

Chesapeake Bay Watershed Agreement

Issue: TMDL/WIPs, stormwater, agriculture and air deposition source sectors

Updated April 10, 2014 (for PSC meeting discussion)

IRC recommendations for PSC are highlighted in yellow below.

Current Language

Excess amounts of nitrogen, phosphorus and sediment in the Bay and its tributaries have resulted in many portions of the Bay being listed as "impaired" under the Clean Water Act. Restoring these waters is critical to overall Bay watershed restoration because clean water is the foundation for healthy fisheries, habitats and communities across the region.

Goal: Reduce pollutants to achieve the water quality necessary to support the aquatic living resources of the Bay and its tributaries and protect human health.

2017 Watershed Implementation Plans (WIP) Outcome: By 2017, have practices and controls in place that are expected to achieve 60% of the nutrient and sediment pollution load reductions necessary to achieve applicable water quality standards compared to 2009 levels.

2025 WIP Outcome: By 2025, have all practices and controls installed to achieve the Bay's dissolved oxygen, water clarity/submerged aquatic vegetation and chlorophyll a standards as articulated in the Chesapeake Bay TMDL document.

NOTE: On its March 26 IRC call, the IRC had consensus on the issue of whether to maintain the current 2017 and 2025 WIP Outcomes in the final Agreement; the IRC recommended no change to the current outcomes. This issue paper focuses on the other TMDL related issue in the public comments related to the need for the Agreement to specifically address certain source sectors, especially agriculture and stormwater.

Options

- 1) **Status Quo:** Maintain current language and make no specific mention of stormwater, ag or other source sectors in the final Agreement.
- 2) **Develop separate sector-specific outcomes** under the WQ goal. These could be developed for ag, stormwater and possibly other source sectors (e.g., air deposition).
- 3) **Add a new sentence to the existing introductory language for the WQ Goal:** The sentence could read something like: "Excess amounts of nitrogen, phosphorus and sediment in the Bay and its tributaries have resulted in many portions of the Bay being listed as "impaired" under the Clean Water Act. The Chesapeake Bay Total Maximum Daily Load (TMDL) is driving nutrient and sediment reductions as described in the Watershed Implementation Plans (WIPs) adopted by the states and the District of Columbia and establishes the foundation for water quality improvements embodied in this Agreement. *These plans set nutrient and sediment reduction targets for various source sectors -- stormwater, agriculture, air deposition, waste water, septic and other onsite wastewater treatment systems.* Restoring these waters is critical to overall Bay watershed restoration because clean water is the foundation for healthy fisheries, habitats and communities across the region." (VA suggested language supported by GIT 3 with sector sentence recommended by EPA added in italics)
- 4) **Add additional sentences to Option 3 language related to EPA responsibilities for air deposition reductions and Federal facilities WIP responsibilities:** "EPA also has responsibilities under the Bay TMDL for air deposition reductions to the tidal waters of the Bay. And Federal agencies with property in the watershed will provide leadership by working with the Bay jurisdictions in implementing their Watershed Implementation Plans. Federal facilities shall commit to actions, programs policies and resources necessary to reduce

nitrogen, phosphorus and sediment as set forth in the Executive Order 13508 Strategy for Protecting and Restoring the Chesapeake Bay Watershed."

Partner Comments

- **Virginia (supportive of inclusion)**
 - The Chesapeake Bay Total Maximum Daily Load (TMDL) is driving nutrient and sediment reductions as described in the Watershed Implementation Plans (WIP) adopted by the states and the District of Columbia and establishes the foundation for water quality improvements embodied in this agreement.

Public/Stakeholder Comments

Supportive of TMDL/WIP Inclusion, Additional Details to Add:

- **Chesapeake Bay Foundation**
 - CBF supports the existing outcomes in the draft Agreement and encourages the partners to ensure these outcomes are maintained in the final Agreement.
- **Conservation Pa, Choose Clean Water, Va League of Conservation Voters, Potomac Conservancy, Va Conservation Network, Potomac Riverkeeper, Penn Future, Allegheny Highlands Alliance, Rock Creek Conservancy, James River Association, National Parks Conservation Association, Friends of the Rappahannock, Natural Resources Defense Council, National Wildlife Federation, +more:**
 - The Final Agreement Should Preserve the Incorporation of Chesapeake Bay Total Maximum Daily Load Requirements into the Draft Agreement: continued inclusion of the existing water quality goal and outcomes is critical to securing our support for the Agreement. The 2017 and 2025 WIP outcomes are properly included in the draft Agreement and should remain in the final Agreement. Furthermore, the draft Agreement properly acknowledges that the outcomes related to the Chesapeake Bay TMDL are not subject to discretionary participation by the jurisdictions. These aspects of the draft Agreement should be preserved in the final Agreement.
- **Eastern Shore Land Conservancy:**
 - Another important piece that may be helpful would be further illustration of how the TMDL is to be maintained with the increased population that will inevitably occur. Some type of specified growth (nutrient & sediment) offset component may be necessary to adequately address the population growth that will naturally happen.

