

Final Recommendations of the Local Planning Goals Task Force

Introduction:

This document serves as a framework of the key questions and options that the Local Planning Goals Task Force (Task Force) recommends¹ that jurisdictions consider when developing their Phase III Watershed Implementation Plans (WIPs). The charge given to the Task Force by the Water Quality Goal Implementation Team (WQGIT) poses three primary questions: 1) should the Phase III WIPs include local planning goals; and 2) if there are local planning goals, what are the options for the scale of the goals; and 3) how these goals could be expressed in different jurisdictions. In order to provide jurisdictions with the flexibility to develop plans that fit their needs, this paper presents options for how a jurisdiction could define “local”, and what is meant by a goal. Below is the full charge to the Task Force as well as the Task Force’s recommendations.

Task Force Charge² - as Assigned by the WQGIT

“To make recommendations to the Water Quality Goal Implementation Team (WQGIT) regarding whether the Phase III WIPs should include local area planning targets³ (LAPTs) and, if so, options for how these targets could be expressed in different jurisdictions. The Local Area Planning Targets Task Force (Task Force) will address findings from the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) Stakeholder Assessment, including the goal of raising awareness of local partners’ contribution toward achieving the Bay TMDL; the technical capacity of the Chesapeake Bay Program’s Phase 6 modeling suite; how local implementation addresses local conditions, needs and opportunities, such as local water quality; and the availability of tools to assist in the development and optimization of local implementation strategies. The Task Force will review the efforts of some jurisdictions to develop LAPTs as part of the Phase II WIPs and recent work to establish federal facility targets. Task Force recommendations will be presented as part of the development of the Phase III WIP expectations by EPA.”

What is meant by goal?

A local goal helps the states achieve their WIPs and helps local partners better understand their expected contributions. Such a goal may be established at various scales and expressed in a variety of ways, to be determined by the jurisdictions, based on the recommended options provided by the Task Force (see Questions #2 and #3).

How do local planning goals support the Bay TMDL processes?

In 2010, EPA established the Bay TMDL that identifies the necessary pollution reductions of nitrogen, phosphorus and sediment across the seven Bay watershed jurisdictions of Delaware, District of Columbia, Maryland, New York, Pennsylvania, Virginia and West Virginia to meet applicable water quality standards in the Bay and its tidal waters. The 2010 Bay TMDL established wasteload allocation (WLAs) and load allocations (LAs) for point sources and nonpoint sources of pollution, respectively. Point sources, in this context, include all sources subject to regulation under the National Pollutant Discharge Elimination System (NPDES) program (e.g., wastewater treatment facilities, some stormwater discharges and concentrated animal feeding operations). Local planning goals are not WLAs and therefore are not directly applicable to NPDES permitting.

The WIPs, developed by the seven Bay watershed jurisdictions, provide a roadmap for how the jurisdictions, in partnership with federal and local governments, will achieve the Bay TMDL’s nutrient and sediment allocations.

¹ Please see Appendix A which includes comments from Task Force members on this final recommendations document.

² To access the full charge, see

http://www.chesapeakebay.net/channel_files/23900/local_area_targets_task_force_charge_2.24.16.pdf

³ The Task Force changed “targets” to “goals” in order to better reflect the range of options of how these goals could be defined.

The jurisdictions are expected to develop WIPs over three Phases. The jurisdictions submitted Phase I and Phase II WIPs to EPA in 2010 and 2012, respectively. In 2018, the seven Bay watershed jurisdictions will develop Phase III WIPs that provide more information on what actions the jurisdictions intend to implement between 2018 and 2025. As part of the accountability framework established in the Bay TMDL document, jurisdictions also establish short-term goals in the form of two-year milestones, which are based on the WIPs and have been reported to EPA since 2011. The milestones are intended to demonstrate the effectiveness of the jurisdictions' WIPs by identifying specific near-term pollutant reduction controls and a schedule for implementation.

