

MEETING SUMMARY
Stakeholder Meeting #3 – Chesapeake Bay Total Maximum Daily Load (TMDL)
Phase III Watershed Implementation Plan (WIP)
October 10, 2018
Newport News, VA

Attendance List attached

1. Review of Stakeholder Meetings #1 and #2

Dr. KC Filippino began the meeting with a brief summary of the topics discussed at the first and second Stakeholders Meetings, which were held on August 2, 2018 and September 6, 2018. The first steps were to define and map the lands included in the unregulated developed sector. The next steps were to identify septic systems, pump-out rates, sewer connections, and other applicable BMPs.

Dr. Filippino thanked the localities and VDH for providing data. She was able to refine the estimates of the reductions that have been made so far across the region and those that are planned for the near future.

2. Programmatic Template

DEQ developed a programmatic template for PDCs to provide actions that could facilitate BMP implementation. DEQ requested information regarding funding and capacity, locality-identified co-benefits, and gaps in statutory/regulatory authority. Dr. Filippino presented a draft of the template, based on stakeholder input. The proposed programmatic actions for Hampton Roads were divided into five categories:

- 1) Shoreline management and stream restoration,
- 2) Stormwater management,
- 3) Septic systems,
- 4) Land conservation, and
- 5) State specific.

Shoreline Management and Stream Restoration

After suggesting a specific BMP for tidal wetland enhancement and requesting credit for hybrid shorelines, which would be actions for the CBP, the stakeholders then discussed how the state could support these practices. One idea was to encourage the state to finally develop the second living shoreline permit.

Another proposed action was to request funding for NGOs to conduct outreach to shoreline property owners and provide incentives for choosing living shorelines. There was some discussion of whether we would be comfortable as a region predicting an increased percentage of shoreline management and/or stream restoration implementation. The percentage would be based on the goals of local NGOs, such as the Elizabeth River Project and the James River Association. VMRC has an existing fund that was designed to be used for these types of projects; however, as noted by Mr. Joe Grist, these funds are subject to the discretion of the Governor's office and often get

tapped for other purposes. It was suggested that we advocate for a stabilized source of funding that is not susceptible to outside expenses.

Mr. Tim Hare said MS4 permittees often fund shoreline and stream restoration projects, which are beyond their MS4 service areas. They use the projects for Bay TMDL credit; however, the practices are included in the unregulated developed sector in the Bay model. It makes it appear as though the MS4 permittees are not doing enough pollutant reductions.

Stormwater Management

Nine programmatic actions were proposed for stormwater management, ranging from funding and accounting of homeowner BMPs to expanding the reporting requirement for Industrial VPDES permittees.

Several stakeholders suggested expanding the Virginia Conservation Assistance Program (VCAP), which is a cost-share program for homeowner BMPs that is managed through the SWCDs. If the region was to suggest an increase in funding for VCAP, it is not clear how much would be appropriate. One challenge with VCAP is that it is not available to homeowners who live in localities that are not part of a SWCD. Since the roots of the SWCDs are in agriculture, many of the urban localities, such as the Cities of Hampton, Norfolk, Newport News, etc. are not part of a District. Another challenge with the existing VCAP is that the fee received by the local SWCD office does not adequately cover their staff time for multiple site visits and long-term BMP verification. Administering the program through PDCs or Extension offices was suggested. Dr. Filippino will reach out to other PDCs to see if they would support that option. There were some questions regarding the distribution of VCAP funds, which is one pot of money for the state. Ms. Katchmark suggested a big picture assessment of VCAP as a step to evaluate better ways to cost-share with private property owners. Ms. Ginny Snead suggested the state convene a stakeholder group to look at options and perhaps mimic the existing agricultural cost-share program.

Other small-scale BMP programmatic actions include funding for the SMART tool and a suggestion to relax the verification requirements for small-scale BMPs to incentivize verification.

There was agreement among the stakeholders to encourage crediting for manufactured treatment devices (MTDs) and to seek more progress from the state on this effort. Existing MTDs treat over 400 acres in the unregulated and regulated developed sectors in Hampton Roads and are not counted in the Bay model. Ms. Snead suggested adding another co-benefit because securing credit for the practices will promote their implementation, which will bring their costs down.

The stakeholders discussed programmatic actions concerning the Industrial VPDES General Permit, including expanding the number of regulated facilities and requiring those permittees to calculate their nutrient loads in the same manner as the MS4s. Industrial VPDES permittees calculate their loads based on the area of the industrial

activity instead of the area of the entire site. Mr. Hare noted that a significant portion of their impervious area, such as parking lots, is not included in the pollutant load calculation. Ms. Kristie Britt suggested that HRPDC staff reach out to DEQ Water Permits to seek clarification on the role Industrial VPDES permittees in meeting Bay TMDL goals. This is of particular concern to the stakeholders because the area of facilities with Industrial VPDES permits is included in the unregulated developed sector.

It was also suggested that an incentive should be provided for Industrial VPDES permittees to install BMPs that reduce pollutants beyond their permit requirements and also to encourage owners to report these practices. Programs established by NGOs reward these types of practices; however, the property owners do not wish to report these practices for fear of future regulation.

The last proposed programmatic action for stormwater management was to provide incentives for VDOT to install BMPs in the right-of-way of large roadways instead of implementing downstream regional BMPs. Ms. Ashley Hall added that VDOT has been supportive of the CBP developing the roadside ditch management BMPs and also the outfall stabilization Expert Panel, initiated by MDOT.

