

**Hampton Roads Planning District Commission
Special Executive Committee Meeting
Minutes of March 31, 2011**

A special meeting of the Executive Committee of the Hampton Roads Planning District Commission was called to order at 9:35 A.M. in the Regional Boardroom, 723 Woodlake Drive, Chesapeake, Virginia, with the following in attendance:

EXECUTIVE COMMITTEE:

Stan D. Clark, Chairman (JC)	Sharon Scott (NN)
Thomas G. Shepperd, Jr. Vice Chairman (YK)	Marcus Jones (NO)
James O. McReynolds, Treasurer (YK)	J. Randall Wheeler (PQ)
Alan P. Krasnoff (CH)	Kenneth Chandler(PO)
Greg McLemore (FR)	Selena Cuffee-Glenn (SU)
Brenda G. Garton (GL)	Tyrone W. Franklin (SY)
Molly J. Ward (HA)	Louise R. Jones (VB)
Bruce Goodson (JC)	Jackson Tuttle (WM)

EXECUTIVE COMMITTEE (ABSENT):

June Fleming (FR)	Paul D. Fraim (NO)
W. Douglas Caskey (IW)	Michael W. Johnson (SH)
McKinley Price (NN)	Clyde A. Haulman (WM)

EXECUTIVE DIRECTOR:

Dwight L. Farmer

OTHER COMMISSIONERS:

Amar Dwarkanath(CH)	Neil Morgan (NN)
Clifton Hayes (CH)	W. Eugene Hunt, Jr. (PQ)
Dr. Ella P. Ward (CH)	Robert M. Dyer (VB)
Gregory Woodard (GL)	Rita Sweet Belitto (VB)
Ross Kearney (HA)	Barbara Henley (VB)
Mary Bunting (HA)	

*Late arrival or early departure

OTHERS RECORDED ATTENDING:

Jeff Corbin (EPA); Dave Evans (McGuire Woods); Anthony Moore (Asst. Secretary of Natural Resources); David Johnson (DCR); Russ Baxter (DEQ); Andrew Baan, Debbie Meadows, Veronica Sheppard, Kate Wilson, Joann Hofheimer, Joanne Berkley, Mary Schsinger, Reed Knight (Citizens); Eric Martin, Barbara Brumbaugh (CH); Ron Peaks (GL); Chuck Fleming, Brian DeProfio (HA); Gretchen Gonzalez, A. Paul Burton (IW); Leo Rogers (JC); Bryan Pennington, Jill Sunderland, June Whitehurst (NO); Michael King, Brian Lewis, Joe DuRant, David A. Kuzma (NN); Cindy Linkenhoker (PO); Ellen Roberts, Budd Green

(PQ); Clay Bernick, Mike Bumbaco, Steve McLaughlin, B. Kay Wilson (VB); Eric Nielson, Karla Haynes, L. J. Hansen, (SU); Peter Stephenson (Town of Smithfield); Rob Catron (Fairfax); Shelia S. Noll (LGAC/York County Board of Supervisors); Debbie Ritter (LGAC/Chesapeake City Council); Curtis Byrd (Office of Congressman J. Randy Forbes); Patrick Ciaie (HRCC); Frank Daniel, Joe Rieger, Bob Hume, Marjorie Jackson (Elizabeth River Project); Roger Everton (DEQ); Shelly Frie (CH2M Hill); Scott Harper (Virginian-Pilot); Corey Nealon (Daily Press); Mark A. Geduldig-Yatrofsky (Portsmouth City Watch.Org.); Ellis James (Sierra Club Observer); Randy Darden, Jr, (Dewberry); Liz Scheessele, John Paine (URS); Karl Mertig (Kimley-Horn & Associates); Lisa Jeffrey (Brown & Caldwell); Karen Forget (Lynnhaven River NOW); Christy Everett, Chris Moore, Fred Adams, Peggy Sanner, Andrea Moran, Faye Bailey, Will Mitchell, Tanner Council (Chesapeake Bay Foundation); Beth Konopnicki, (York County Waterways Alliance, Inc.) Claire Beasley (Chesapeake Sierra Club); George Banks (Stokes Environmental Assoc., Ltd); K. Bezakova, (Terra-Scapes); Chris Rodgers, D. Neiman (J4C); David Crandall (Empower Hampton Roads); Peter Huber (Willcox & Savage); Staff: John M. Carlock, Camelia Ravanbakht, Rick Case, Jennifer Coleman, Kathlene Grauberger, Greg Grootendorst, Julia Hillegass, Frances Hughey, Jim Hummer, Rob Jacobs, Whitney Katchmark, Sara Kidd, Mike Long, Jay McBride, Kelli Peterson, Katie Rider, Tiffany Smith, Joe Turner, Jenny Tribo, Chris Vaigneur.

Chairman Clark called the special meeting of the Hampton Roads Planning District Commission to order. Chairman Clark began the meeting with the following remarks:

In every respect, every person born and/or raised in the Hampton Roads region owes their existence, livelihood, or quality of life to that great body of land and water that we call the Chesapeake Bay. The contour of the bay and the value it contains supports more people than any other single entity we can name. We respect and honor its richness and inherent wealth so much that one of our member jurisdictions is named for it. Virginia Beach derives from its clean beaches and surf, Norfolk Naval Shipbuilding presents strategic importance; it would not exist except for its deep water port. Newport News is named for the Captain that sailed the Bay. Hampton, Isle of Wight, Surry, Suffolk, York County, James City County, Gloucester, Poquoson, Franklin and Williamsburg all share a rich waterman's local history in the Chesapeake Bay Watershed areas and all them share the wealth of tourism, military and federal facilities, retail, port, freight and manufacturing jobs and dollars that has generated many various ways that are generated on my prosperity to this great natural asset. Our quality of life is completely ingrained and joined with it. Sadly in the last 200 years the Chesapeake Bay Watershed region which includes many eastern states did not care properly for the health of the bay. Without question, we have used it and its tributaries as a dumping ground. As regional leaders in Hampton Roads, I think I speak candidly for all the localities that we recognize the errors and transgressions of the past. We as a body absolutely affirm our obligation to work toward the cessation of harmful bay activities in the direction of resources in an attempt to reverse the damage done. We accept the mission of the EPA and DEQ in this regard and embrace it. As an elected official in this region we have the mission to work toward the bay cleanup and acknowledge it as one of our highest priorities. Our additional obligation is to make sure the corrective action and the cost thereof are evenly born by all states and regions and the citizens of Hampton Roads are bearing their fair share of the cost. Additionally, Hampton Roads taxpayers have stepped up on the bay cleanup. We

have an obligation to make sure the cleanup measures and cost thereafter are based on sound science and principles and that the cost of the cleanup methods are effective. There are less onerous methods that are cost effective. Additionally, it is our obligation as elected officials to recognize the acute economic conditions that exist in Hampton Roads. The Bay cleanup costs that I have seen range from \$300 to \$800 per household annually over many years to come. It is our duty equally to recognize that across the region that families are losing their homes, people cannot find work, and citizens cannot afford their medicines. It is our obligation to represent all of Hampton Roads and to recognize that there are many households that cannot pay an additional \$8.00 much less \$800 without sacrificing food, clothing, shelter and/or medicine. Of all the emails and faxes that I have received asking us not to oppose the EPA TMDL regulations, not one has mentioned the effect this massive unfunded federal mandate will have on budgets. Many families are beyond the breaking point. There is great waste of tax dollars in the federal government. It is odd to me that we reach into the bread baskets of working Americans and federal tax dollars to clean up the bay. But still it is our duty to achieve a balance among our competing obligations and yes we do need the Wisdom of Solomon for these matters. This body today will discuss all these matters. Not a single Hampton Roads elected official member mentioned suing the EPA. Let there be no mistake, we are committed to protecting the bay and our citizens in a manner that is appropriate and fair. We will begin in open session and hope to stay in open session. But if we feel the need to go to closed session to discuss matters in full in protection of the bay and our citizens, we will do so. As I have said in our last meeting, there is no lawsuit; but this is a federally unfunded mandate and we have a duty to our citizens and families of this generation to make sure, by all means necessary, that what is done to clean up the bay is fair, reasonable, cost-effective and affordable. As elected officials, this is the job we have been hired to do. This is the job our citizens expect us to do, and this is the job we will do.

After public comment we will amend the agenda to include a new letter from our legal counsel.

PUBLIC COMMENT

Five people requested to address the Hampton Roads Planning District Commission.

Frank Daniel

Good morning and thank you, my name is Frank Daniel, I am a member of the Board of the Elizabeth River Project and the Board has asked me to come before you this morning and make a brief statement. The non-profit Elizabeth River Project works to restore the Elizabeth River in Norfolk, Portsmouth, Virginia Beach and Chesapeake. We support the EPA development of a Bay Total Maximum Daily Load for nitrogen, phosphorous and sediment. We also commend Virginia for preparing a strong implementation plan. These may be the most promising steps yet for reducing nutrients, the top challenge for restoring the Chesapeake Bay. This approach is especially critical for the Elizabeth River which exhibits some of the highest nutrient levels in the Chesapeake Bay. Each summer, a massive algal bloom starts in Hampton Roads and spreads into the lower bay, in some cases leading to fish kills. We question whether legal action will result in anything but further delay in implementing Hampton Roads' efforts, and instead recommend spending scarce resources on developing cost-effective locality plans. We recommend a collaborative approach to resolve remaining

issues. In regard to the Commission's recently discussed concerns, an affordable approach is certainly needed. However, cost may be considerably less than the Commission's estimates so far. Localities have yet to develop specific implementation plans and have considerable flexibility on approaches, with widely varying costs. Low cost approaches are available that will help contain cost. A new state law banning phosphorous in fertilizer will help meet reductions with relatively little cost. Other inexpensive approaches include code changes to reduce impervious surfaces, and programs to disconnect rain spouts are just examples. We agree that several issues remain unresolved and recommend a collaborative approach between EPA, the Commonwealth and localities to address them. It appears that some elements of the TMDL may have been added without the opportunity for full public comment. It is important for the EPA, the state and localities to meet and revolve concerns regarding the EPA model. While further work should be done to confirm the accuracy of the modeling, we support the numeric goals for reducing stormwater loads to the bay. What gets measured, gets done. The bay and its tributaries are long in need for clear cleanup goals and approaches. Finally, the Elizabeth River Project has 17 years' experience with successfully and collaboratively resolving complex environmental issues. We stand ready to help our local government partners in any way possible. Thank you very much.