Stormwater / Agricultural BMP Support:

- **Conservation Pa, Va League of Conservation Voters, Potomac Conservancy, Va Conservation Network, Potomac Riverkeeper, PennFuture, Allegheny Highlands Alliance, Rock Creek Conservancy, Md Conservation Council, James River Association, National Parks Conservation Association, Friends of the Rappahannock, Natural Resources Defense Council, National Wildlife Federation, SELC, Sierra Club Pa Chapter, VASWCD, 70+ Individuals:**
 - The Final Agreement Should Address Polluted Runoff: The draft Agreement fails to mention polluted runoff, let alone set outcomes for reducing it. An outcome related to reducing polluted runoff would fit either within the "Water Quality" or "Land Conservation" goals.
- **Congressman Sarbanes:**
 - In order to effectively address the greatest looming threat to the Bay - polluted stormwater runoff - we must tap the energy of the millions of people who live in the Bay watershed & provide them with meaningful opportunities to contribute to Bay restoration effort. The Partnership should include goals and outcomes related to engaging individual homeowners ... with opportunities for participating in nutrient and sediment runoff reductions ... 2/10/14 CBP final approval of Urban BMP Protocols to Credit Nutrient Reduction Associated with

Installation of Homeowner BMPs. I strongly encourage the partnership to incorporate these strategies into the final agreement

- **Public Individuals:**

- Stormwater management and pollution created through runoff have in many cases been dealt with by local government, yet this document fails to address. This is something that should be addressed in the water quality section.
- MS4 Permits must remove turf grass from the MDE and local Departments of Permitting Services list of effective stormwater management vegetation.
- Curb the nutrient pollution from agricultural and home sources, including poultry and livestock farms and the lawns at homes, golf courses and institutions.
- There is no mention of atmospheric (air) deposition within this agreement. Since this is a large source of pollutants to the Bay, why is there no mention here or a stated goal?

Center for Progressive Reform: The failure to hold agriculture accountable for its share of the pollution unfairly shifts the burden to taxpayers and other polluting sectors. ... The final Bay Agreement should hold agriculture equally accountable across state lines.

- **Public Individuals:**

- The WIP budget of \$14.4 billion, where a mere \$928 M is allocated to agriculture that according to the CBF contributes 41% of the pollution while septic systems contribute 3% of pollution but are allocated \$3.7 billion, these allocations should be switched with ag getting a larger share of resources.
- The only way to save the bay is to put real teeth in legislation that forces states and communities to reduce NPK and designer chemicals
- There should be specific goals to provide more technical assistance (NCRS) to advise farmers, and on-ground monitoring of farm nutrient management plans
- Focus on synthetic chemicals of large scale farms, less regulations on small organic farmers or famers using manure

Against TMDL/WIP Inclusion, Litigation Issue, Preserve Agriculture Business

- **Virginia Grain Producers**

- In citing the Chesapeake Bay Total Maximum Daily Load (TMDL) under the water quality goal and management strategies, the draft Agreement language clearly aligns itself with EPA's position that Section 117(g) of the Clean Water Act provides EPA the authority to enforce these goals. VGPA firmly believes the TMDL goes beyond the scope of the authority of the Clean Water Act and we object to including this disputed authority within the Chesapeake Bay Agreement. ... A successful approach would allow for the flexibility necessary to let states pursue water policies in a manner and approach suitable for its unique circumstances. The Virginia Grain Producers Association does not believe it makes sense for states to simply hand over this prerogative, authority, and lead role to the EPA.

- **VAMWA/MAMWA**

- We are concerned that the statement of timing aspects in the Water Quality goal may be detrimental to efforts to hold the Chesapeake Bay TMDL intact in ongoing litigation. We are concerned that the document reads like a deadline ("by 2017" and "by 2025") without properly characterizing these dates as "targets" consistent with EPA's own argument. We urge the Partnership to make the "target" versus "deadline" issue clear in the agreement before it is finalized and potentially used against EPA in the pending litigation.

- The document provides that signatories are not allowed to abstain with regard to matters “required by law” and related to the Water Quality Goals. VAMWA reiterates its concern that the Bay Agreement must not in any way hamper state statutory approaches, state regulatory programs that have been lawfully promulgated subject to the public safeguards of administrative process laws, or various voluntary initiatives in a given state.
- **Pa Farm Bureau**
 - The draft final Chesapeake Bay Watershed Agreement appears to be intended, in large part, as a vehicle to transfer additional authority over land use and other decisions to the federal government—authority that the Clean Water Act properly and pointedly reserves for state and local governments.
 - While the draft document gives substantial attention to the goals of promoting maritime commerce, preserving wildlife habitats and expanding recreational opportunities in the Bay watershed, we continue to be concerned about its lack of insight into its intended future effects on agriculture.
 - Any changes to the Chesapeake Bay Agreement must protect and enhance the future viability of agricultural operations in Pennsylvania...

Background

- The Water Quality Goal and Outcomes align with those of the Bay TMDL and Executive Order Strategy.
- The Bay jurisdictions’ WIPs have specific nutrient and sediment reduction targets for specific source sectors (e.g., stormwater, agriculture, air deposition, wastewater, etc.) consistent with the December 2010 Bay TMDL allocations.
- As the agreement was drafted, it was determined that each jurisdiction’s WIP will be used as the basis for the management strategies for the 2017 and 2025 WIP Outcomes.