

AGENDA NOTE - HRPDC QUARTERLY COMMISSION MEETING

ITEM #20: CORRESPONDENCE OF INTEREST

A. Letter, HRPDC Chairman Stan D. Clark to Mr. Jeff Corbin, EPA

Attached is the letter to Mr. Jeff Corbin, Senior Advisor to the Administrator, EPA, regarding HRPDC concerns on the Chesapeake Bay TMDL, approved by the HRPDC at its Special Executive Committee Meeting on March 31, 2011.

B. Letter, Governor Bob McDonnell, Robert S. Duvall, Joe Thomas and Carol McCormack to Dwight Famer, March 9, 2011

Attached is a letter to HRPDC Executive Director Dwight Farmer acknowledging the support provided to the United Way by the HRPDC. The letter also transmits a certificate, recognizing the work of Kelli Peterson as the HRPDC Campaign Coordinator. A copy of the certificate is attached.

C. Letter, Kevin Hughes to Dwight Farmer, March 14, 2011

Attached is a letter to HRPDC Executive Director Dwight Farmer from Suffolk Economic Development Director Kevin Hughes, acknowledging Mr. Farmer's contributions to the City's Technical Assistance Panel Project with the Urban Land Institute.

D. Letter, Kevin Hughes to Greg Grootendorst, March 14, 2011

Attached is a letter to HRPDC Chief Economist Greg Grootendorst from Suffolk Economic Development Director Kevin Hughes, acknowledging Mr. Grootendorst's contributions to the City's Technical Assistance Panel Project with the Urban Land Institute.

Attachments

MEMBER JURISDICTIONS

March 31, 2011

CHESAPEAKE

Mr. Jeffrey Corbin
Senior Advisor to the Administrator
U.S. Environmental Protection Agency, Region III
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Corbin.jeffrey@epamail.epa.gov

FRANKLIN

GLOUCESTER

HAMPTON

RE: Chesapeake Bay TMDLs

ISLE OF WIGHT

Dear Mr. Corbin:

JAMES CITY

Thank you for attending the March 31, 2011 special meeting of the Commission's Executive Committee and for presenting EPA's perspective on the Chesapeake Bay Total Maximum Daily Loads (TMDL).

NEWPORT NEWS

NORFOLK

POQUOSON

PORTSMOUTH

SOUTHAMPTON

SUFFOLK

SURRY

VIRGINIA BEACH

As you know from recent reports in the media, the Commission has been evaluating the potential impacts of the TMDL on its member localities that operate Municipal Separate Storm Sewer Systems (MS4s) together with legal options for addressing any flaws in the TMDL that could cause adverse socio-economic impacts on the Hampton Roads region without providing any meaningful water quality benefit. Based on that evaluation, we have concluded that there are legitimate reasons to be concerned about the potential impacts of certain aspects of the TMDL. Those concerns, however, largely reflect uncertainty about the outcome of the Phase II Watershed Implementation Plan (WIP) process now underway as well as EPA's intentions with respect to the way in which the Hampton Roads region's MS4 permits must be written to be consistent with the assumptions and requirements of the TMDL. Therefore, the Commission wishes to know EPA's answers to the following questions so that we can make the best informed assessment of the TMDL's likely impact on the region's MS4 localities. The Commission has decided to defer further consideration of its legal options pending receipt of EPA's response.

WILLIAMSBURG

To put the questions in context, the Commission wishes to make clear that it and its member MS4 localities are supportive of the TMDL's goals as reflected in their ongoing commitment of significant resources to implementation of the

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Hampton Roads region's MS4 programs. No other region of Virginia has a greater stake in a clean Bay than Hampton Roads, and as stated in the Commission's comments on the draft TMDL, the region's MS4 localities are prepared to commit more money and resources to their storm water programs where needed to help restore the Chesapeake Bay and protect the James and York rivers. However, the Commission and its member MS4 localities believe that a clean Bay can be attained without wasting scarce resources or exposing the MS4 localities to enforcement actions for failing to achieve unrealistic and unattainable TMDL-derived compliance obligations. Unfortunately, it appears that these may well be the consequences of several flaws in the TMDL as reflected in the following issues of greatest concern to the Commission and the MS4 localities. I want to emphasize that the Commission and the MS4 localities believe the TMDL is flawed in other respects, but they are most concerned with the following issues because they are likely to have the greatest impact on the MS4 localities.

