

## **Summary of EPA's Response to HRPDC Comments on the Chesapeake Bay TMDL**

### **1. EPA HAS NOT PROVIDED REASONABLE ASSURANCE THAT THE URBAN RUNOFF SECTOR ALLOCATIONS CAN BE ACHIEVED BY 2025**

#### Summary of EPA Response:

Because Virginia submitted a revised Watershed Implementation Plan with satisfactory reasonable assurances for agricultural reductions and additional wastewater reductions, the EPA backstops have been removed from the final TMDL. The final allocations for urban stormwater will be challenging to achieve but are much more technically feasible than EPA's backstop allocations.

### **2. EPA DOES NOT HAVE THE LEGAL AUTHORITY TO ESTABLISH A DEADLINE IN THE TMDL**

#### Summary of EPA Response:

EPA maintains that they have the legal authority to require the States to develop implementation plans that will achieve 60% of the targeted reductions by 2017 and 100% by 2025. EPA believes, in light of the decades-long history of not meeting water quality goals, that the staged 2017/2025 implementation framework is both lawful and reasonable, and that the implementation can be completed in the projected timeframe.

### **3. EPA HAS FAILED TO PROVIDE THE LOCALITIES WITH A REASONABLE OPPORTUNITY TO REVIEW, EVALUATE, AND COMMENT ON THE BASIS FOR THE PROPOSED ALLOCATIONS.**

#### ***A. Insufficient Comment Period:***

#### Summary of EPA Response:

EPA noted that the Chesapeake Bay TMDL is not a federal regulation. EPA declined to extend the TMDL's 45-day comment period because doing so would have made it impossible for them to establish the Bay TMDL by December 31, 2010. EPA stated that they are acting pursuant to Executive Order 13508 to "make full use of its authorities" to protect the Bay, as well as a promise EPA made in a May 2010 settlement agreement resolving *Fowler v. EPA*. While EPA could have attempted to negotiate an extension of the *Fowler* agreement date, EPA believes that - under all the circumstances of this TMDL, including the considerable transparency of the process to date and EPA's considerable efforts to engage in public outreach - its efforts were better spent finishing work on the TMDL in order to avoid any further delays in implementing EPA's and States' 27-plus year old commitment to restore the Bay's water quality.

#### ***B. Failure to provide all information:***

#### Summary of EPA Response:

EPA believes it has made sufficient information available for the public to reasonably and intelligently comment on the Bay TMDL.

**4. THE PHASE 5.3 MODEL AND MODEL INPUTS ARE NOT SUFFICIENTLY DEVELOPED TO PRODUCE RELIABLE PREDICTIONS.**

Summary of EPA Response:

EPA maintains that the Phase 5.3 model has been sufficiently developed, calibrated, and verified through peer review. EPA states, "Five generations of the Chesapeake Bay Program Watershed Model has been applied to management decisions in the Chesapeake for over two decade. The Watershed Model has been continually refined over those five development cycles... The Phase 5.3 Watershed Model was been developed, calibrated and verified through collaboration with federal, state, academic, and private partners. Development teams at the Chesapeake Bay Program Office (CBPO) and the U.S. Geological Survey (USGS) included EPA, USGS, University of Maryland Center for Environmental Sciences, University of Maryland College of Agriculture and Natural Resources, Virginia Tech, and Chesapeake Research Consortium. After more than five years of development work, calibration and validation were completed in March 2010 and reviewed and approved by several of the above groups."

**5. THE MODELING PREDICTIONS DO NOT JUSTIFY USE OF THE CHLOROPHYLL-a CRITERIA AS THE BASIS FOR THE JAMES RIVER BASIN ALLOCATIONS**

Summary of EPA Response:

Although EPA maintains that they have the responsibility to propose allocations that meet the chlorophyll a criteria in the James River and that the model is a valid tool to determine compliance, they believe that Virginia's final Phase I Watershed Implementation Plan put forth a credible approach for achieving the 2017 (60%) and the 2025 (100%) allocations for nitrogen, phosphorus and sediment for the James River basin. These allocations will meet Virginia's existing dissolved oxygen, water clarity/submerged aquatic vegetation, and chlorophyll a water quality standards for the river. EPA is willing to work with Virginia to evaluate the science behind the chlorophyll a water quality standard in the James. If the water quality standards are changed, the TMDL may be revised to reflect the new standards. Until that time, the current standards are in effect and the TMDL is based on those standards and the provisions of the TMDL will need to be implemented until and unless the TMDL is modified.