EPA conducts oversight of WIP implementation and jurisdictions' progress toward meeting two-year milestones, as part of the Bay TMDL's accountability framework. If progress is insufficient, EPA may take federal actions that would assist the jurisdictions in improving progress in meeting their goals⁴.

The WIPs and two year milestones provide confidence that the Bay TMDL will be implemented. Local planning goals could be used to strengthen that confidence since local partners will carry out many of the implementation efforts. The development of local planning goals could lead to the development of more meaningful strategies for incorporation into the Phase III WIPs.

EPA expects the jurisdictions to work closely with their respective local partners in the development and implementation of these local planning goals. It is up to each jurisdiction to decide how to track and report progress towards achievement of local planning goals through their two-year milestones and/or annual progress reporting to EPA. In no way do the planning goals supersede or modify, jurisdictions' obligations under statutes, regulations, policies, or executive orders. These recommendations do not establish any new requirement or rights for the jurisdictions or its local partners.

Task Force members have expressed their concern that establishment of local planning goals could imply the subsequent delegation of responsibility for achieving those goals to the localities. The Task Force members also expressed concern that local, state and federal statutory and regulatory requirements could influence the implementation of local planning goals. Task Force members questioned whether local planning goals could subject localities to new or more stringent WLAs, permit limits, or other related enforcement by EPA. The Task Force, therefore, recommends that EPA directly address these questions and concerns in the Phase III WIP Expectations document. The Task Force requests EPA specify in the Phase III WIP Expectations document that in no way do the targets supersede or modify locality obligations under statutes or regulations, that local planning goals do not establish any new requirement or rights for localities, and that decisions regarding how local stakeholders may be involved in achieving local planning goals will remain with the jurisdiction.

What benefits could local planning goals provide?

There are many ways in which jurisdictions and their local partners could utilize local planning goals to enhance planning, communication and expectations. The ultimate objective is for the development of local planning goals to lead to the development of more meaningful local strategies for incorporation into the Phase III WIP. Because of the varied nature of the local government structure across each jurisdiction, local planning goals may address different needs and provide different benefits to each partner. Below, the Task Force has listed several

⁴ Federal actions include expanding coverage of NPDES permits to sources that are currently unregulated, increasing oversight of NPDES permits and requiring additional pollutant reductions from point sources. Other federal actions include increasing federal enforcement and compliance, prohibiting new or expanded discharges, redirecting EPA grants, and revising water quality standards to better protect local and downstream waters. All of these federal actions are based on existing EPA authority under the Clean Water Act.

ways in which local planning goals could be effectively used to enhance implementation efforts and provide benefits to both the jurisdictions and their local partners.

1. In some instances, a local partner may wish to better understand their role in helping the jurisdiction meet its TMDL requirements. In this case, the jurisdiction could work with that local partner to develop a local planning goal, so they understand the suite of BMPs upon which they should be focusing their implementation efforts, and how much additional implementation is needed from their local area in order for the jurisdiction to meet its TMDL requirements.
2. In another instance, a state jurisdiction may be seeking to find the most cost-effective way to meet its TMDL requirements. They might identify the highest loading geographic areas or source sector, and work with their local partners in those areas to develop local goals in order to better understand the resources needed in order to meet those goals. This benefits both the jurisdiction and the local partners by providing a cost-effective implementation approach to the jurisdiction and more targeted resources for local partners who may otherwise be resource limited.
3. Implementation of local planning goals can also serve to advance other restoration priorities that have co-benefits beyond Chesapeake Bay water quality improvements such as flood control or habitat improvement, and reflect local needs and concerns.
4. While the Task Force does not recommend that local planning goals be enforced through federal action, establishing local planning goals could also help ensure equity across the source sectors in both regulated and unregulated communities by establishing clear goals in areas where they had not previously existed.
5. Local planning goals can also enhance local citizen and other volunteer engagement in local needs and concerns as well as Chesapeake Bay water quality improvements by offering a better understanding of the suite of BMPs necessary to address water quality needs and progress toward meeting local and regional goals.

