |
| Keith White     | Henrico County          |
| Steve Hubble    | Stafford County         |

Thank you for working with us and others who wish to develop a guidance document that will support local efforts to prepare effective TMDL Action Plans.

Sincerely,



Dwight L. Farmer  
Executive Director/Secretary

JLT/jc

**Summary of HRPDC comments (12/19/13) on Proposed Regulatory Action to Amend and Reissue the General Permit for Discharges of Stormwater from Small MS4s and Responses (1/4/13) prepared by the Virginia Department of Conservation and Recreation (DCR)**

1. **HRPDC comment:** The baseline loading rates in Section I.C. of the Permit are not accurate and their use in calculating baseline pollutant loads will require the MS4 localities to achieve greater load reductions than necessary to reach their Bay TMDL target loads.

**DCR Response:** The Department collected data in MS4 reports and supplemented this information with reported data related to the Construction General Permit BMPs. These data were provided to EPA and incorporated in Chesapeake Bay Program Watershed Model 5.3.2. Given concerns regarding the accuracy and precision of modeling, the best professional judgment was to use information at a basin-wide level. In order to address a basin-wide approach and the fact that it may not capture all local data, the draft regulations require a smaller pollutant reduction for this permit cycle. If future permit cycles and the watershed data used to calculate the model run show that less reduction is needed, then the necessary reductions will be adjusted. The Department urges localities to continue to look at locally-documented BMPs and land uses that could be used for the next model run to correct any TMDL data.

2. **HRPDC comment:** Section I.C. fails to provide the localities with the opportunity to take credit for BMPs installed after June 30, 2008.

**DCR Response:** The June 30, 2008 date has been changed in the draft regulations to June 30, 2009.

3. **HRPDC comment:** We request that Section 1C be edited to instruct localities to base their loads and pollution reduction using loading rates from the 2010 No Action Model Run. Localities should also submit data on BMPs installed and the resulting nutrient reductions since 2006 and prior to 2013 and receive credit for these reductions beyond the baseline load.

**DCR Response:** The agreement in the WIP calls for the use of 2009 data. Consequently, the 2010 No Action Model Run could not be considered in the draft permit regulations. The Executive Council for the Chesapeake Bay Program provided guidance in the WIP development process to use the 2009 land use as the starting point for TMDL compliance. Consequently, this progress run looks at 2009 conditions not conditions going back to 2006. According to the draft regulations, BMPs from 2006 would have to be used to offset new growth and could not be applied to existing conditions (line 1306).

4. **HRPDC comment:** Neither the Permit nor the Fact Sheet refers to methodologies for calculating nutrient reductions and guidance for developing Action Plans.

**DCR Response:** It is the Department's intention to develop additional guidance to address acceptable methods for operators to demonstrate progress with the Chesapeake Bay TMDL.



March 26, 2013

The Honorable Robert R. McDonnell  
Governor  
Patrick Henry Building, 3rd Floor  
1111 East Broad Street  
Richmond, Virginia 23219

RE: Chesapeake Bay Total Maximum Daily Load Program

Dear Governor McDonnell:

Since 2010, we have served at your request on the Chesapeake Bay Program's Local Government Advisory Committee. The Committee is tasked with improving the role of local governments in Bay restoration efforts and advising the Bay Program's Executive Council. We are honored to serve Virginia as a voice for local government, but we are hindered from being able to provide more effective representation. For that reason, we feel compelled to share our concerns with you and seek improvements.

The attached outline describes our three areas of concern: communication between the State and localities, communication between the State and the Chesapeake Bay Program, and transition of the Stormwater Program from DCR to DEQ.

We understand that the implementation of the Bay TMDL is a monumental challenge that the EPA has forced on the Commonwealth without offering substantial support. We hope the Commonwealth will choose a different approach in dealing with localities by providing guidance and tools instead of forcing localities to shoulder the entire burden of TMDL implementation. Local governments need state agencies to represent their interests by actively supporting changes to the Bay Program.

Please respond to our outlined concerns prior to our next LGAC meeting on April 11, 2013. We welcome the opportunity to meet with you to refine solutions to these issues and improve communication moving forward.

Sincerely,

Debbie Ritter  
City of Chesapeake

Sheila Noll  
York County

Rosemary Wilson  
City of Virginia Beach

Attachment

Copy: The Honorable Doug Domenech, Secretary of Natural Resources  
The Honorable John Cosgrove, Delegate, Virginia General Assembly  
David Paylor, Director, Department of Environmental Quality