I. Issues of Greatest Concern

A. Land Use Data Used to Derive the MS4 WLAs

The waste load allocations (WLAs) in the TMDL are based on land use data, specifically the amount of impervious area within the locality. An analysis of representative Geographic Information System (GIS) land use data shows that the satellite imagery used by EPA for its land use inputs to the watershed model underestimates the extent of imperviousness in the Hampton Roads region by an average of approximately 48 percent. Locally developed imperviousness data is more accurate than the satellite imagery relied on by EPA, but EPA did not take the time to work with the Hampton Roads' localities to collect this information and use it in the model. EPA has acknowledged that the land use data used to develop the TMDL is inaccurate and has stated that it plans to develop revised load reduction estimates based on revised imperviousness data. However, we understand that EPA intends to continue using satellite imagery rather than local GIS data.

The implications of underestimated imperviousness are significant because it means that the Hampton Roads localities, including those with MS4 permits, will have to reduce their urban runoff loads based on modeling data which assumes that they are less impervious than they actually are. In other words, the urban land area that will have to be treated in order to attain the WLAs would be greater than the land area assumed in the TMDL. This has potentially serious implications for not only the ultimate cost of compliance, but also the ability of the MS4 localities to achieve their WLAs by the TMDL's 2025 deadline.

B. Establishment of Individual WLAs for the Hampton Roads Phase I MS4s

EPA should not have included individual WLAs for Virginia's Phase I MS4 localities (including the six Phase I MS4 localities in Hampton Roads) in the final TMDL. The individual WLAs were not included in the draft TMDL, so there was no notice of or opportunity to comment on the WLAs before they were established in violation of the Administrative Procedures Act. We are also troubled by the fact that Virginia's Phase I MS4s were singled out for individual WLAs as well as EPA's failure to provide any justification for adding the individual WLAs or explanation of how they were derived.

As you know, EPA and the Bay states agreed that not enough information was available during the TMDL development process to generate individual WLAs for MS4s, and therefore, agreed to defer dividing aggregate point source targets to a finer scale until the Phase II WIP process. Accordingly, we suspect that the individual WLAs are based on the same inaccurate land use data that was used to derive the proposed aggregate WLAs in the draft TMDL, but we have no way of knowing whether this is, in fact, the case or whether other errors are built into the WLAs because EPA has not explained how the individual WLAs were derived. In particular, we strongly suspect that the individual WLAs for Total Suspended Solids (TSS) are inaccurate because in addition to the use of inaccurate land use data, the TSS WLAs were derived using a model that EPA has acknowledged could not be calibrated for sediment.

The potential consequences are far reaching because the Phase I MS4 localities would be at significant risk of federal, state, and citizen enforcement for failure to comply with their permits if EPA proceeds with TMDL implementation using individual Phase I MS4 WLAs derived from erroneous land use data.

C. 2025 Deadline

As explained in the Commission's comments on the draft TMDL, we do not believe EPA has the authority to establish a deadline in the TMDL. MS4s are uniquely affected by the 2025 deadline because they are regulated as point sources, but face far greater implementation challenges than any other source sector, point or non-point. The MS4 WLAs will require widespread implementation of storm water retrofits on private property in a heavily urbanized region. The MS4 localities could implement these retrofits cost effectively through their land use approval process as redevelopment occurs, but the 2025 deadline will make it impossible for the MS4s to achieve their WLAs in this fashion because the average rate at which land is redeveloped will

not allow it. Instead, the MS4 localities will be forced to not only install and operate storm water retrofits on private property, but also to acquire retrofit easements by purchase or condemnation. Again, the potential consequences are far reaching. Aside from the cost, easement acquisition takes time, making it highly unlikely that the MS4s could achieve their WLAs by 2025, thereby exposing them to federal, state, and citizen enforcement despite their best efforts to comply.

II. Questions for EPA.

While the Commission and the MS4 localities believe their concerns are well founded, they wish to hear from EPA. Therefore, it will be greatly appreciated if EPA will answer the following questions.

A. Hampton Roads MS4 WLAs

1. Why does the final TMDL include individual WLAs for the Phase I MS4s in Virginia, but not the Phase I MS4s in the other Bay states?
2. Why weren't the individual WLAs included in the draft TMDL?
3. How did EPA derive the individual WLAs for the Hampton Roads Phase I MS4s?
 - i. What MS4 boundaries were used?
 - ii. Did the WLA calculations for the Phase I MS4s include areas in the Phase I boundaries that are covered by other permits held by private companies, the state, or federal agencies?
4. Is EPA prepared to work with the Hampton Roads localities during the Phase II WIP process to ensure that the urban runoff WLAs reflect the most accurate land use data available, including the available GIS data?
5. Under what circumstances will EPA modify the WLAs at the conclusion of the Phase II WIP process?

Specifically:

- a. The EPA has agreed to run the Bay model with revised land use data in 2011. Will the WLAs be revised if the WLAs increase for some Phase I MS4s?