Question #1: Should the Phase III WIPs include local planning goals?

The Task Force recognizes the intent of the WQGIT that local planning goals should be established by each of the seven Chesapeake Bay jurisdictions at a scale below the state-major river basin. The Task Force further recognizes that due to the varied nature of local government structures (including soil & water conservation districts) across the Chesapeake Bay jurisdictions, one size will not fit all with regard to the development and implementation of local planning goals. Accordingly, the Task Force recommends that local goals be established in partnership with their local and regional partners, stakeholders and federal and state facilities, at a scale below the state-major river basin, using the options provided for “local” under Question #2. Providing such flexibility will allow the jurisdictions to design Phase III WIP planning and local engagement processes that are best suited to them and their partners. Doing so will facilitate “buy in” from local partners because they will have been involved with a key decision relating to the Phase III WIP planning process. In addition, each jurisdiction should also have the flexibility with regard to how local planning goals are expressed, using any one or more of the ways defined by the Task Force under Question #3. As an example, a jurisdiction may identify a “high load” sub watershed that is contributing high nutrient and sediment loads from the agricultural source sector and establish goals expressed as needed agricultural BMP implementation for soil & water conservation districts in that watershed. That same jurisdiction may establish state-wide programmatic stormwater requirements, or strategies to reduce loads from the urban source sector.

The Task Force further recommends that jurisdictions consider the following factors when developing local planning goals:

- How would the state work with their local partners to established local planning goals that are realistic and achievable?
- What resources would the state and local jurisdictions need to establish local planning goals and to adequately implement strategies to achieve those goals?
- What programs are already in place and what programs would be developed that could improve facilitation of local partner implementation in meeting the Bay TMDL and WIP commitments?
- What tools are already available to states to focus limited resources to achieve the greatest reductions?
- How would the state help localities integrate the Bay-related goals with other local resource concerns such as locally impaired streams, local TMDLs, sea level rise, karst habitats, etc.? What would a jurisdiction need in order to provide such information to a locality, what type of staff training would be needed to enable a locality to use such tools, and how could the elected officials at the local level be kept informed?
- Have the largest sources of nutrient and sediment loads within the jurisdiction been identified, and has consideration been given to which scales might be most effectively used for addressing those loads?
- Local planning goals should be limited to a scale and source specificity that is scientifically defensible.
- How will progress be tracked, reported and evaluated?
- Would the goals be structured to aid state efforts to ensure nutrient and sediment trading programs protect local water quality?
- How would local planning goals help to ensure that the impacts of future land use decisions are properly considered so as to avoid and/or offset new loads?

Question #2: How should “local” be defined?

In order to provide flexibility to state and local partners the Task Force has developed a recommended list of options for how “local” could be defined for the purposes of establishing local planning goals. When a jurisdiction is considering these options, the Task Force recommends that consideration be given to any existing political or programmatic structures that could provide guidance and/or funding opportunities that would support implementation efforts and provide a framework for tracking progress.

1. Locality jurisdictional boundaries (city, town, county, borough, township) or collections of such sub-state political subdivisions
2. Federal facilities
3. State facilities
4. Soil & Water Conservation District (Conservation District) boundaries
5. Regional entity boundaries (e.g., planning district commissions; regional river basin commissions, utility districts)
6. Watershed or sub-watersheds of Chesapeake Bay Tributaries
7. Targeted areas with high nitrogen, phosphorus or sediment yields (loadings)
8. “Segment-sheds” as depicted in the 2010 TMDL
9. Any area (e.g., MS4), entity or political subdivision based on an identified need for pollutant reductions for a given source sector or sectors
10. Some combination of the above

The Chesapeake Bay Program’s Modeling Team expressed to the Task Force that each of the recommended options would be supported by the Chesapeake Bay Program’s Phase 6 decision support tools. While the Task Force generally supports these options, jurisdictions should maintain the flexibility to determine their respective local scale based upon the capabilities of the final approved Phase 6 decision support tools.