Fred Adams

I am a resident of Virginia Beach. The Chesapeake Bay is a huge economic engine and I think I would without noticing that it would be very difficult to trade jobs. It was recently reported in our local news paper that during the last couple of months in this area we lost 7,500 jobs. It is my understanding that if we do the best that we can to clean up the Chesapeake Bay, that we could have immeasurable benefits. One report indicated that for every dollar that we invest today we would return that in about \$1.58. I thought that was pretty impressive. If we invested \$10 million, you may get \$15 or \$16 million back. Or if you invested \$50 million you get \$75 million back. When I looked at the cost of some of the things we have to face when making changes to the bay, we are talking about billions of dollars. I do ask that question for every billion we invest are we going to get a billion and half back? I don't know if that would occur. However, another setting has indicated that over a period from 2000 to 2008 we lost commercial activity of \$460 million; that is almost \$60 million a year. If we were to clean up the bay and have that kind of benefit again, we would have the situation where several other economically viable species such as rockfish at Lynnhaven and with that we would only have to clean up the bay once to derive from the benefits along with these and other species. So we could look at it annually a \$100 million or so, it does not compare too well with the billion dollar expense we are confronted with. It is a serious challenge. I can remember the first time I read the TMDL I was taken back. I have never seen the document. Of all the planning documents that I looked at, I never saw one that looked so - conservable. So I commend you for sticking with this issue, I commend you for what it is that you are doing. We need to do the best we can as quick as we can because the problem could only get worst and more expensive. So I urge you to not sue the government, to continue to work with EPA, work with our requirements and do the best that we can with them, educate the citizens with regard stormwater runoff and get as far as we possibly can. We need a cost effective way take care of our sewage. Thank You

Christy Everett

Christy Everett, Chesapeake Bay Foundation, Hampton Roads Director. I believe there were some excellent public comments at your March 17 meeting. We will not repeat that today. We feel that it is important for you to take your time in clarifying issues and getting some answers from EPA and the Commonwealth on this very important issue. Because many of us are forgoing our public comments today I would like to recognize these individuals who represent volunteers for various organizations.

Please stand at this time. Those who opposed the bay challenge to the TMDL please stand at this time. Those individuals include representatives of Lynnhaven River Now, Sierra Club Chesapeake Bay Chapter, and the Virginia Chapter, the J4C, James River Association, Coastal Conservation Association and the Chesapeake Bay Foundation. Thanks to you our elective officials for taking the time for working through any concerns or issues for the Bay Restoration effort. As you know, it is very critical to our economy, our quality of life and the citizens of Hampton Roads. We appreciate your time in doing this versus the alternative of taking abrupt measures to take legal challenge against the Bay TMDL. Thank You.

Mark Geduldig-Yatrofsky

Good morning Mr. Chair and members of the Planning District Commission. Mr. Clark you did a fair job. My name is Mark Geduldig-Yatrofsky and I appreciate people who make the effort. Speaking of making the effort I show my age I will be another year older tomorrow but needless to say back in the cold war era there is no winner in nuclear war. You can almost say the same thing about a suit about one government entity against another except the lawyers win. The taxpayers lose. We pay for the suit on both sides of the issue. It is the most complete and senseless disruption of taxpayers' dollars that has ever been devised by humanity. So I am here to urge you as a resident of Portsmouth and a citizen of the globe not to waste our tax dollars on suing on either side. Thank you very much.

Ellis W. James

Good morning Chairman Clark, members of the Commission, my name is Ellis James I reside here in Hampton Roads and have done so for a good chunk of my life, mostly all of it. I think we all in this room recognize the difficulty that we are confronted with. But those of us who are arguing strongly for no delay in the implementation of these regulations have waited a long time. Thirty years is plenty of time to get the ball rolling and get action taken. I would like to ask the members of the Commission if you have not had the opportunity to read Chairman Clark's letter in today's packet I would urge you to do so. There are great concerns in that letter, but there are also specific implications of commitment and as you heard in the Chairman's statement that was read in the beginning of the meeting. I think it is clear that the Commission should be committed to achieving the goal of cleaning up the bay. It is not that his letter included everything that we who are looking for no delay in implementation would want, but it is clear that there is an effort this morning to assure we the citizens and you the members of the localities as the elected officials that action is needed and we need to take it. In the end, I would call your attention to attachment 4C Hampton Roads Statement of Legislatives Principles Regarding Implementation of the Chesapeake Bay TMDL. If you carefully examine that you will find everything that I have just referenced and more. You will also find a rather strong paragraph on unfunded mandates. Whether you agree or disagree with that, I would suggest to you that the ball is now in the administration of the Commonwealth of Virginia court. We need to have a clear signal sent from Hampton Roads as to our commitment and our determination without disregarding the needs of our citizens to move the cleaning up of the bay forward. It is possible it will take a lot of work, but it is the signal you need to send and I believe that is the signal citizens are asking you to send. Thank you Mr. Chairman.

APPROVAL/MODIFICATION OF AGENDA

Mr. Farmer stated available for review is a new business item which was structured for a closed session. Mr. Dave Evans will brief the Commission on several legal issues related to the Chesapeake Bay TMDL and Virginia Watershed Implementation Plan.

Chairman Clark asked for a motion to accept the agenda with the modification.

Commissioner Kearney Moved to approve the agenda with the modification; seconded by Commissioner Shepperd. The Motion carried.

CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD (TMDL) – HRPDC UPDATE AND STAFF BRIEFING

Chairman Clark introduced Mr. Carlock who would provide a brief update on HRPDC activities related to the Chesapeake Bay TMDL and Virginia Watershed Implementation Plan.

Mr. Carlock stated there are six items that are significant events as HRPDC moves forward with the Chesapeake Bay TMDL and Watershed Implementation Plan: 1) The HRPDC provided final comments to the state in November on the draft Watershed Implementation Plan along with comments which were provided to EPA with technical comments on the TMDL. The focus of that was on the particulars on the urban stormwater commitments the cost and the time associated with that; 2) second item is the presentation in January that pointed out that there had been improvements as we moved from the draft to the final TMDL and the final Watershed Implementation Plan. It also included a resolution the Commission adopted which endorsed the legislative principles that were considered at the December meeting; 3) HRPDC forwarded the resolution with a memo to the General Assembly Delegation on February 2, 2011. That document supports a number of different legislation that were considered by the General Assembly and some items were considered possibilities and others remain to be considered in future sessions. The memo also pointed out the need for funding needed by local governments in order to cost effectively achieve the commitments that are in the Watershed Implementation Plan; 4) HRPDC staff sent a letter to the Secretary of Natural Resources requesting guidance on how Hampton Roads would go about achieving the Phase II WIP. The letter stated that Hampton Roads needed guidance, additional information and additional data from the state as a region to move forward with the development of Phase II; 5) HRPDC staff gave a presentation at the retreat on February 7, 2011 that outlined some of these concerns. EPA responded to the Commission on some of the comments. The presentation addressed one option that might be available for the Commission as they move forward to address the requirements and the commitment of the TMDL; 6) notes from the March 17, 2011 meeting when the Commission talked about the issues and concerns with the waste load allocation and the MS4 permits that many of the localities in the region currently operate under.

Mr. Carlock stated in February 2011, the General Assembly approved several significant bills that will assist the region in moving forward which match the region's legislative principles. However, HRPDC has questions and concerns about the draft TMDL for EPA about the lack of reasonable assurance that the urban runoff sector allocations were achievable, legal authority to establish a deadline in the TMDL, lack of reasonable opportunity to review and comment on the basis for the proposed allocations, accuracy of the Phase 5.3 model and model inputs and their ability to produce reliable predictions, and justification for use of the chlorophyll-a criteria as the basis for the James River allocations.

Mr. Carlock indicated some of the questions and concerns were addressed by the state and federal government.

Mr. Carlock stated some important actions have been taken by the Commission over the last seven months: the revision of cost estimates to reflect the final TMDL and WIP, adoption of a resolution and statement of legislative Principles, and authorization for HRPDC staff to proceed with development of a regional framework and process for addressing Phase II WIP. These are some strong commitments on the part of the Commission and localities as they move forward with addressing the cleanup of the Chesapeake Bay.

Mr. Carlock stated when the region started the TMDL and the Watershed Implementation Process months ago, the assumption was in the TMDL, EPA would establish targets for the state. The state would take a state-wide target for nutrient reductions and translate it into basin-wide targets through the Watershed Implementation Plan. They would also determine how much reduction is needed to come from agriculture, wastewater, and urban stormwater. In Phase II of the WIP, the state, localities and the local stakeholders would develop the allocation together at the local level. However, that process did not work out. When the TMDL came out in December, it included allocations for each of the sectors at the local level. Phase II of the WIP was to be divided as target nutrient reductions into a finer geographic scale, counties, sub-watershed to help identify specific controls and practices that will be implemented no later than 2017 to meet interim water quality goals and then again by 2025 in order to meet the alternate clean up goal.

Mr. Carlock stated as Hampton Roads move forward with Phase II, the HRPDC and the localities have a number of questions that need answers as to how this is going to work. In Phase II of the WIP do the allocations have to be consistent with Appendix Q? Will localities have the flexibility to trade nutrient reductions with other sources? What information on existing management practices was included in the TMDL for each locality? How will existing management actions that were not included be credited to the localities? Will localities receive credit for nutrient reduction activities that are not accounted for in the Bay models? There are some things this region is committed to as a major investment in the elimination in sanitary sewer overflow. Several localities have adopted no discharge zones and comprehensive oyster restoration. How do these things get accounted for in terms of their reductions to loads?

Mr. Carlock stated the impact of the TMDL on the localities' MS4 permits will enforce the nutrient reductions in the TMDL. DCR has indicated the state intends to write permits for all Phase I MS4s by the end of 2011. The HRPDC staff and locality staffs have many unanswered questions about how the nutrient reductions in the TMDL were calculated.

