

**Questions and Answers about the Bay TMDL and the Phase II Watershed
Implementation Plan Development
June 27 2011**

1. Q: Are there mandates? Is the TMDL regulatory? We've heard it is voluntary. Please explain.

A: Virginia is obligated under the Clean Water Act to meet the "waste load allocations" contained in the Chesapeake Bay TMDL. Virginia will use a variety of programs to meet the reductions called for in the TMDL. Some programs, such as permits issued to wastewater treatment plants, are regulatory. However, some programs, such as Virginia's agricultural BMP cost-share program, are voluntary. Those loads have to be met or EPA has threatened to take regulatory consequences in the form of "backstops." However, in this process, rather than immediately taking regulatory actions to meet the allocations, EPA is requesting that the states work with localities to develop strategies that will help ensure that the actions proposed in the Phase I and II Watershed Implementation Plans are realized. Localities are obligated to meet any regulatory requirements contained in permits they are issued, but for the sake of the TMDL, the allocations are given to the state and localities are given non-regulatory reduction goals.

There is no mandate for localities to participate in the Phase II planning process, or to develop or implement strategies. However, if they do not, Virginia will have difficulty showing how it will meet its allocations and EPA may use regulatory tools at their disposal to ensure the allocations are met, which may adversely affect a locality.

2. Q: What are EPA "backstops?"

A: Rather than using its regulatory powers at the beginning of this process, EPA may use them later if the states cannot prove they can meet the allocations through state and local actions. EPA has termed this potential use of its powers "backstops." This might mean reducing Virginia's federal funds used to fight water quality problems. It might also mean EPA taking a more active role in the permits issued to facilities in Virginia. This could mean more stringent requirements for wastewater treatment plants, MS4s, other stormwater permitting and confined feedlot operations.

3. Q: What benefits are there for a locality to participate in this effort?

A: Participation does give localities some measure of control. As discussed earlier, if statewide allocations are not met, EPA may take regulatory actions, many of which will potentially have large, costly impacts for local governments, developers and farmers. But rather than taking immediate action, the watershed implementation planning process gives localities an opportunity to self-determine how they want to meet their reduction goal.

The local goals were developed using data produced by the EPA Watershed Model. The community conservation information process proposed by DCR also provides localities with the opportunity to use their own data to help determine the accuracy of the model derived information. It will also help initiate the process to add other practices into the model for future reduction credit.

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The process of reviewing existing programs and resources and determining future reduction practices and strategies, including detailing the resources needed, also helps substantiate the need for those resources. As a result of the earlier tributary strategies, hundreds of millions of dollars have been made available for wastewater treatment plant upgrades and agricultural best management practices. The hope is that this effort will drive similar funding efforts in the future. Localities that participate will be better positioned to receive this funding as it is made available.

Perhaps the most important reason for local participation is the potential for local benefits. The watershed implementation planning process does not only help develop water quality strategies that have a positive impact on the Bay, they will also have a positive impact on local streams.

4. Q: What is different now vs. tributary strategies? Why didn't we use that information and input?

A: Hopefully we did learn from the tributary strategy process and are using those lessons to take a different approach with localities. For much of the tributary strategy process the state went to localities and asked them **how much** they could reduce rather than **how** they would reduce. The result was that locally generated input decks never reached the levels of reduction needed to meet the tributary strategy goals. As a result, last minute additions were made to the local work to meet the goals. Much of this work, particularly many nonpoint source strategies, was not fully ground-truthed, leading to implementation levels that were impractical if not impossible to meet. In addition, there were no definitive strategies developed to determine how the nonpoint source reductions would be made.

The tributary strategies for point sources were implemented by a "Watershed General Permit" issued to all significant wastewater dischargers in the Chesapeake Bay watershed.

This time, we are hoping to work with localities to determine specific local strategies on how we will reach the determined reductions. Localities will also be given an assessment tool so they can actually determine if and when their implementation scenarios meet their goal. There is also an iterative process built in this time that will allow, even encourage, everyone to revisit and modify strategies as time goes on. These two-year milestones will help determine what types of changes need to be made, where emphasis might need to be shifted.

However, the main difference is that now there are real implications if goals are not met. EPA will establish backstops if goals are not met.

5. Q: Assuming a PDC wants to play a role in pulling together localities to develop strategies and reach reduction goals, who are we asking them to bring to the table?