- b. Why were Total Suspended Solids (TSS) WLAs included in the TMDL given EPA's acknowledgement that the Bay model could not be calibrated for sediment?
 - c. Does EPA intend to distribute any of the 9.5 percent TSS load reserve in the James River Basin or the 9.2 percent TSS load reserve in the York River Basin to Hampton Roads MS4s as part of the Phase II WIP process?
 - d. Can all of the MS4 sector WLAs be revised as part of the Phase II WIP process if the basin allocations are met?
6. How can the Hampton Roads region follow the Phase II WIP process when the Department of Conservation and Recreation (DCR) has already started writing permits based on the individual Phase I MS4 WLAs? EPA's Phase II WIP Fact Sheet states as follows:
- “EPA expects the Bay jurisdictions to develop Phase II WIPs that further divide final nonpoint source and aggregate point source target loads for the 92 303(d) segment drainage areas using a finer geographic scale such as counties, conservation districts, sub-watersheds, or, where appropriate, individual sources or facilities. EPA expects the local targets to be used for planning purposes and does not intend to establish local targets as separate allocations within the Bay TMDL.”
7. The Hampton Roads localities are already investing in programs that will reduce nutrient loads. Existing EPA documentation indicates that the localities cannot count these programs as efforts to meet the TMDL. How can localities get credit for investments that reduce Sanitary Sewer Overflows (SSOs)? Implementing no discharge zones for boats? Increasing oyster restoration?
 8. Will EPA count nutrient load reductions from non-structural BMPs like nutrient management and the fertilizer ban as MS4 reductions or treat them as nonpoint source reductions?
 9. Virginia's BMP efficiencies and EPA's model BMP efficiencies are not equivalent. Will EPA defer to Virginia's BMP efficiencies to assess compliance?

B. 2025 Deadline

1. Will EPA expect DCR to include compliance schedules designed to meet the applicable WLAs by the 2025 deadline in the Phase I MS4 permits when they are reissued and in the Phase II MS4 general permit when it is reissued?
2. NPDES (MS4) permits will be the enforcement tool to implement TMDL-based storm water nutrient reductions. NPDES storm water permits are based on the "maximum extent practicable" (MEP) standard. The evaluation of the MEP standard includes technical and economic achievability. Will the EPA consider adjusting the timeline for storm water load reductions in the TMDL if the existing timeline is not reasonably achievable?

We ask that EPA respond to the questions in writing within 30 days of the date of this letter. Should EPA choose not to answer the questions, we would appreciate knowing that as well within the next 30 days. EPA's responses to the questions may well lead to additional questions so it would be helpful to arrange a meeting as soon as possible to discuss the questions and answers before EPA responds in writing.

Thank you for your consideration of this request and we look forward to hearing from you at the earliest opportunity. Please contact the Commission's Deputy Executive Director, John Carlock at 757.420.8300 or at jcarlock@hrpdcva.gov if you wish to discuss this matter further.

Sincerely,



Stan D. Clark
Chairman

copy: Douglas Domenech, Secretary of Natural Resources
Anthony Moore, Assistant Secretary for Chesapeake Bay Restoration
David A. Johnson, Director, Virginia Department of Conservation and Recreation
David K. Paylor, Director, Virginia Department of Environmental Quality
Hampton Roads General Assembly Delegation
HRPDC Commissioners
Dwight L. Farmer, Executive Director, Hampton Roads Planning District Commission
John M. Carlock, Deputy Executive Director, Hampton Roads Planning District Commission
David E. Evans, McGuireWoods, LLP

March 9, 2011

LIVE UNITED

Dwight Farmer
Hampton Roads Planning District Commission
723 Woodlake Dr
Chesapeake VA 23320-8909

United Way
of South Hampton Roads



Dear Dwight Farmer:

Thank you for your ongoing commitment to our community. Your support helps United Way of South Hampton Roads improve the lives of people in our community by helping kids succeed, supporting people with special needs and disabilities, caring for our elderly and assisting South Hampton Roads' residents who are experiencing unforeseen hardships.

Our ability to change lives depends on your commitment, but also on the hard work and dedication of your company's Campaign Coordinator. We want to thank **Kelli Peterson** for devoting time and energy to United Way of South Hampton Roads' 2010 campaign. The willingness of people like **Kelli** to go beyond their day-to-day responsibilities in helping those in need is vital to a healthy community.

Enclosed is a certificate of appreciation to be presented to **Kelli Peterson** as a special thank you for helping make our community a better place to live and work. We hope it will serve as a reminder of the people whose lives have been changed.

Thank you again for supporting your Campaign Coordinator, and for giving your employees the opportunity to help their community in a meaningful way. We look forward to working together with you again during 2011 to create lasting change in the community we share.