Commissioner Shepperd asked about the allocations in Phase II and if it ever was resolved. It was his understanding that EPA was going to cut and that is where Hampton Roads was going to get the allocations.

Mr. Carlock stated it is not known how the numbers were assigned to the individual localities and how they are translated into the Watershed Implementation Plan. It is staff's understanding of the Clean Water Act that once the number is assigned to a particular locality in a TMDL, that requirement then goes into individual permits which means localities will have to develop a program to achieve that number. That reduces the flexibility thought to be part of Phase II to determine what those numbers are and the ability to trade between localities or sectors for the most cost effective achievement of those goals.

Commissioner Shepperd asked if the trading was at the local level and Phase I was mitigated on cost because of the trade off on agricultural and sewer. Mr. Carlock stated yes.

Commissioner Shepperd asked what will localities' loads be and what happens to the hundreds of millions of dollars already spent on stormwater clean up and sewers and when is the baseline actually going to be established. Is the region waiting for the state to make that determination? Will the work done in 2009 be discounted?

Mr. Carlock stated the baseline was established in 2009. There will be an accounting system which will explain those things that are part of the Chesapeake Bay model. It is not known how it is going to be counted.

Commissioner Kearney asked if there any figures on what percentage of the area is still using septic system.

Mr. Carlock stated HRPDC has that information for some of the localities, for the ones we do not the information can be collected and it will become part of the region's input to the state.

CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD (TMDL) – EPA BRIEFING

Mr. Corbin stated he appreciated being at HRPDC. When he took the position with EPA one of the most critical things agreed on was open communication and good structured dialogue. He stated he lived in Virginia for thirteen years and he has been with EPA for over a year and prior to that he had the privilege of working with Governor Kaine and serving the Commonwealth as part of the natural resources team and prior to that he was working on the nonprofit side on bay issues for about nine years.

Mr. Corbin stated EPA is doing TMDL because it is the next step in about a thirty year bay restoration effort. Significant progress has been made but serious work is still to follow. The three standards that are driving the bay cleanup are low dissolved oxygen levels, major algal problems, and cloudy water. EPA is trying to reduce pollution, nitrogen, phosphorus and sediment going into all the rivers and the bay to meet standards that have already been set.

Mr. Corbin gave a brief history on how the TMDL came about. The Bay restoration process has been going on for over 30 years and the first formal agreement happened when the

states came together and said they are going to work together in 1983. The agreement was expanded in 1987, and this is when the 40% nutrient reduction was set. In 1992 the concept of tributary strategies was established. In 1996, the first tributary strategy was developed in Virginia for the Shenandoah/Potomac. In the late 90s, there were some legal challenges in Virginia, DC and a settlement in Maryland that locked in a schedule for a Consent Decree to develop the TMDL. There are hundreds of TMDLs in Virginia including one for the bay and the rivers that has to be done no later than 2011. In 1999, water quality monitoring of the bay, Virginia portion of the bay, tidal rivers and EPA impaired water system is what triggered the TMDL to be developed. At the same time, EPA and the states had a bay program partnership where all the states were working together to reduce pollutants and they gave it some time to see if it could be done without TMDL and the date was given until 2010. The reductions were not met and the TMDL process began. In 1999-2000 the Shenandoah/Potomac plan was developed and the state developed one for the James, Rappahannock, York and the Eastern Shores Tributaries. In 2000 there was a landmark Chesapeake 2000 Agreement and all the states came together including Virginia and agreed to over 100 different commitments and one of them was to reduce nutrient and sediment pollution going into the bay to get the bay rivers off the EPA impaired water list. In 2005, a state-wide tributary strategy was developed. In 2006, a law was passed which required annual cleanup plans for the bay and rivers in Virginia.

Mr. Corbin stated because the level of cleaning up the bay and rivers where it needs to be, EPA developed the process of the TMDL. TMDL is the amount of pollutant, nitrogen, phosphorus and sediment going into the bay and into the rivers and still reach the water quality standards. The latest progress numbers show significant progress has been made although there is still a lot more pollution going into the river. The tributaries strategies Virginia developed, and if fully implemented, will get close to the numbers that were put out in the TMDL which is the same target aimed at for about 25 years. The TMDL process is a little larger, but the goal is the same.

Mr. Corbin stated the plan should be revised and amended as needed. Some specifics about what needs to be in the plan are: measurable and attainable objectives, description of strategies, time frame, how to pay for it, contingency plan for a problem area, what are you going to do if plan A does not work and what is plan B, description of the extent, a coordination between the state and local government. Phase II of the TMDL includes an assessment of alternative funding.

Mr. Corbin presented slides that showed the expectations that EPA gave to the states for their Watershed Implementation Plan, which is not much different than what the state law requires. Accounting for growth in the TMDL is a critical part to get down the pollution level and stay under that pollution level and figure out how to offset future growth. He stated the localities need to be 60% by 2017.

Mr. Corbin stated that EPA has been at this for quite awhile and he has been working on this for fifteen years in Virginia. EPA has a good idea of what needs to be done because they have developed many plans and many TMDLs, as well as hundreds of TMDLs in Virginia and thousands across the nation. Virginia came up with a very solid Watershed

Implementation Plan. The TMDL is different because there is more accountability and assurance, localities have to show the state what they are going to do in the Plan and that it can actually be done. There is a new clean up date which is 2025. This date was set by the states through the Chesapeake Bay Executive Council with the Governors and the Mayor of DC and the Administrator of EPA.

Mr. Corbin stated there is a potential for federal changes, and federal actions if we fall behind. The 2009 is the baseline, and 2010 and 2011 we finish the TMDL, we finish the Phase I Watershed Implementation Plan. EPA is making changes to the computer model that the states asked for. EPA is going to give them new numbers in a couple of months and then start developing Phase II WIP. The first milestone will be due next January when the state says this is what we are going to do and these are the pounds of pollutions we are going to reduce over the next two years. If you want to move things around in that plan, if you want to get more from wastewater and less from stormwater or more from septic and less from stormwater you can do that as long as you get your numbers along the way. It is about reducing pounds of pollution. Being flexible is the most important part, focus on those milestones to get those reductions over those two years.

Mr. Corbin stated included in the TMDL is the state Implementation Plan for wastewater facilities on the James River. The current allocations that have been given to the James River are going to require some additional upgrades to sewage treatment plants. The state indicated this will take time to plan, design and fund. EPA built some staged implementation options into the TMDL. Better accounting practices were addressed EPA has a process in place through the partnership if there are things the localities are currently doing that EPA does not know are happening, EPA can include those as input to the model. If there are practices that EPA currently does not know what kind of effect it has on nutrient or sediment pollution, EPA will figure it out. This is a 15 year timeline; this is not an overnight process. Virginia has a very successful point to point trading program that saved the Commonwealth hundreds of millions of dollars. I encourage the state plan to include a process that expands its trading program.

Mr. Corbin stated the MS4 stormwater permits issued for the draft Watershed Implementation Plan submitted by the state were very stringent reductions for stormwater and EPA did not think the reductions were achievable. EPA spread the allocations around and came up with a percent reduction over three permit cycles.

Mr. Corbin stated what EPA put in the TMDL was a miscommunication or lack of communication, and what EPA thought Virginia wanted was a specific number to put in their permit. We know that is not what they intended. EPA staff has been talking to Virginia staff and think we have a way to resolve this. EPA will be moving away from the individual waste load allocations in the TMDL to aggregate so that you can move pounds around among localities as you see fit. Phase II is about making sure the localities understand what their part of the plan is and what they are going to have to do. As part of Phase II EPA, has issued a guide because the state asked for more guidance.

Mr. Corbin stated EPA has extended the schedule because the states indicated they need more time to be able to reach out to local governments and to move toward a solid Phase II. The old date was November 1; we are now extending it until the end of March for state development. EPA will be providing contacts in order to help with public outreach issues, information issues and technical issues. The cost is high; your localities are not the only ones that are raising concerns over cost. We all have known about these costs for awhile and the TMDL itself did not impose these costs. As he went over the state law and the tributary strategies the plans that are already on the books and the plans that Virginia has committed to implement carry these same costs so I am not trying to belittle the importance of those costs and the difficulties you all have with having to come up with how you are going to pay for them, but we have known about them for awhile. In 2005, the estimate was \$7 billion and the statewide tributary strategy had an estimate of \$10 billion and tributary strategy for the James River in 2005 was around \$4.5 billion. They are significant but they are not new costs. EPA has supported the states while they were developing their Watershed Implementation Plans. EPA gave over \$11 million last year to the states and an additional \$400,000 in contractual support; \$3 million for pilot projects, and provided technical support as well.

The scheduling for the Phase I of the TMDL is done. EPA is working on Phase II and when Phase II is done, it is about meeting your milestones in 2017 which is the next big check-in point. EPA will see what had changed on the landscape, science and monitoring and modeling. EPA will make changes as they go through this process. It will have been about six or seven years and then Phase II will be completed and at that point we will develop a Phase III and we will take a look again at the plans the states put together and EPA will make revisions. The goal to be done is by 2025.

Chairman Clark asked for questions for Mr. Corbin.

Commissioner Kearney had several comments and then asked Mr. Corbin if there was someone who could find some type of financing to help the localities with the cost?

Mayor Ward thanked Mr. Corbin for coming and stated his presentation was concise and helpful.

Commissioner Goodson stated having open communication was going to be very helpful and we all wanted the same results and we needed measurable results. Mr. Goodson indicated at the same time he felt the localities were setting themselves up for failure with some of the deadlines. EPA is talking about being 60% done by 2017; it has taken James City County over a year to get through all the legal issues and permitting to get one BMP done. EPA has indicated that it is going to be 2012 before we get the rules which leaves us with only five years for hundreds of BMPs to be accomplished by 2017. If it is not done, what is going to happen in 2017? EPA will issue fines because we did not meet the deadline. No one is going to win with these deadlines.

