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April 30, 2015

By Electronic Mail (agreement@chesapeakebay.net)

Nicholas DiPasquale, Director
Chesapeake Bay Program
Environmental Protection Agency
410 Severn Ave., Suite 109
Annapolis, MD 21403

Re: Draft Chesapeake Bay Management Strategies

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Dear Mr. DiPasquale:

On behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA), a statewide association of local wastewater treatment agencies that own and operate publicly-owned treatment works (POTWs), enclosed please find our attached comments regarding select draft Management Strategies, written pursuant to the 2014 Chesapeake Bay Watershed Agreement.

If MAMWA can be of assistance or answer any questions regarding our comments, do not hesitate to contact me at jpippel@washco-md.net or 240-313-2621.

Very truly yours,

/s/ Julie Pippel

Julie Pippel
President

Enclosure

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**MAMWA COMMENTS ON 2014 CHESAPEAKE BAY WATERSHED AGREEMENT
DRAFT MANAGEMENT STRATEGIES
APRIL 30, 2015**

I. INTRODUCTION

MAMWA – the voice of Maryland’s Clean Water Utilities – brings together approximately 23 proactive local governments and leading wastewater engineering firms to work for clean water in Maryland based on sound science and good public policy. MAMWA has been supporting clean water, vibrant communities, and a strong state economy for nearly 20 years by seeking to align clean water goals, smart management practices, and affordable technology and infrastructure.

MAMWA has worked extensively with EPA, the State of Maryland, and other stakeholders to advance water quality in Maryland and the Chesapeake Bay. MAMWA is proud of its and its Members’ well-known leading efforts on nutrient reduction, beneficial policy development, and overall positive water quality contributions.

MAMWA submitted comments on the abridged and final drafts of the new Chesapeake Bay Watershed Agreement (the 2014 Agreement) on August 13, 2013 and March 17, 2014. Today’s comments address four of the Management Strategies drafted to “achieve the Goals and Outcomes” of the 2014 Agreement, including: Toxic Contaminants Policy and Prevention Outcome; Toxic Contaminants Research Outcome; 2017 WIP, 2025 WIP and Water Quality Standards Attainment & Monitoring Outcomes; and Healthy Watersheds Outcome. Thank you in advance for considering our views and recommended revisions to these four important documents.

II. COMMENTS

A. Toxic Contaminants Policy and Prevention Outcome

MAMWA has concerns regarding the following aspects of the draft Toxic Contaminants Policy and Prevention Outcome Management Strategy:

- Biosolids – Biosolids are mentioned several times in the draft. Biosolids land application is listed as a potential source of PCBs in stormwater (p. 6), and the draft suggests a need for research on PCBs in biosolids because of the “[l]imited information...available on whether land application of biosolids containing PCBs are a source of PCBs in unregulated and NPDES regulated stormwater.” (p. 8, 21).

MAMWA objects to the characterization of biosolids as a potential source of PCBs in stormwater. *If* there are trace levels of PCBs in biosolids, a third-party, not the wastewater collection or treatment system, is the source. It is most efficient to reduce PCBs at the source (on contaminated sites, through PCB transformer programs, etc).

Furthermore, biosolids are highly treated materials that are land applied with multiple environmental safeguards (for example, buffers). This is a valuable recycling program that brings nutrient management and other site management requirements to farmland that otherwise would not be subject such requirements. The draft Management Strategy fails to provide any context regarding these benefits.

Recommended Revision: Delete all text that suggests that biosolids land application is a source of PCBs. If the text remains, provide a more holistic view of state biosolids land application programs that notes the positive aspects of the program.

- Method 1668 – The draft relies heavily on a test method (Method 1668) that does not meet EPA’s own requirements under 40 CFR Part 136 and comparable State requirements. For example, one of the recommended Management Strategies is to: “Encourage use of method 1668 to analyze PCBs as it is the most sensitive method.” (p. 20). This is a flaw in the strategy. An approved test method should be used or developed if important to this strategy.

Recommended Revision: Clarify that Method 1668 is not an approved method and cannot be used in any regulatory context.

- Numeric PCB Requirements – One of the wastewater-related Management Strategies is for the EPA Region 3 NPDES Permits Branch to “draft and review permits with a focus on ensuring that PCB WLAs are clear and enforceable.” (p. 22). Currently, in appropriate situations, Bay jurisdictions use non-numeric WQBELs in the form of pollutant minimization plans (PMPs) for wastewater permittees. (p. 9). PMPs are appropriate and effective. Numeric PCB requirements are unnecessary and ill-advised.

Recommended Revision: Revise the paragraph on page 22 to delete references to PCB WLAs in wastewater permits.

B. Toxic Contaminants Research Outcome

MAMWA generally supports scientific research. However, MAMWA has identified two problematic issues in the draft Toxic Contaminants Research Outcome Management Strategy.

- Wastewater Treatment Plant Upgrades – The draft suggests that research could fuel additional management strategies, including “applying upgrades or new technology to wastewater treatment...” (p. 13). With regard to PCBs, suggesting upgrades to wastewater treatment plants is inconsistent with the Policy and Prevention draft (as noted above, PMPs are being used to address PCB TMDLs in appropriate situations). Jurisdictions are not requiring wastewater treatment plant modifications to address PCBs.

Recommended Revision: Delete the sentence quoted above from page 13.