Septic

VDH has been active in the Phase III WIP development process, providing data and explaining how septic systems are tracked throughout Virginia. The proposed programmatic actions include expanding the 5-year pump-out requirement beyond the CBPA. There was some discussion on whether it would be better to expand it to the Bay watershed or throughout the state. Ms. Rachel Hamm indicated that limiting it to the Bay watershed would be more likely and would allow resources that are dedicated to the Bay to be used to cover the cost of pump-outs or to offer a cost-share.

Another proposed programmatic action would be to stabilize and increase funding for pump-out programs. Ms. Snead mentioned using federal 319 funding, and Ms. Britt indicated that the 319 could only be used in watersheds with an approved TMDL Implementation Plan. Several stakeholders agreed that the Bay TMDL WIPs should meet this requirement. Ms. Britt indicated that Mr. Steve Hummel (DEQ) is working on that issue. Ms. Hamm said that some DEQ funding has been set aside for pump-outs within the CBPA. There is a lot of demand especially since it covers the full cost of the pump out. She also noted that it would be advantageous for Hampton Roads to have funding for septic pumpouts limited to the CBPA.

Another suggested action was to establish a tax credit for septic upgrades or replacement with nitrogen reduction systems. Mr. Hare, along with other stakeholders, wondered if those who cannot afford septic system upgrades would be incentivized by a tax credit to do so.

The last suggested action is for the state to grant counties the authority to require connections to sanitary sewer.

Land Conservation

Several programmatic actions for land conservation were proposed; including increased funding for conservation and incentivizing local conservation planning efforts. One idea was to expand the criteria for the Stormwater Local Assistance Fund to also include purchasing land for conservation. Ms. Barbara Brumbaugh agreed that it would be in line with the existing criteria, which allows for SLAF to cover nutrient credit purchases.

Mr. Ben McFarlane suggested that the state refine the Governor's goal for conserved acres to emphasize acres within the Bay watershed.

Dr. Filippino stated that the CBP is not clearly developing a credit for putting land in conservation for perpetuity. Mr. Hare pointed out that future land use predictions would include additional conserved acres.

Mr. McFarlane offered a suggestion to alter development requirements so that preserved open space would prioritize wetlands, floodplains, forested areas, etc. Such a change may require enabling legislation.

State Specific

Some of the proposed programmatic actions did not fit into the other categories, so the last group is a catch-all. The first action is to recommend that state lands be separated from local lands and determine a state area planning goal instead of having the acres grouped into the locality lands.

Though this process is dedicated to reductions from unregulated developed, it has brought attention to the lack of reporting from the regulated developed sector. Stormwater BMPs that have been reported through the MS4 Annual Reports were not relayed to the CBP. It is recommended that additional staff be funded at DEQ to better account for existing practices.

Another issue of concern for the regulated community is the requirement to first account for baseline before taking credit for BMPs implemented beyond MS4 service areas. It is suggested that the Bay TMDL Action Plan guidance be revised to remove this requirement.

The region will continue to advocate for the expansion of the CBPA to the entire Chesapeake Bay watershed. Ms. Brumbaugh added that regulatory requirements should apply equitably throughout state, and the recent proposed changes to stormwater regulations in rural Tidewater as a result of HB1774 is one example of requirements becoming disparate statewide.

Lastly, the stakeholders have requested a statement of surety so that the potential of regulatory action does not prevent the reporting of BMPs on unregulated developed

lands. Ms. Snead stated that the intent of the process is to demonstrate funding and capacity needs not to expand regulatory reach.

Potential new BMPs were also discussed, including oysters and boater pump-out. Dr. Filippino encouraged all of the stakeholders to provide additional feedback.

3. BMP Input Deck

Before presenting a draft BMP Input Deck, Dr. Filippino first reviewed the steps taken to collect and evaluate local data. DEQ created the BMP Input Deck as a way for regions to report the types of BMPs and the number of acres that could be treated if the recommended programmatic actions were in place.

Of the BMPs available for the unregulated developed sector, Dr. Filippino focused on the five that are most effective in removing nitrogen. As a starting point, she included an additional 490 acres of bioretention, 2,600 acres of detention ponds, 26 acres of filtering practices, 10 acres of impervious surface reduction, and finally, nearly 600 acres of infiltration practices.

Though shoreline management and stream restoration are the most common stormwater retrofits in the unregulated developed; they do not remove as much nitrogen as the practices listed above. The concept of separating regulated and unregulated developed lands complicates the accounting when: 1) MS4 permittees often fund these types of retrofit projects beyond their MS4 service areas, and 2) lands that are regulated have been grouped into the unregulated sector.

Several stakeholders asked where the data listed in the “2017” column came from. This data came from CAST, but it is unclear where the locality-specific numbers came from since localities have not reported BMPs on unregulated developed lands in the BMP Warehouse.

Ms. Suzanne Dyba explained the challenges in predicting future BMPs because there are so many options associated with LID where in years past, engineers relied on wet ponds.

4. Next Steps

Dr. Filippino requested additional feedback from the stakeholders. The draft BMP input deck is to be submitted to DEQ on October 15, 2018 to see if the local area planning targets would be met.

DEQ is hosting two meetings between the HRPDC and the area SWCDs. The first will be held on November 28, 2018 in Fredericksburg, VA and will include the following:

- SWCDS – Colonial, Hanover-Caroline, Henricopolis, Monacan, Northern Neck, Three Rivers, Tidewater, and Tri-County

- PDCs – George Washington , Middle Peninsula, Northern Neck, and Hampton Roads
- Richmond area localities

The second meeting will be held on November 29, 2018 in Melfa, VA and will include the following:

- SWCDs – Appomattox River, Eastern Shore, Chowan Basin, Peanut, Virginia Dare, and James River
- PDCs – Accomack-Northampton and Hampton Roads