Mr. Corbin stated 2017 is the mid-point with 60% done and 2025 is to have it all done. It is a milestone. EPA does not necessarily expect every sector to be on the same path of

reduction. Some of these reductions can be achieved later in the schedule, EPA is not saying that the stormwater, septic, and waste water for all jurisdictions has to stay on the same schedule. What is going to be critical is when the states start putting together Phase II and start putting together their milestones. The states will look at the jurisdictions to see which ones are not going to be able to be ready in the next two years. If your facilities are not going to be ready in six to eight years, then through reduction, it will be built in further out in the milestones, not for next two years. It is not as if James City County and everybody else has to get to 60% , It may take some jurisdictions to 2017 to 2025 to get those reductions, but you have to be looking in the next six years as to where else you can get those reductions. It may be in the sewage treatment plant, septic, air reduction, the fertilizer law; not everybody has to stay on the same reduction schedule. I am not saying it alleviates all of your concerns, and it makes you completely happy that you can't do all of this; 2017 is a state wide goal. Make your milestones and you can move around your practices within the plans.

Mr. Goodson said stormwater issues are the most expensive and take the longest to solve. There are so many questions and I have not heard the answers yet. That makes me nervous and makes me want to continue to talk to EPA and maybe have counsel; have lawyers on both sides to make sure we are clear with the rules before we say yes this is the way we want to go. James City County has an HRSD facility. I do not know if we are going to get credit for what is happening at the facility.

Mr. Corbin stated that HRSD is a regional facility and it will count if there are things going on that are generating nutrient reductions. The baseline for which the allocations were set was 2009; we will have a 2010 number. If you counted reductions in those years they will come off the top of your allocations.

Commissioner Scott stated that she did appreciate Mr. Corbin coming to expand on the situation with the Chesapeake Bay and we are really committed to cleaning up the bay also. The people at EPA need to know the citizens in Newport News cannot afford \$1,000 per household. Newport News is a city that has a large majority of retirees, people on fixed income, and lot of people below the poverty level. Another \$700 to \$1,000 per person is not affordable. That is the difference in someone getting medication or eating. We are concerned in Newport News about the unfunded mandated.

Mr. Corbin stated he will certainly carry that message back to EPA.

After several comments Commissioner Shepperd asked Mr. Corbin during the briefing he stated the first 60% of the first half way point was going to be easy. What make it so much easier than the second part, because to him, 60% of a billion dollar project is a concern. Why is the front end so much easier than the back end?

Mr. Corbin stated he did not think he said easy he said easier. As we move along with this, we are going to see a lot of wastewater treatment plant upgrades, and you should get very significant and very quick reductions. You are going to see stormwater facilities getting fairly significant reductions and when you get to the last five to fifteen percent, which is

where it is going to be more of a challenge. As we get closer to the end and try and get though the last few pounds, it is going to be harder to figure out where they are going to come from.

Commissioner Shepperd stated he was concerned not only when we get to 2025 but also with when we do not reach the goal and have to come back and try and fit the retrofit to the retrofit and it starts costing even more. Who will set these backstops? When you talk about backstops, to me they are penalty.

Mr. Corbin said if they occur in the future, backstops will be done through EPA. He stated EPA is going to look at the milestones and if a state does not meet their milestone and EPA is going to be putting out some guidance on milestones soon. The big question is if the state gets 90% of milestones what do we do. Obviously, if the state is 50%, short then EPA might start to think about doing something different, but if the state is 89% to 95% are the backstops the same. The 40% under the Clean Water Act is to do things like get more reductions from permitted sources if you are not getting progress. EPA has the authority to start permitting additional sources. EPA has the authority to start moving around funds. Mr. Corbin stated EPA was not thinking that taking away funds or making states pay more money because they are missing the target makes any sense. EPA will potentially start moving more money into areas where it seems to be getting the most reductions or the most progress. What it will be is the progress at the end of 2012, which is when the first milestone starts and end at 2014. As EPA gets closer, they will see where the states are, how much they have missed the milestone, how much and why it missed them, and then figure out what are the most appropriate actions.

Commissioner Shepperd stated when most of us hear the word backstop, it means that EPA is going to set a penalty for not getting things done on time. He was concerned that the cost is not realistic and it will undermine the efforts in cleaning up the bay. He indicated we want to clean up the bay, but we need to come up with a plan that is realistic. He appreciated Mr. Corbin coming but at the end of the day, he wanted to see a plan that we can actually reach.

Mayor Hunt stated speaking for the citizens of Poquoson, we are a city of 12,000 people and EPA is an agency with 17,000. Poquoson is in favor of cleaning up the Chesapeake Bay; they make their living from the bay. This whole body sitting here are participants in the Chesapeake Bay Restoration. The City of Poquoson has spent some sufficient funds in trying to clean the bay, and according to your data, it appears that we are succeeding in making a difference in the Hampton Roads area. The EPA data also supports that we are succeeding in cleaning up the bay. The EPA report stated that the northern bay is more polluted than the southern bay and we know Virginia enacted a Chesapeake Bay Ordinance across the state in 1990. EPA data show that Virginia gets a lot of float coming down the streams and creeks as well as from the northern states and EPA satellite shows that to be the same. Poquoson wants to be a participant, but we want to have some understanding that we have already put in some significant funding. Will these models take into account what has already been done as far as our goals within the state, and will the fertilizer credit that the state passed will that count also toward the goals?

Mr. Corbin stated that he was sure that everyone was committed to cleaning the bay. There was a process that EPA went through. They looked at how much impact is coming from the localities and where they are located throughout the bay. The lower part of the bay has less responsibility than the others because they simply do not impact the bay in the same way; much of the pollution that comes out of the James River ends up going into the ocean. The fertilizer legislation will be counted. He did not know what the numbers are or what the estimate is or how much those will count toward the goals. Anything that happens between now and 2025 that reduces nitrogen and phosphorous and sediment pollutions will be counted, and EPA has a process in place to do the accounting. He indicated that tracking was going to be the key. If there are things going on that localities have already achieved reductions that EPA does not know about, EPA needs to know. If there are new things that go on the ground EPA will be closely tracking that. Please do not think just because localities did things five years ago or five months ago they do not count.

Mayor Hunt stated there is some concern about where EPA is setting their baseline. Is EPA setting their baseline for two years ago? We have been cleaning up the Bay before 1990, that is why here in Hampton Roads we are looking at \$700 to \$1,000 depending on where EPA gets their numbers. The people who have been investing in this are already in, and we in this locality think we are making a difference. We just want that factored into future permits as well as future costs that we have invested significant dollars.

Mr. Corbin stated he did not disagree. When you develop a TMDL you have to start with a baseline somewhere, and it takes awhile to collect data from the states, compile it, and do a quality assurance check. EPA will be coming out with 2010 numbers and whatever you have done between 2009 and 2010 to achieve reductions will be counted.

Commissioner Dyer stated like everybody in this room, we want to clean up the bay in Virginia Beach. I had the privilege to serve on the Clean Community Commission. We are making progress in that direction and once again I think we have to deal with some of the political reality. I think effective public policy would be a policy that everybody can buy into and realize that it is obtainable and then we can work together as a team and a community to achieve this because once again we have misappropriated burdens placed on the localities. We are going through a process and we are tapped out right now. In order for it to work, we have to have a public policy that is attainable, achievable one that everybody buys into.

Commissioner McLemore stated being from one of the smaller cities, he was as concerned as our colleagues from York and Poquoson. Franklin had experienced a major employer loss of over two thousand jobs, with a population of 9,000 people. He did not know how the citizens could afford to pay to clean up the bay. How can one implement time lines, deadlines, and backstops as my colleagues said, without investing in other avenues to achieve the most effective result?

Mr. Corbin stated we are breaking this up into two parts. I agreed it is difficult at the local level and state level to indicate what they are going to do for ten years from now, but you can plan for the next 24 to 48 months and that where the two year milestone in Phase II comes in. Virginia could come back in a year or so with a trading program that significantly reduces cost. He indicated that EPA would be coming up with new technology to do things cheaper and better. He also indicated he was not trying to say the plan is locked in forever; this is what you have to plan for. This is where you need to be in 15 years and plan for the next two years.

Commissioner Belitto stated she had a couple of technical questions, the first question was on one of Mr. Corbin's timelines where he talked about changes to the watershed model were to be completed by June 30 of this year. What type of changes does that involve?

Mr. Corbin stated there are two things that the state brought to our attention last year. One had to do with agriculture and nutrient management plans. EPA is tracking and accounting the reductions EPA would get from putting nutrient management plans that pull together stakeholders and scientists to figure out whether EPA's accounting was correct. The other issue had to deal with urban and whether or not EPA estimates in some of the more urbanized areas were broken up correctly between pervious and impervious areas. The number might change, that is why EPA is doing Phase II and will amend the TMDL.

Commissioner Bellito asked what metrics EPA is using to indicate if we are meeting the 60% reduction by the two year milestone or by 2017. What is being done in measurements of the quality of water bodies involved?

Mr. Corbin stated 60% and 100% is based on putting the practices on the ground. He could not tell if localities did everything that is needed to do to get to 60%. He could not say that in 2017 EPA is going to go out and sample water everywhere to see if the nutrients pollution is down 60%, or if it is going to be a 100% in 2025. He indicated EPA could get there quicker because scientists could tell at some point we would have more grasses, more oysters and when it starts coming out the tunnel that is something we want to look at in 2017.

Commissioner Wheeler asked at a high level, what would the reasons in your opinion would the policy have on that if the nation could not have achieve this objective so far and in the developing this TMDL what new strategies has EPA thought about that specifically over comes issues that have together helped us not to achieve the results so far. Is there a strategy map designed to get us across the finish line and why haven't we made enough progress?

Mr. Corbin stated if he understood correctly, what triggered this and why does EPA think the localities have not made enough progress. He indicated a lot of this is cost and how the localities are going pay for this. We have been working on this for 20 years. Everyone knows what they need to do. The challenge has been how do we come up with the cost, or do we regulate it, do we start issuing more permits, or start writing more laws, or do we all allow it to be done through a process? He stated he would be the first to say he knows

localities are committed to this and knows Hampton Roads has made progress. They just have not gotten to where they need to be. He was not going to dodge the cost question. The toughest thing right now is to figure out where the money is going to come from and are there ways to do it more cost effectively through future plans and whether it is going to be local, state or federal money.