- Biosolids – Consistent with MAMWA’s comments regarding the draft Toxic Policy and Prevention Management Strategy, references to biosolids land application as a potential source of PCBs should be eliminated.

In addition, as a part of the discussion of endocrine-disrupting chemicals (EDCs), the draft reads: “Sources of EDCs include biosolids, animal manures, aging sewer infrastructure, septic systems, agricultural runoff, urban runoff, and other factors.” (p. 15). If the relevant issue is trying to “better define the sources” of EDCs (p. 15), it is puzzling that the next paragraph appears to conclusively identify various sources of EDCs. In addition, listing biosolids first is objectionable. Biosolids, when land applied, are intended to be taken up by the crops as a nutrient source. Biosolids should not be first in a list that includes actual runoff pathways.

Recommended Revision: See recommendations above regarding PCBs. Revise the text on EDCs to make the scientific uncertainty clear and to prioritize runoff pathways over biosolids land application.

C. 2017 WIP, 2025 WIP and Water Quality Standards Attainment & Monitoring Outcomes

MAMWA has reviewed the draft 2017 WIP, 2025 WIP and Water Quality Standards Attainment & Monitoring Outcomes draft Management Strategy, and recommends that the following changes be made before the strategy is finalized:

- Cross-Sector “Consequences” – The draft states that the “WIPs identify contingency strategies” that can be used if implementation does not occur. This allows a jurisdiction to “pursue the development of enhanced authorities or new regulations to control loadings from that same source sector or another source sector.” (p. 8). MAMWA objects to making one sector such as the Wastewater Sector bear “consequences” if another source sector fails to meet their goals or simply needs more time to do so than is currently assumed. The Bay is a nonpoint source dominated system, making it impossible for point sources to make up for shortcomings in air deposition or other nonpoint source reductions. Additionally, major investments have recently been made in these wastewater facilities to meet Bay and Local water quality needs that would be undermined by cross-sector consequences.

Recommended Revision: “For example, if an enhanced cost-share program does not yield adequate participation and compliance rates, a jurisdiction might pursue the development of enhanced authorities or new regulations to control loadings from that same source sector ~~or another source sector.~~”

- Determining “Local Targets” – The draft includes a discussion of “Local Engagement” under the “Participating Partners” heading. (p. 4-5). MAMWA supports local engagement efforts, but has a concern about any use of the phrase “local targets” that assumes or implies a legal obligation or responsibility on a locality (i.e., local government) is being determined by the CBP Partnership. The term could cause confusion between determining geographic planning targets affecting a variety of sources in any given local area (proper) versus determining

targets that could be misconstrued as mandates on a locality itself outside of the TMDL process (improper, because of the limited authority localities have over existing development on private property).

Recommended Revisions: “Outreach to a variety of local entities may help the CBP partners assess and determine the ideal scale at which implementation will occur and where possible, ~~quantify~~ identify efforts in local ~~targets~~ areas for inclusion within the WIPs. The CBP partnership recognizes that individual jurisdictions may pursue somewhat different approaches to this local outreach.”

- “Demonstrated” WQS Attainment – Expected improvements in water quality based upon the installation or implementation of particular practices are based upon projections, not demonstrations with factual outcomes. (p. 5). There are inherent issues with making projections and various stakeholders have expressed concerns about the Bay model, making the use of the word “demonstrated” incorrect.

Recommended Revisions: “Based on the current science and the associated CBP modeling system, the CBP partnership has ~~demonstrated~~ projected that implementing practices for reducing nitrogen, phosphorus, and sediment loads ~~will~~ should achieve applicable water quality standards in the Bay. Improved understanding of the following elements could further enhance decision-making for the Phase III WIPs: (1) the factors affecting the time it will take to see improvements (i.e., “lag times”) between implementation of practices and responses in water quality; (2) factors in addition to nitrogen, phosphorus, and sediment pollutant load reduction that affect response of DO, clarity, SAV, and chlorophyll; (3) the relationships between water quality improvements and the recovery of habitat conditions for fish and shellfish populations; ~~and~~ (4) how increases in plant and animal biomass in response to improved water quality improves the assimilative capacity of the system for nutrients and sediment and, (5) an improved understanding of uncertainty associated with model projections.”

D. Healthy Watersheds Outcome Management Strategy

In 2014, MAMWA expressed a concern that the Healthy Watersheds Outcome – “100 percent of state-identified currently healthy waters and watersheds remain healthy”— seemed to incorporate into the agreement the regulatory concept of “antidegradation” found in state water quality standards, but without the policy tools and flexibilities states have to balance water quality with other societal needs.

The draft Healthy Watersheds Management Strategy (p. 7, 12) suggests the need for “protective measures,” including “upstream projects that address wastewater discharges,” for healthy watersheds that are facing risks to existing water quality. The draft offers no additional details regarding the types of projects envisioned, who would pay for those projects, when they would be considered, etc.

In MAMWA's experience, existing requirements for obtaining authorization to discharge into a high quality water are quite rigorous and time-consuming. The draft gives this reality short shrift, and seems to criticize current antidegradation policies: "Allowable degradation cannot result in a loss of waterbody use(s), but can be significant nonetheless." (p. 6). Additional "protective measures" are needed to address this perceived shortcoming. In this way, the draft Management Strategy, like the 2014 Agreement, attempts to create a higher standard for discharges to these waters. MAMWA believes this is unnecessary.

Recommended Revision: Remove references to the need for additional "protective measures" for wastewater discharges.
