

AGENDA NOTE – HRPDC ANNUAL RETREAT

ITEM #11: LEGAL ASSESSMENT OF CHESAPEAKE BAY TMDL APPEAL

SUBJECT:

The U.S. Environmental Protection Agency has completed the Chesapeake Bay TMDL, which has significant economic and legal implications for the Hampton Roads localities.

ISSUES:

HRPDC submitted comments to the Environmental Protection Agency (EPA) and Virginia regarding the draft Chesapeake Bay TMDL on November 8, 2010. The EPA released the final TMDL and provided responses to comments on December 29, 2010. The HRPDC comments were organized around the following points:

1. EPA has not provided reasonable assurance that the urban runoff sector allocations can be achieved by 2025.
2. EPA does not have the legal authority to establish a deadline in the TMDL.
3. EPA has failed to provide the localities with a reasonable opportunity to review, evaluate, and comment on the basis for the proposed allocations.
4. The Phase 5.3 model and model inputs are not sufficiently developed to produce reliable predictions.
5. The modeling predictions do not justify use of the chlorophyll-a criteria as the basis for the James River Basin allocations.

Mr. Dave Evans, McGuire Woods, legal consultant to the HRPDC, will brief the Commission on the EPA's responses and provide his evaluation of appealing the Chesapeake Bay TMDL based on these five points. He previously led an extensive discussion on this topic with local government attorneys on January 25, 2011.

DISCUSSION