Chairman Clark thanked Mr. Corbin for his presentation.

CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD (TMDL) – STATE BRIEFING

Chairman Clark introduced Mr. Anthony Moore, Assistant Secretary for the Chesapeake Bay Restoration, Mr. David A. Johnson, Director of the Department of Conservation and Recreation and Mr. Russ Baxter, Department of Environmental Quality.

Mr. Moore thanked the Chairman for allowing him to speak to the HRPDC. He then gave a brief history of his background.

Mr. Moore stated the original Chesapeake Bay Agreement was with Pennsylvania, Virginia, Maryland and DC and then we invited New York, West Virginia, and Delaware. They are all starting to contribute to this plan and it was helping to speed up our process. This has been a very successful program. We have reduced nitrogen by 23% from 1985 to 2009. The tributary strategy is where we were heading with the tributary strategies and the TMDL is where we were going now. It is about 2.3 million pounds per year that we have to continue to reduce. With nitrogen, the state has made significant reductions between the tributary strategies and the TMDL and we still have to reduce another 1.3 million pounds of phosphorus. We are in Phase I and Phase II now, and in Phase III we have to have all of our BMP's in place by 2025.

Mr. Moore stated Virginia developed this program so it would allow us to implement the most cost effective practices in each watershed using some of the programs that were in place and then expanding some programs and adding some new programs. It was also important for the state to have appropriate time frames in each sector to achieve these cost effective reductions. We need to see on the ground improvements and not just improvements to meet the model. There are a lot of programs that are already in place that localities have had experience with and will contribute to us meeting our goals for the Chesapeake Bay and TMDL. These programs will be included and the funding that is currently in these programs will help us to meet our goals. We submitted our plan, the EPA accepted it. Our plan currently meets all the target loads for 2017 in all basins.

Mr. Moore said the State wants to expand the nutrient credit exchange program. In 2005, a cap was established under the State Water Control Board's general permit, and each watershed has a cap where point sources are allowed to buy and trade credits under that cap. There are instances where agriculture and urban storm water can participate; what the state would like to do is expand this program so that all of the sectors can buy and sell credits. The State feels this will give the localities the ability to choose the most cost effective practices in meeting allocations without stifling growth. As for the James River,

the state has a specific strategy because we have a concern with the chlorophyll standard or chlorophyll criteria and how it was implemented in this TMDL. The state has worked out a plan to study chlorophyll to make sure EPA has the right chlorophyll number and they are applied in the correct way. This will be a three to five year study and the study will start this year. We will do some scientific work that is already in place there, conduct some monitoring. If our study determines that number to be higher or lower, the state will make those adjustments through the EPA process. The plan is to have this completed by 2017.

Mr. Moore stated he would talk about some of the specific waste loads, sector proposals and waste water in order to meet the allocations by 2017 through the watershed cap. In 2005, the state began an upgrade of all their facilities at a cost of about \$1.5 billion across the state. As more of those facilities come online, we will get closer to our goal, and as 100% of those facilities come online, the state thinks we will meet our goal by 2017. Our plan is to propose an additional reduction of 2.6 million pounds of nitrogen, and 200,000 pounds of phosphorus on the James River and another 42,000 pounds of reductions on the York River. There was a bill that passed in 2010 that requires dischargers of over 1,000 gallons per day to offset their entire nutrient load. The state proposes that facilities under 1,000 gallons per day must offset their entire loads and the state will propose that facilities that start at 1,000 move up to expand up to less than 40,000 gallons per day will also have to offset their entire nutrient load. By the end of this 15 year plan, most of the new facilities will have to offset their entire nutrient load. For onsite septic, newer replacement systems will have to use the nitrogen reduction technologies. The Department of Health is currently in the process of upgrading their regulations and those regulations will have performance standards for those new systems. We are looking at establishing a tax credit or some other financial assistance to upgrade the old systems or replaced with this new technology. The plan also proposes that within the next 15 years we will require that all septic systems have to be pumped out every five years throughout the bay watershed.

As for agriculture, the state wants to apply extensive implementation of resource management plans. These resource management plans can include any of the five priority practices. They can use nutrient management plans, livestock exclusions or buffers. The point is these are going to be farm specific plans to meet the goals in their watershed. We will also have milestones of percent acres covered, if we will keep on with this program. If we miss two of our two year milestones in a row, then there may be more mandatory programs in place. The state will also start a program that will vastly include the voluntary practices. There are practices that farmers do not get cost share for and those practices currently are unaccounted for under the model. We have a program to collect that information and input that into the EPA model. The state will look to improve our water quality practices and BMPs for forestry; up to 90% by 2017 and up to 95% after 2017. For urban and stormwater the state is proposing that urban lands that use fertilizers start using nutrient management plans as well as golf courses that use fertilizers. The state currently does this so we will ask the localities and golf courses to do the same. The plan also includes restrictions on do-it-yourself fertilizers with phosphorus in it. We understand that Scotts will have a phosphorous free fertilizer by 2012 that will help us meet our goal. After December 30, 2103, phosphorus in fertilizer will not be available unless there are certain conditions that are needed.

Mr. Moore said the state will propose the 20% phosphorus reductions on lands that are being redeveloped and the state plan also includes a percentage of stormwater retrofits. Currently, it is at 25% but this is not a requirement that you have to dig up 25% of your land and put in retrofits. There are other ways to make these nutrient reductions; the state will accept those. The state wants to make sure that we have the reductions. They are not going to require that you retrofit or dig up concrete. New development will not be allowed to exceed the load allocations of the previous land use.

Mr. Moore stated there have been a lot of questions about funding. This year the water quality improvement fund has about \$36.4 million. The water quality improvement fund, if there is any excess money in the general fund, ten percent goes to the rainy day fund, after that another ten percent goes to this water quality improvement fund. The Secretary of Natural Resources decides how the money is spent between point sources and nonpoint sources. The state has asked the General Assembly to allow them to spend 90% of that money on nonpoint sources; that will help meet our goals with some of the stormwater goals and also help us to establish resource management plans on farms. The way the General Assembly allocation is about \$27.8 million will go into the natural resources commitment fund, that money is further divided into soil and water conservation district, about 55% for the Chesapeake Bay, 35% for the southern rivers and \$3 million of that funding will go to point sources and some of those funds will be used for our chlorophyll study on the James River.

Mr. Moore stated EPA is in the process of revising their model. The state has asked for two revisions. EPA is making changing to the program on land use discrepancies, and the state is looking at the ability to stack agriculture and stormwater BMPs. A lot of the farmers do not till, continuous no till practices and the way the model is now it does not allow them to use that and stack other BMPs on top. EPA is adjusting their model so all those practices can be used and it will be accounted for in your reduction goals.

Again, we will look at the TMDL to make modifications. The current schedule now, we thought Phase II the draft was going to be due in June and the final was due at the end of December. I have not seen the guidance. The draft indicates we would have to have a draft to EPA around the November time frame, and then we would have a final of the TMDL Watershed Implementation Plan by the end of March. The states are developing their Phase II programs, and we plan to adjust our allocations depending on the processes.

There is an adaptive management plan for the states and as you have discussed before, 100% of those BMPs have to be in place before 2025. The states are taking on a lot of responsibilities this year. We have done our Phase I Watershed Implementation Plan; we are currently working on Phase II. We also have to look at expanding our nutrient credit exchange program and we will start the chlorophyll study on the James River. We are not sure if we have to do regulations for the fertilizer bills.

The state will be setting up Stakeholder Advisory Groups for the expansion of the credit exchange program, the chlorophyll study and Phase II. The group will be looking at the different types of jurisdictions that we have to work with on developing Phase II plans and

96 of the localities do not include the smaller towns so we need to figure out how to include everyone involved in this plan.

Mr. Moore stated that they are in the process of developing a plan to get the most input on how to develop Phase II of the Watershed Implementation Plan. During this process the state will look at Phase I of the process and refine the local government areas. The state will work with stakeholders and elected officials to develop the plan and include the two year milestones in this process. With the two year milestones, we will not have to submit another two year milestone until 2025. We will be looking at two year sections and deciding what we can accomplish in those two years. We will assess that information and after two years set a new set of milestones and again, that adds to the adaptive management portion of this plan.

The state would like for HRPDC and other PDCs around the state to help out with how to collect information that is already out there, and how they can match what is already out there with what the localities have in this process and then find out where we need to move in order to meet our conservation strategies.

Mr. Moore stated the Secretary and the Governor think that it is very important that we have multiple input on what is already on the ground and how we can put into practices things that are cost efficient and effective to meet these overall goals. Again, this is a 15 year process and there are a lot of proposals that will have to be statutorily changed and the legislature will participate in this process. We are looking to inform the public and the PDCs. I have talked to the Federal Delegation and the Virginia Delegation to let them know what our plans are and to make sure they understand there are a lot of caveats in this plan that depend on federal funding. We need federal funding and we need the federal facilities to contribute to these reductions.

Mr. Moore stated they will have a Stakeholders Advisory Committee that will be requested to develop this plan; they will give the PDCs or locality a target goal on what reductions are needed to accomplish in that area. We need to have a strategic plan and work with all of the localities; hopefully everyone will take the lead in collecting all the information and developing a plan that will work for the Commonwealth.

Chairman Clark thanked Mr. Moore for his presentation and asked for questions.

Commissioner Shepperd asked who in the state is going to say this is our plan.

Mr. Moore stated at the end of the day it will be someone in his office, collectively working with someone in the state agencies. They will develop this plan using a Stakeholders Advisory Group and hope the Stakeholders Advisory Group will incorporate leaders around the state. The PDCs are being asked to help us through these initial steps in finding out what exactly needs to do be done to make our goals. We are hoping this is going to be a down up process. We need information from the localities and we will develop a plan that meets our final implementation goals.

Commissioner Sheppard asked since we are dealing with the federal government, and the Governor signed Phase I, would the Governor expect to sign Phase II when it becomes a Plan?

Mr. Moore stated that is correct.

Commissioner Sheppard stated his expectation is that every locality will be given a load. The TMDL piece that we have to meet, what are the figures based on and are you expecting each locality produce a sub-plan?