A: At a minimum we would ask the PDCs to bring together the local governments in their coverage area (cities and counties) and the soil and water conservation districts. Beyond

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that we would encourage them to invite other stakeholders they feel appropriate. This might mean representatives from the towns in their areas. It might also mean conservation groups, farm organizations, builders, professional organizations, federal land holders, watershed roundtables or other stakeholders. State staff can suggest relevant stakeholders to include and facilitate contact as needed.

6. Q: What happens in cases where local governments share segment sheds? Do they work on strategies together?

A: Each of the 96 localities identified in Virginia's portion of the Bay watershed will receive a reduction goal. This will be for the entire county or city and therefore may include parts of several "segment sheds". State staff will take the finalized strategies and their reductions and redistribute to the appropriate segment sheds. This will apply to localities that share segment sheds with others, as well as localities that contain portions of multiple segment sheds. Incorporated towns will not get a separate goal, they will be included as part of the surrounding county.

7. Q: If our locality is an MS4 and we are given a waste load allocation in our permit, do we still have to meet the local target goals? Can practices to meet the target goals be used to meet the waste load allocation in the permit?

A: Within the jurisdictional area of a locality that has coverage under an MS4 permit, there will be lands regulated under that permit and other lands outside of the MS4 area that are not regulated under the permit. The local target load will include both of these lands. Localities can utilize the WIP II process to begin developing proposed strategies and practices to meet the overall target goals as well as those reductions required under the MS4 permitting program. However, the MS4 permit will establish the schedule and requirements for measures to meet the waste load allocation and the associated regulated land reductions.

Practices implemented in order to meet the required MS4 waste load reduction will count toward meeting the overall locality goal. However, at this time, reductions on unregulated lands outside the MS4 may only be applied towards meeting the overall local reduction goal and not to the required reductions on the regulated urban lands established by the waste load allocation. DCR is working with DEQ and EPA to determine the regulatory mechanisms (i.e., trading, offsets) necessary to allow reduction practices implemented outside of MS4 service areas to be applied towards meeting portions of a locality's regulated lands waste load.

8. Q: How does the Commonwealth intend to transfer waste load allocations from Phase I MS4 jurisdictions to Phase II MS4 permit holders which are currently not assigned any waste loads (some towns, VDOT, universities, federal facilities are not assigned waste loads at this time). What mechanisms are being discussed for this issue?

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A: DCR is working with EPA on assuring that waste loads are available for the Phase II permit holders that are located within Phase I jurisdictions.

The MS4 General Permit will include a list of permit conditions applicable to the Chesapeake Bay TMDL that the MS4 Phase II permittees will be required to implement. Under the Clean Water Act, compliance is measured by compliance under the permit. Thus, if the permit holder meets the conditions established by the permit, the permit holder is in compliance. The permit conditions will be based on the WIP I reductions.

9. Q: Localities do not currently have the authority to require retrofits for existing urban areas. How does the state expect us to meet the allocations for that component of the urban source sector?

A: While it is correct that local governments do not have the authority to require retrofits on private lands that are already developed and not currently subject to any local approvals; there are a variety of economical best management practices that can be used on public lands to address reductions for the urban source sector. Also, local government can look at any number of incentives for achieving reductions on existing privately held urban lands.

10. Q: If and when the local government identifies practices and land uses that are in addition to or different from what's in the model, will the model be updated with that better information? If so, when?

A: EPA would prefer that local governments focus on those practices that have reduction efficiencies identified in the model. However, everyone, including EPA, recognizes that there are other practices being developed or implemented that have beneficial effects on water quality as well. As all localities start to identify new practices, DCR will look at all strategies and practices to determine which ones should be further explored for potential inclusion in the model. There is a precedent for adding new practices (street sweeping was recently added) but it is a 2-3 year process. It is also important to note that EPA approved practices that are currently on the ground, but not yet reported in the model, can be reported now and counted as progress toward meeting the local reduction goal. In the case of differences in land use data, the local data will not immediately affect the goals or the model, but will be used to influence EPA regarding land use issues in future versions of the model.

11. Q: What can be expected of extremely rural localities with no growth? What benefit is there for a rural locality to participate?

A: A rural locality might rely more on the agricultural sector to help meet their local reduction goal. This may mean coordinating with the local soil and water conservation districts to determine potential strategies. A local government may also look at septic pump-out programs, enhancing their local erosion and sediment control and implementation of the new state stormwater regulations.