Sincerely,

Bob McDonnell
Governor of Virginia

Robert S. Duvall
2010 Campaign Chair
Vice President & General Manager
of Virginia Natural Gas

Joe Thomas
2010 Board Chair
Regional Vice President, GEICO

Carol McCormack
President & CEO
United Way of South Hampton Roads

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Attachment 20B

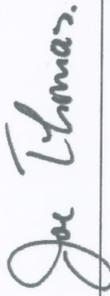
ORG: united way

Kelli Peterson

On behalf of a grateful community, United Way of South Hampton Roads would like to recognize your leadership and thank you for helping to create a better life for all.



Bob McDonnell, Virginia Governor



Joe Thomas, Regional Vice President, GEICO
United Way of South Hampton Roads, Board Chair



Robert Duvall, Vice President and General Manager,
Virginia Natural Gas
United Way of South Hampton Roads, Campaign Chair



Carol McCormack, President and CEO
United Way of South Hampton Roads

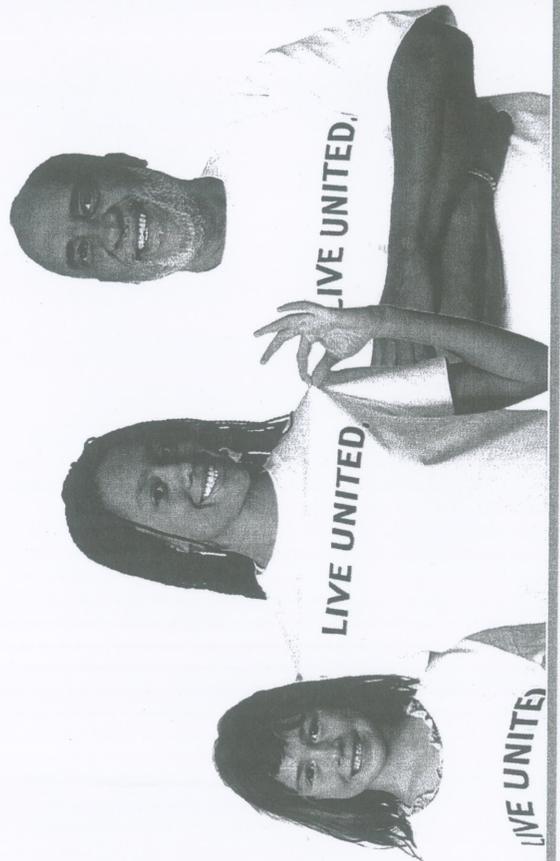


United Way
of South Hampton Roads

Attachment 20B

Because of your leadership and generosity, you provided:

- 5,561 people a safe haven at an emergency shelter
- Distribution of 13 million pounds of groceries for our neighbors who are hungry
- 5,045 hours of after school tutoring for at risk children
- Home away from home support to 5,500 military families





P.O. Box 1858
Suffolk, Virginia 23439
Telephone 757-514-1111
Facsimile 757-923-3628
www.YesSuffolk.com

March 14, 2011

Mr. Dwight Farmer
Executive Director
Hampton Roads Planning District
723 Woodlake Drive
Chesapeake, Virginia 23320

Dear Mr. Farmer:

Thank you for your recent participation in the Suffolk Economic Development Authority (EDA) and the Tidewater Community College Real Estate Foundation (TCCREF) sponsored Urban Land Institute's Technical Assistance Panel Project. As you know, the EDA and TCCREF own significant properties with tremendous development opportunity for the City of Suffolk and the Hampton Roads region. It is for this very reason that we invited you to provide your insight as a stakeholder in the Commonwealth, Region and the City during our recent project.

A copy of the final presentation given by ULI as well as the briefing book on the site and the surrounding area can be found at www.yessuffolk.com. We will be sending you a final report on the project when we receive it from ULI in the next 60 days.

Your feedback regarding future development opportunities is valuable and I hope we can work together to continue the momentum of the ULI project forward as these sites develop over the next decade.

Sincerely,



Kevin Hughes
Director

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HRPDC

It's a good time to be in Suffolk
Attachment 20C



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March 14, 2011

Mr. Greg Grootendorst
Chief Economist
Hampton Roads Planning District Commission
723 Woodlake Drive
Chesapeake, Virginia 23320

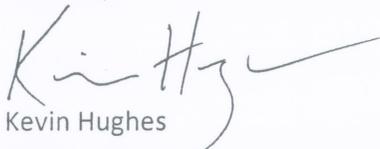
Dear Mr. ~~Grootendorst~~ ^{Greg}:

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Sincerely,


Kevin Hughes
Director

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HRPDC

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