Mr. Moore stated that is not his plan. He is asking localities to help the state to develop a plan. It would be almost impossible for the state to work with each individual locality, collect that information, and put it all together into a plan. What we would like to do is to ask the PDCs, the soil and water conservation districts, and all of those entities that are already working with localities, to help us collect the baseline and, to find out what is already in progress, is there anything that is already in progress that will help us to meet our goals. Then, we would take that information and go to the Stakeholder's Advisory Group and put together a statewide plan.

Commissioner Sheppard stated he has to know what he is spending the money on, and that it is in the plan because the county cannot ask taxpayers for the money and get it. If it is in the budget, there must be some justification for the expenditures of those funds. It was mentioned several times the new facilities have to meet 100% of the loads, the requirements for cleanup. If the county going to spend money, taxpayer's dollars, we have to have some concept of what the EPA is going to require for our county. We have to be able to have some sort of plan to be able to do that and if it is an unfunded mandate that falls in on top of what else we are currently doing. In the end, again, water off loads to one point – the bay. You take a sample and say we did not get there. You have made allocations for farming, sewers, and you are going to say again we did not get there, so therefore we have to pay more, create more BMPs, do something better, but you cannot tell us specifically without a plan; we cannot tell specifically what we are investing in. We have to have some sort of guidance from you so the board of supervisors can create a plan to figure out how we are going to spend the taxpayer's dollars to reach what you want us to reach.

Mr. Moore agreed. We must have local participation in developing the plan. We cannot put together this Phase II without input from the local governments. Organizations like the HRPDC can help collect that baseline and find out exactly what is already in place and then we can together figure out where we need to go to meet our allocations.

Commissioner Sheppard stated he thought maybe then he had jumped past Mr. Moore because Phase II Plan when it is approved by the Governor, officially York County, says this is what we are going to do and from that point then I have a full vested understanding, and York County will do it not necessarily in sequence, but in parallel, to create whatever we need to do within our localities to support the plan. If you are just looking for input for the Phase II he understood that, but the municipalities are going to have to create budgets to meet that expectation or we are going to be another year behind, or maybe two. My

expectations would be if I have to create a something, BMP, to meet your requirements, then I will have a plan to work with and I will be able to figure this out. My last question is how someone knows if a facility is meeting its 100% cleanup.

Mr. Moore stated with point sources it is a little easier because there is a point that can be looked at and sampled and find what the nutrient inputs are. With nonpoint sources it is a little bit more challenging but we plan on continuing to monitor the watershed and to find out and to look at where those improvements are being made. Although the allocations are based on model numbers, we in Virginia plan on using scientific methods to make sure these plans are working, that these BMPs are working and actually looking at monitoring to make sure that we are cleaning up our watersheds.

Commissioner Shepperd stated if the water flows down the stream, coming to a point source, and stormwater going into a creek or river, there are no BMP, lots of houses upstream, and they use fertilizer, do you tell them based upon your impervious surface, they need to put in a BMP and you have to build this kind of BMP. Is your plan, and models based upon what type of BMP to establish? If I invest \$4 million in a BMP and the engineers then a year later find out we are not at the point we need to be and then have to add more gravel.

Mr. Moore stated that was correct. There are efficiencies. All BMPs have certain efficiencies and we know with whatever the type of pollution to abate them, these BMPs will have certain efficiencies on helping to remove those nutrients and making those reduction. We evaluate which BMPs are necessary for which type of pollution we are trying to reduce. I want to have input from the local governments and the localities on how to implement those BMPs so by the end of March we will have a Phase II program and that Phase II Watershed Implementation Plan will tell the localities what new types of BMPs need to be put in place to meet the reduction goals.

Commissioner Shepperd stated from a county's perspective what they need from the state is the number and then we will have to figure out the approved BMPs to give to the engineering department to figure out where to put the BMPs and which ones have to be retrofitted and how to deal with the public who owns the property. There are homeowner's associations or new businesses and then we have to figure out what part we are going to have with the Corp of Engineers and the state over the mitigation of any water quality issues or digging. So to me we have to have by default a plan at the local level.

Mr. Moore stated at the end of the Phase II process, all the localities will know what reductions they need to make.

Commissioner Shepperd stated in tonnage and pounds.

Mr. Moore stated in his estimation of the Phase II process, he was not as concerned with everyone meeting a number of reductions. What he personally would like to see is a global plan on how or if we take this Phase I plan and how do we make that plan work throughout the local governments? When you look at EPA's models, the models look at specific numbers so from this type of, and in this sector of the watershed, you have to meet this

reduction. We have accomplished a lot of that in Phase I, so my goal for Phase II is to have a plan on how we can meet these allocations.

Commissioner Shepperd asked how you know that other localities are carrying their weight.

Mr. Moore stated that is one of the things that needs to be included when developing the Phase II portion of the TMDL. The Phase II will give us more definition on what is needed locally. As we develop the Phase II process, we will find out what is already on the ground and exactly what needs to be done to meet the allocations.

Commissioner Goodson thanked Assistant Secretary Moore for attending the meeting. It has been very helpful to hear from him. As for the James River strategy, the state is going to do a study on the chlorophyll for the James River. James City County is concerned with the standards that have been set so far. You are going to use that study to adjust the model and the study is going to be done by 2017, but by 2017 the localities have to be done with 60% of the criteria. If I do not know the criteria until 2017, what is going to be the final, how do the localities know what 60% to plan for? I have to plan for what facilities I put in the ground between now and 2017 to get to 60% but yet I don't know what 60% is yet.

Mr. Moore stated our Phase I plan is already in place.

Commissioner Goodson stated the number we have to get to will not be known until 2017. If this is the case, are they going to be adjusted?

Mr. Moore stated we know what the numbers are currently on the James River and once we do this study, if this study different we will the change that number, then it will be either raised or lowered depending on what that study tells us. If we follow the plan the way it is currently set out in Phase I, we will meet that 60% goal. If we find out that changing the chlorophyll standard lowers the reductions that we have to make on the James River and throughout the state, we can make changes.

Commissioner Goodson asked what happens if you need to reduce it by 200% and we have hit 60% and so we have put all this money on the ground unnecessarily.

Mr. Moore stated it is an adaptive management plan. There are places throughout the plan where adjustments can be made. If the fertilizer bill changes and gets localities more reductions than we planned, we can make a reduction somewhere else. This is a global plan; as changes are made, we look at our successes or our failures and changes can be made to this program.

Commissioner Goodson asked for clarification regarding that we do not necessarily have to retrofit BMPs, that we can use other ways to do that. I just don't know of another way to do that. If you do, please tell us right now because if you are dealing with stormwater runoff from a locality in a neighborhood that does not have a BMP now, the only way I know to solve that is to go out and take somebody's property and install a BMP. Is there is another solution?

Mr. Moore stated this is one of the reasons why we want to expand the Nutrient-Credit Exchange Program. If we expand that program, then we want to make it so that localities or MS4s might be able to find ways to exchange credits, or buy credits, or find a lower cost way to reduce those credits. The Secretary talked to the Agriculture Committee and he mentioned that with a wastewater treatment plant, it costs about \$6 to remove a pound of phosphorous. In some cases, a stormwater facility might cost \$6,000 or up to \$35,000, with the expansion of the credit exchange program. We want to see if there are other methods you can make those reductions in a lower cost method. We are looking at new technologies and if there are new technologies available that can help make their reductions. We would consider that.

Commissioner Goodson stated the trade programs, my radar has been up those because if you have the farm lobby puts these in effect, and since I have the ability to tax my citizens and the farmers have no way of generating revenue for their solutions, the easy thing for the state to do is to say all you have to do is to tax citizens of James City County and pay a farmer up in Lancaster County and we have solved the problem. James City County is not clean at all. We are putting out the same amount of phosphorous from the start, but our taxpayers have paid for some farmer somewhere else, they have transferred the money to another problem and our county does not get cleaned up.

Mr. Moore said he hopes that you would participate in expanding that program. We are looking at having a Stakeholder Advisory Group that will meet sometime in April. We will be looking at how to expand that program so that everyone can benefit from buying and selling credits.

Mayor Hunt wanted to know how to get on the Stakeholder Advisory Group.

Mr. Moore stated we are currently inviting people to participate in the Phase II Stakeholders Advisory Group. We have membership from the PDCs on that group. The James River study, we have invited scientists to participate; we have not developed a Stakeholders Advisory Group. The state sent letters out from my office to invite people to participate and if they interested. If not, we will have a small group of people to help participate; we want small groups, but have people that can represent large entities, that is why we asked members from the PDCs to participate on some of the Advisory Groups.

Mayor Hunt stated from his answer Mr. Farmer is on the Stakeholder Advisory Group.

Mr. Moore stated he did not have the list of people involved, but I know that there are representatives from local governments; there might be people from VACO, or VML. On the Phase II Stakeholder Advisory Group, there are a number of representatives from PDCs and some people are carrying double duty with some of the Stakeholders Advisory Groups.

Mayor Hunt asked is there anybody from the HRPDC involved in a Stakeholder Advisory Group.

Mr. Farmer stated it is a staff level as we understand from Mr. Moore. We have one or two staff members that will participate. The list includes Northern Virginia, Thomas Jefferson,

and Hampton Roads which in my view, we still need to expand that group. HRPDC is on the original list of three.

Chairman Clark asked is it just for staff; are there any elected officials involved in this group?

Commissioner Kearney asked can cities volunteer a staff person to serve or are you going to keep it at a higher level?

Mr. Farmer stated the advice from Mr. Moore was to keep it small, but represent large.

Mr. Moore stated notices will be sent to entities that are interested and they can participate in the meetings, but we would like to keep that Stakeholders Advisory Group small. The group will have a six month timeframe to complete these projects, so I would like to have a group that will work fast and efficiently but still can represent the localities no matter how large or small.

Commissioner Tuttle stated there are many of our localities have a lot of property that is owned by the federal or state government in their jurisdictions. His question is how will the federal and state agencies be held accountable for their part in this because they are not accountable to local government.