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While rural localities might be limited in what they feel they can do, failing to participate in developing local reduction strategies can have potential impacts. EPA backstops could have an impact on local farmers with animal operations. Rural localities with even small wastewater treatment facilities might face costly upgrades. Stricter requirements for construction projects needing coverage under the general construction stormwater permit might also be imposed.

12. Q: What assessment/tracking tools will be available for local governments?

A: EPA will be providing a web-based assessment tool that the states will then pass along to localities. This tool will take BMP scenarios and estimate the resulting reductions. This will allow localities to judge for themselves how close alternative BMP scenarios come to meeting their local reduction goal and to adjust accordingly.

13. Q: Since soil and water conservation districts report BMP installation straight to DCR, why would they be included in these discussions? Why doesn't DCR handle that separately?

A: DCR will use the agricultural cost share program information to help determine what is being done by the agricultural sector in each locality. That is part of the data DCR brings to the table. Agriculture is a key component of many of these localities and soil and water conservation districts are actually local government entities that do work with their county and city governments. So there are benefits to having them at the table so that everyone becomes more knowledgeable about all reduction practices being considered. In this context districts can do more than report what has been done; they can also identify barriers to and opportunities for further reductions. Many districts are also becoming more involved in urban issues and can be helpful in identifying expertise and opportunities in making voluntary reductions in urban stormwater.

14. Q: Will the state provide examples of local strategies, etc.?

A: In working with the localities it is expected that DCR staff can provide some strategy examples and share what other similar localities are proposing.

15. Q: How is Virginia dealing with federal lands? Will allocations/reductions assigned to federal installations included in local goals?

A: Initially, yes, the federal reductions are included in the local goals. After the new bay model is up and running in July the federal reductions will be separated. Virginia has proposed that federal facilities be dealt with by EPA, much like they will deal with air deposition. As of June 2011, it is not known if this approach will be approved.

16. Q: Will trading be allowed?

A: Under the existing Nutrient Credit Exchange Program currently operating wastewater treatment plants can buy and sell credits among themselves so long as each facility meets

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its permit requirements and all facilities within a major river basin collectively meet the total cap load for nitrogen and phosphorus for that basin as required by the Chesapeake Bay Watershed General Permit. Credits generated from nonpoint source management practices, including agricultural BMPs, can be used to offset the loads from new or expanding wastewater facilities. Credits from nonpoint sources can also be used to meet the nutrient reduction requirements of stormwater regulations, under certain circumstances, Virginia's Phase I WIP called for the expansion of the nutrient credit exchange so that all source sector could participate. The Secretary of Natural Resources is charged with presenting a report on this enhanced program to the 2012 session of the General Assembly. DEQ has been given the responsibility of conducting the study on behalf of the secretary and has convened a panel of experts and stakeholder for assistance. Information about the study can be found at:
<http://www.deq.virginia.gov/vpdes/NutCrdExStudy.html>

The ability to use trading and offsets beyond what is now permitted by law will not be certain until action by the General Assembly is completed in its 2012 session.

17. Q: What if a locality's voluntary strategies don't meet their reduction goal?

A: Our first priority is to encourage localities to participate. If Virginia can show that most of its localities are making an effort to develop and implement reduction strategies, it is expected that EPA will approve the WIP and allow localities to adaptively manage, continuing to develop strategies and scenarios even if their initial efforts fall short. This is a 15 year, iterative process. Technologies, funding and other variables will change. It is important that we show effort and progress toward meeting the goals when the Phase II WIP is submitted in 2012.

19. Q: Why is the James River treated differently in the TMDL?

A: The James River is the only river in the Chesapeake Bay watershed with a numeric standard for chlorophyll. As a result, in addition to nutrient and sediment reduction necessary to help achieve dissolved oxygen standards in the mainstem of the bay, EPA has called for additional reductions to meet the James specific chlorophyll standard. Virginia's Phase I WIP proposed a scientific study to ensure that the chlorophyll standard is reflective of the most current science. DEQ is embarking on such a study, the result of which will be evaluated prior to setting final allocations for the James River. In the interim, additional nutrient reductions are proposed in the James according to a schedule contained in Appendix X of the TMDL that can be found at:

http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/AppendixXJamesRiverStagedImplementationTMDLSummary_approvedRW1228_final.pdf