Question #3: How should local planning goals be expressed?

There are many options for how to express local planning goals in a way that helps states achieve their WIPs, and helps local partners to better understand their expected contributions. The Chesapeake Bay Program's Modeling Team expressed to the Task Force that each of the recommended options below would be supported by the Chesapeake Bay Program's Phase 6 decision support tools (e.g., CAST). In addition, the Task Force feels that monitoring trend data, provided to the Chesapeake Bay Program Partnership by USGS, could also be used to support the establishment of local planning goals either independently, or in conjunction with the support of the Partnership's suite of modeling tools. Goals may be expressed using any one of these options, or in some combination, but should result in measurable outcomes.

- Percentage of Best Management Practice (BMP) Implementation on land uses defined in the Phase 6 model
- Quantifying implementation goals for particular BMPs
- Programmatic Goals (e.g., ordinances with provisions for Erosion and Sediment Control, Urban Nutrient Management, post-construction performance standards) that include specific implementation, oversight and enforcement requirements
- Numeric nitrogen, phosphorus and sediment as expressed as reductions or maximum load goals
 - Numeric load goals for one or more pollutants (e.g., delivered load of 300 lbs. P)
 - Numeric reduction goals for one or more pollutants (e.g., reduce loads by 4000 lbs. N)
 - Yield based goals for one or more pollutants (e.g., 0.41 lbs. P/acre/year from developed lands)
- Pace of implementation over a certain time frame
- Percent reduction of existing loads over a certain time frame
- Percent of flow in certain tributaries/runoff captured – flow-based targets

Appendix A: Local Planning Goals Task Force Member Comments on Final Recommendations

Department of Defense

Department of Defense (DoD) abstained on Monday's LAT TF meeting until a follow up call could be scheduled to discuss DoD/EPA position alignment on a couple of issues. From our discussion this week, there was one area that did not align, and therefore am submitting the following comments on the current recommendations document. Our comment is not new and was communicated throughout LAT TF meetings and during the November Management Board meeting.

Our position continues to circle back to fair implementation requirements and equitable distribution of loads. It is our understanding that local area planning goals would essentially be the total aggregate of the major state river basin's load. A baseline or minimum threshold for local area planning goal development should be established in order to ensure equity for all sources.

The scale at which a federal facility target and local area planning goal may be different (i.e. size, multiple political boundaries, etc.), but the methodologies to determine reductions must be consistent and equitable between the two. We certainly acknowledge methodologies can vary based on the jurisdiction and understand flexibility is necessary among the states. However, flexibility may allow for inequity. Therefore, numeric or implementation based goals need to be developed per "local area" with each state particularly if federal facility targets are going to remain intact and maintain momentum through 2025.

DoD provides the following language for consideration: "When EPA or the Jurisdictions calculate numeric or implementation based Local Area Planning Goals and Federal Facilities Targets, the methodologies used to determine reductions must be consistent and equitable between the two."

Chesapeake Bay Foundation

Chesapeake Bay Foundation (CBF) cannot support the current set of recommendations which do not explicitly tie the local area planning goals to items which are specifically associated with quantifiable levels of nutrient reduction, either through approved BMPs, policies which specify expected nutrient reductions (e.g. fertilizer bans) or other options that would provide reasonable assurance that implementation of these goals would lead to the scientifically defensible expectation of nutrient and sediment reductions. This specification is an essentially component to providing reasonable assurance. While the specification that goals should be measurable (which is currently included) is helpful, there are several goals which could be measurable but do not have direct implications upon nutrient reductions. With that said, as some other partners have also voted, CBF does not support but does not wish to stand in the way of the completion of the task force.