Mr. Moore stated there are certain portions of the plan where state governments will have to participate. State owned land have to have their nutrient management plans. The federal government, federal facilities, there is an Executive Order that tells the federal government what they need to do to participate in this program. The state wants the federal facilities to help in participating by reducing these loads. So again, this is a global program where everyone participates and state and federal authorities will be making reductions on the lands that they own.

Commissioner Tuttle asked do the state or the EPA have authority if we get to the backstop phase to mandate those expenditures from the state or the federal agencies as they would conceivably be as unfunded mandates to local government.

Mr. Moore stated the state would use authorities they already have. I cannot speak for EPA. The backstops were originally supposed to affect the states in developing their Phase I plan. The state has a Phase I plan that is completed and has been signed off by EPA. I do not anticipate the EPA will come to the states and ask for backstops. What the state and the federal government would do, as we move forward and you don't make the goals, they would use whatever authorities they already have to try and get the localities to meet their allocation goals. There are some new programs that have evolved, but I do not think the state will use any additional regulatory authority or backstops to force a locality to meet these goals. There is MS4 program and a stormwater programs. DEQ has their authorities and he does not anticipate they would try and do anything differently to meet our goals.

Commissioner Bellitto asked who gets credit if the federal facility develops a nutrient management plan. Is it the locality where that facility is located or is there a separate allocation for that federal facility?

Mr. Moore stated he would assume it would be counted in that area because the Phase I plan is developed on sub-watersheds wherever that facility would be they would get credit for that area.

Chairman Clark thanked Mr. Moore for his presentation.

Chairman Clark stated the next agenda item is for a closed session; however there is no need for a closed session and with the Commission's permission, we will ask Mr. Evans from McGuire Woods to speak.

LEGAL ASSESSMENT OF THE CHESAPEAKE BAY TMDL

Mr. Evans stated he would give brief background before he talked about the content of the letter from comments that the commission submitted on the draft TMDL.

The Commission submitted comments on the draft TMDL that raised a number of issues and concerns that covered a broad range of items from EPA's failure to provide adequate notice, the opportunity to comment on the draft TMDL, the accuracy of the model, the model inputs they use to develop the draft TMDL modeling based upon the chlorophyll A standard, and EPA's authority to set the 2025 deadline in the TMDL. EPA and the state did increase the allocations for the MS4 for the James River Watershed in the final TMDL which in turn reduced the extent of the impervious area that had to be treated and thereby lowered the overall cost of the TMDL. They did not respond to the issues and concerns that were raised by the Commission in its comments. We have an additional issue that was not before us at the time of the draft TMDL because it involves EPA's addition of individual waste load allocations for the Phase I MS4s, those are the larger Phase I MS4s. There are six of them in the Hampton Roads region. EPA added those in the final TMDL without including them in the draft TMDL so the Commission did not have the opportunity to comment. In addition to the issues that were raised by the Commission in its comments on the draft TMDL we have an additional issue associated with the establishment of individual waste load allocations for the Phase I MS4s.

The Commission has a letter addressed to EPA and I have been asked to present this with a follow up discussion. The issues that the Commission raised in the comments together with the issue that was presented by EPA having added the individual waste load allocations for the Phase I MS4s. Based upon our assessment, we have three issues that have the potential to expose the region's MS4s to significant liability for failure to comply with their permits. Despite their best efforts to comply we believe because of that, these should be considered significant issues of concern among the larger group of issues upon which you commented and those issues are identified.

Mr. Evans stated he would give a quick summary of what those major issues of concern are because they are the prelude or the context to the questions that we have outlined in the letter that we would like to propose to the EPA. The first issue involves the land use data that was used to provide the region's MS4 waste load allocations. The MS4 waste load allocations are land-based sources of nitrogen, phosphorous, and sediment. Because of that, the waste load allocations are based almost entirely on land use data and it is critical that land use data used to derive the waste load, allocation be as accurate as possible. Putting our comments together, we did an analysis of representative GIS data from various localities in the Hampton Roads region because EPA used satellite imagery to derive their waste load allocations in the course of developing the draft TMDL. It showed the inputs to the model underestimated the extent of the imperviousness in the Hampton Roads region by approximately 48% and was due in large measure to the fact that EPA used satellite imagery that was available at the time rather than working with the MS4 localities in the region to derive the allocations based upon the GIS data. As Mr. Corbin and Mr. Moore mentioned, EPA has acknowledged that the data is not correct and they both said that during the Phase II process they are going to be updating the data, correcting the data in an effort to come up with more accurate land use data upon which to base the waste load allocations at the conclusion of the Phase II process. It does not appear EPA has made any commitment at all to go beyond satellite imagery and instead does not intend to use the most accurate information available which is the GIS data. The fear is that even though during the Phase II process the data will be updated with new data, satellite imagery data, it will still not be accurate because it is not based upon the GIS data.

Commissioner Kearney asked if there a way, since we are talking about the cooperative effort, that you can intercede to get that data that comes from each one of the localities to provide to EPA.

Mr. Evans stated yes, that is one of the reasons we are raising this issue now and posing a series of questions to EPA is to begin that dialogue and to take advantage of the opportunity during the Phase II process to see that the waste load allocations are updated with the best available GIS data from the individual localities within the Hampton Roads region. This is a significant issue because the implications of underestimating the imperviousness of the land area are significant because it means that the localities would have to treat more area than is reflected in the waste load allocations and that, in turn, has potentially serious implications for not only the cost of compliance but also the MS4s that are ready to comply with the permit because if they have to meet a 2025 deadline based upon assumptions about the extent of imperviousness that they have to treat and if in fact the extent of the imperviousness is greater than what is reflected in the waste load allocations then not only will the cost be greater than assumed at the outset of the process but it also means that they are more unlikely to be unable to comply with the 2025 deadline to treat the full extent of imperviousness required to comply with the allocations. That is why that is a significant issue it goes directly to, ultimately to the ability of the MS4s to comply with the permits despite their best efforts to do that by the 2025 deadline. That is why we have identified this as a very significant issue. The second issue involves the addition of individual waste load allocations for the Virginia Phase I in the final TMDL.

Commissioner Shepperd stated he had not completely read the letter but Mr. Evans have raised the issue so are we going to ask the EPA to address this. Are we going to say this is a problem? We want to use good data.

Mr. Evans stated there are a series of questions dealing with all three of these issues, but among the questions to EPA are do they intend to use satellite imagery as part of the Phase II process to update the MS4 waste load allocations or do they intend to work with the localities towards gathering the available GIS data and input that information into the Phase II process so we get the most accurate waste load allocations possible?

Commissioner Shepperd asked do we need to ask question about this letter as there is a EPA representative there.

Mr. Evans stated if Mr. Corbin will answer the questions today, we have it on video, we can take it out of the letter.

Mr. Farmer stated in reference to Mr. Shepperd's question, in fairness to EPA, he thought Mr. Corbin would agree it would be a cooperative effort. Some of the localities, Dave Evans and HRPDC staff have talked about this and some of our localities have this information, some do not. EPA will accept Mr. Evans' comments in this letter as something they would work on with us. We also need to step up and have some of this work done and made available in a timely fashion so EPA could then consider it and have it implemented.

Mr. Evans stated that was a very good point because EPA is not in a position to simply gather the data themselves. It is going to require a cooperative effort on the part of the MS4 and EPA and the state to gather this data, input it into the process and make sure that at the end of the day when we complete Phase II process, EPA has the most accurate waste load allocations possible. He was glad to hear EPA agreed to push back the date scheduled for the Phase II process because this is going to take some time. It is absolutely critical. If you don't have accurate land use data for an MS4 control program you are operating in the dark.

Commissioner Shepperd said the statement in the letter addresses the MS4, not all the localities are under the MS4 permit. York County is one of them. If EPA is going to use the impervious surface to make the determination of our TMDL; why is it just the MS4s? What if I want to give them the right data to give us the correct loads that are needed?

Mr. Evans stated Mr. Shepperd was correct, however we are focusing on the MS4s; accurate land use data is important for all localities whether they are MS4s or not. Most of the localities in the region have areas within the jurisdictional boundaries that are not within an MS4. The point is the same.

Commissioner Shepperd asked why we don't just point that out in the letter.

Mr. Evans stated if EPA were to agree to work with the localities to update the waste load allocations based upon the best available GIS data, then that agreement would extend to all the localities wanting to participate in that cooperative effort. The reason we are focusing

on it for the MS4s is simply because MS4s are regulated under federal law. If you are not part of an MS4 you are not part of the federal regulatory program at least as far as your stormwater is concerned for existing development. What we are concerned about are the ultimate consequences of having these waste load allocations incorporated into the MS4 permit, being federally enforceable, and then the compliance consequences that flow from operating an MS4 program based upon inaccurate data.

Commissioner Shepperd asked if Mr. Evans was making the assumption that EPA is going to extend this into the rest of the operation.

Mr. Evans stated if that is a concern, then we can certainly make it clear.

Mr. Shepperd stated it would take it out of the assumption phase and gets it right into the question. If we get an answer from EPA we will know where we are going.

Mr. Evans stated the second issue relates to the EPA having included the individual waste load allocations for Phase I MS4s in the final TMDL. EPA added after the draft TMDL was noticed so we really did not have an opportunity to comment. Because we did not have an opportunity to comment, we really do not know the underlying basis for it. EPA did not explain in the final TMDL document how the individual usage of allocations was derived. What the basis for the allocations were and why they established individual allocations in the first place is particularly significant since it has been generally agreed by EPA, the states, and the participating localities that there simply was not enough information available during the Phase I process in order to establish reasonably accurate and reliable individual allocations. We are absolutely astonished that EPA would establish individual allocations.

Mr. Evans stated if the allocations do stay in the final TMDL after the conclusion of the Phase II process, EPA will then insist that the Department of Conservation and Recreation include those individual waste load allocations in the Phase I MS4 permits when they are re-issued. If the allocations contain inaccurate data and if in fact they are included within the MS4 boundaries areas that are beyond the regulatory authority of the scope of the MS4 program, then that poses a very serious risk to those MS4 localities, and ultimately they will not be able to comply with their permits. A recent decision out of the Ninth Court of Appeals through California held the City of Los Angeles liable for all discharges that occurred from the MS4 system even though those discharges originated in parts of the regional counties that were not under the City of Los Angeles' control. We have areas included in these Phase I MS4 waste load allocations that these jurisdictions have no regulatory authority over. They are going to be held responsible over activities that they do not control. The consequences of having derived these waste load allocations in the way they have are significant in terms of future liability for the Phase I MS4s. Mr. Corbin stated it is an issue still in discussion and I think I may have heard him even say they decided to take them out, go back to the aggregates and if in fact that is the case, we will confirm it, and then we will remove it from the letter. Hopefully, it will come out and will become a non-issue, but if it stays in, they stay in there. We think it is a very serious issue.

Chairman Clark stated that was one of his concerns. Forbearance is a two way street. EPA has fines and injunctions and all kinds of legal remedies at the tail end of this. Nobody wants to sue anybody and nobody wants to get fined at the end of this either.

Mr. Evans stated the final issue concerns the 2025 deadline and from the comments on the draft TMDL, the Commission took the position that EPA did not have the authority to include a deadline in the TMDL. The comments the MS4s are uniquely affected by the deadline because unlike other land based sources, such as agriculture and septic systems, they are regulated under the federal Clean Water Act. Unlike municipal waste water treatment plants or industrial waste water treatment plants, the challenges they face to implement and achieve compliance with waste load allocations are far more significant than any other source sector. We all recognize that achieving these allocations is going to require widespread implementation of best management practices, not only on public land, but on private land as well. We would all agree that these retrofits can be implemented on a cost effective basis if they are done as redevelopment occurs and are imposed through local government zoning and land use approval process. With the 2025 deadline, redevelopment simply does not occur at a rate that would allow the retrofits to be implemented on private land at a rate sufficient to meet the 2025 deadline. The concern is that it will require these localities then to acquire easements, stormwater retrofit easements on private property, either by acquisition or condemnation. It poses potentially serious long term consequences, not only in terms of the cost of implementing the measures needed to achieve the waste load allocations because not only do the localities need to install, operate and maintain best management practices on public property, but they also have to acquire by easement or condemnation the stormwater retrofit easements on private property and install and operate the retrofits themselves. The concern is the cost of acquiring those retrofits could equal, if not exceed, the actual cost of installing the BMPs, and acquiring the land, particularly by condemnation is a very lengthy and time consuming process. That calls in question whether the localities would be able to acquire enough land, install enough BMPs, and retrofits in order to meet the 2025 compliance obligation. This gets translated into permit obligations and can the localities reasonably expect to achieve that. We believe the concerns are legitimate.

Commissioner Shepperd said we basically did not like the 2025 deadline; it is too stressful a deadline. What are we telling them we like? What is acceptable?

Mr. Evans stated the comment raised a pure legal question does EPA have the authority to impose any deadline at all, whether it be 2025 or some other deadline? The point he was going to get to is that it is difficult at this point, even though we can certainly have concerns about the ultimate consequences of that. We do not know what the consequences of that will be until we see how these permits are written. All of this gets translated into the Phase I and Phase II MS4 permits. We know that the Department of Conservation and Recreation has started the process of issuing the MS4 permits. They are in discussion with the County of Fairfax. There is some indication from what we have seen so far in those discussions that DCR and perhaps EPA are looking to include Phase I waste load allocations into those permits and possibly implementation schedules designed to achieve those waste load allocations by 2025. There are a number of things in the works now which could

conceivably affect the ultimate impact of that deadline. Mr. Moore talked about the trading program. It certainly is one possible way to deal with the easement acquisition issue that I have talked about and whether or not in fact it will be the ultimate solution to the kinds of threats that I see with the imposition of the deadline remains to be seen.

At this point, I would say these are legitimate fears, legitimate concerns; whether they are well founded, remains to be seen. We are raising these concerns, not so much because we are able to predict the future, but because there is a lot of information that we do not have right now. We do not know what EPA's expectations are with respect to the Phase II Watershed Implementation Plans and perhaps more importantly, we do not know what EPA's expectations are with respect to how these MS4 permits that have to be written in order to provide for the assumptions and requirements in the TMDL. If EPA is going to take the position that each and every MS4 permit has to meet its waste load allocations and it has to be on a schedule to accomplish that in incremental phases and achieve that by 2025, there really are not any viable alternatives, such as trading, or other options available to the localities in order to achieve that, then it is going to present some very serious compliance problems for the localities. At this point, it appears that DCR is moving forward with the re-issuance of the Phase I MS4s, we have not finished that process. We are talking and relying extensively on a trading program to comply with these obligations or any other measures that might ultimately come out of the Phase II process that may be approved by the General Assembly in 2012; they are not here yet. We are faced with the prospect of having permits issued before we have had a chance to put into place the various measures that have been addressed this morning that are designed to provide for cost effective compliance for flexibility, more meaningful solutions to enable these MS4s to achieve their compliance obligations by 2025. The timing in all this is critical and one of the questions that we have for EPA, perhaps ultimately for DCR because they work together on this, then is what is the relative timing between the re-issuance of the Phase I MS4 permits that will include TMDL derived permit conditions and the conclusion of Phase II process and putting in place the various mechanisms such as expended point and non-point source trading program. What is the relative timing on those things so that we can have some assurance that there are options available other than going out and undertaking widespread condemnation in order to acquire the property to retrofit BMPs, stormwater BMPs on private property?

Commissioner Shepperd asked if MS4 communities are already under consent order or is MS4 part of a consent order.

Mr. Evans stated no.

Commissioner Shepperd asked they are not under a consent order for the sewer systems?

Mr. Evans stated no, and one of the larger concerns is if we do not do this right, you are going to have the entire MS4 system in the Hampton Roads region under a consent decree.

Mr. Evans stated he would hope neither the environmental community nor the governments want to end up there but if we are not careful, and do not deal with these

issues before this TMDL process is concluded, we may be on a path towards a regional consent decree that covers all the stormwater systems in Hampton Roads.

Commissioner Shepperd stated he thought we were under a consent order for sewers already.

Mr. Evans stated we are.

Mr. Evans stated these concerns may represent the worst case scenarios, we are not sure, and we simply do not have enough information with respect to what EPA's intentions are. In order to advance a cooperative working relationship with EPA and DCR and to make sure that we all get to the same place we want to and not expose these MS4s to unreasonable liability, what we would like to do is to pose a series of questions to EPA. If EPA will respond to these questions completely, then we will have a lot more information than we have now. We can make a better assessment of what the potential and likely consequences of these issues and concerns are and can better advise you on what if anything you want to do in response to that.

Commissioner Goodson stated in the previous meeting, one of the other questions about the chlorophyll A and the James River and how it related. The question is does it actually relate to the dissolved oxygen levels in the bay? It is not addressed in this letter or did staff decide that was not a real issue?

Mr. Evans stated we did not think it was characterized as a significant issue of concern largely because the state and the EPA have agreed to conduct a study to look at whether or not the chlorophyll A standard needs to be changed as Mr. Moore stated, and I think the resolution on that issue will come out of the results of that study. There is little that we can do at this stage of the TMDL process that would affect the outcome of that process, we did not feel that it would be particularly productive to dwell on the chlorophyll A issue in this letter to EPA.

Commissioner Goodson stated it is probably more of a concern for the James River localities.

Mr. Evans stated he and the staff developed the letter for all consideration as part of the deliberations connected with the TDML, and they are prepared to make any modifications to it as appropriate.

Chairman Clark thanked Mr. Evans.

Mr. Farmer stated in light of Mr. Shepperd's earlier remarks to modify the letter we would say under item 1A, second paragraph, staff would suggest where it says, "the implications of underestimated imperviousness are significant because it means that the" and we would insert 'Hampton Roads localities including the' in front of "MS4 localities...etc." so there is no misunderstanding, that it applies to everyone. The simple modification should take care of it.

Mr. Farmer stated this has been a long meeting. The HRPDC staff's perspective is to get your authorization to have the Chairman sign this letter, as modified that is addressed to Mr. Corbin of EPA. The HRPDC staff would like to say thank you, Mr. Corbin who was very gracious to adjust his schedule to be here, and thank you Mr. Moore and Mr. Johnson.

Chairman Clark asked for a motion to approve the authorization of the Chairman to sign the letter addressed to EPA as modified.

Commissioner Shepperd Moved to approve the authorization of the Chairman to sign the letter addressed EPA as modified; seconded by Commissioner Kearney. The Motion Carried.

Chairman Clark stated he would like to thank all of our distinguished guests and speakers. He appreciated the candor and efforts to come here and we appreciate all that you do for your country and your state.

Mayor Krasnof stated before you adjourn he thought would it be appropriate to ask our state legislators because being on the Transportation Planning Organization they want to be at the table to hear our concerns because sometimes just by hearing the dialogue as opposed to long distance. He keep hearing the word "unfunded mandate" and let them at least hear the concerns. We certainly feel compelled to invite our legislators from all our localities to come to the table to hear this because I appreciate the EPA and the state being here, and if they heard it they would have the letter already. It would be the same for our legislators, so would that be an unreasonable request.

Chairman Clark stated he thought it is great idea.

Mr. Farmer stated HRPDC staff will copy all of Hampton Roads General Assembly Legislators, the Board members of the Commission, copies in the Secretary's office, and Mr. Moore will get a copy.

Mayor Krasnoff stated he would like them at our next meeting if we could have our legislators here.

Mr. Farmer asked Mayor Krasnoff was he suggesting we have another briefing at the next meeting in two and a half weeks.

Mayor Krasnoff stated he would leave it to the Chairperson to make that decision. He thought our legislators should be at the table to hear this because each and every one of them represents our same citizens.

Chairman Clark stated there needs to be some discussion about how we are going to do that.

Mr. Krasnoff stated that was fair enough.

Mr. Farmer stated that could be in six weeks.

Chairman Clark stated this has been a long meeting spent on an important topic about the bay and the potential cost to all of our citizens for this cleanup. I appreciate your time and efforts.

ADJOURNMENT

With no further business to come before the Hampton Roads Planning District Commission, The meeting adjourned at 12:30.

Stan D. Clark
Chairman

Dwight L. Farmer
Executive Director/Secretary