

Local Area Targets Task Force Conference Call

September 8, 2016

Meeting Summary

Summary of Action and Decision Items

ACTION: The Task Force will be polled via email to decide whether the recommendations document will use the word “targets” or “goals” or some other alternative.

ACTION: The draft recommendations document will be revised to reflect the feedback received during this conference call and redistributed to the Task Force for their review and continued discussion.

Introductions and Announcements

- David Wood (Co-Coordinator) verified call participants and reviewed changes to the draft decisions document in response to feedback received during the September 1st Task Force Conference Call.
- Joan Salvati (Co-Chair) announced that the timeline provided to the Task Force was not intended to be overly restrictive. If the Task Force needs to work beyond September in order to develop initial recommendations that the group feels comfortable with, that will be acceptable. No concerns were raised about this possibility.

Draft Recommendations Document

Lisa Schaefer (Co-Chair) and Joan Salvati walked through a series of questions and asked Task Force Members to provide feedback. Every Task Force member was polled and all responses are reflected below. Task Force members who were unable to participate in the conference call were contacted via email immediately following the call and asked to provide their feedback on the same questions. Their responses are also reflected below.

What, if any, additional comments/concerns do you have with the latest version of the draft recommendations document? This can refer to questions/topics that you would like to see addressed in the document that are not currently addressed, or more general concerns with the direction of the Task Force at this point in time.

- I like the approach of structuring the draft recommendations document like a decision tree. In order to manage expectations, the document should make the distinction between the TMDL wasteload allocations (WLA) and local area targets. Otherwise, my general sense is the Task Force is taking a position that the state jurisdictions should have maximum flexibility, and that EPA would expect targets to be developed at least at the major basin scale. EPA should probably provide some expectation at a technical level, that a state has to at least have x, y or z, and then it is up to the states to determine how to meet those technical expectations. That would be a fine approach. There may also be benefits of explaining the pros and cons of particular options. For example, Maryland has segments within the watershed that cover multiple counties. If I was in the county with a lump number, it may not be that helpful for me. Even if it isn't a requirement, the benefit is it helps them understand their responsibility.

- Generally, I like the direction this revised draft recommendations document is going. I felt like last time a lot of folks expressed that local governments might not want localized targets and I wanted to clarify that many do want localized targets, too. Takoma Park and Montgomery County, MD would welcome targets, for instance. Targets help clarify where best to target resources. Phase II MS4s have been operating without Phase II permits for years now and we want to do the right thing but need the structure. Also, targets are goals, not necessarily hard and fast numbers that need to be met. Finally, on page 2 of the document, the 4th bullet, “Would the targets allow a jurisdiction to focus limited resources for implementation?” is very important and should be emphasized.
- Our stance, both from the state and local level, has been to give as much flexibility to the states as possible to determine what works best to meet their goals. Our planning is done at the watershed level. I am okay with the path we are taking.
- Our state would like to also emphasize maintaining flexibility for states. The decision tree approach does make sense for us.
- I agree with the changes that have been made to the document and agree to the flexibility that is needed at the local level.
- Flexibility is a key theme, but local area targets could be a tool in the toolbox that states could use to help locals see where they fit into the picture. We would do well to understand that local area targets might only be one tool, though, and that there may be other tools to reach local partners.
- I agree with the previous point, letting states come up with the toolbox they may need is important. We should maybe call these local goals instead of targets. They help us meet what we need to do locally. Flexibility tends to be limited by what EPA allows. We need ultimate flexibility, even within the state, so that we know what needs to be done but not necessarily how to do it in terms of how the goals are expressed and how to use capital investment to meet the goals. One issue in Question 1 in the document is, what programs are in place? It would be helpful if EPA had something we could use to decide how much we will need to invest to meet the goals as a municipality. Local might be defined differently for different goals. How to address agriculture will be a big issue because these farms are spread across counties and that should be considered as part of the flexibility. Also, how goals are expressed will be critical so we know what they are and can better inspect them for cost.
- From my perspective, not necessarily my state’s position, I concur with colleagues in other jurisdictions. Our jurisdictions are very different in terms of geography and local government structure, so I concur that we need flexibility. In addition to the flexibility, we should also try to very strongly emphasize that the states not only utilize the criteria and decision tree, but they make their decisions in partnership with local governments and other local partners.
- I think the group is on the right track and would like to suggest that in the “if yes” section of questions, there be a bullet to the effect that targets should be limited to a scale of source specificity that is scientifically defensible. Second, in the discussion of how targets could be expressed, I think it might be useful to expand the paragraph to allow the potential to use monitoring trend data as well as modeled data, either independently or in combination, as a means of establishing targets.
- I agree with the previous point on making sure the targets are scientifically defensible. I am personally a little concerned with how local should be defined. I have yet to hear evidence that

the Phase 6 Model will support anything finer than the Phase 5.3.2. Model could. Also, in the regulated community, the phrases “goal” and “target” quickly become synonymous with permits.

- With regards to comments suggesting we change “targets” to “goals”, we seem to have utilized those words interchangeably. The question is, do you want it phrased as though it is a fixed requirement or number, or a goal we are working towards achieving? I think the way the document has evolved is outstanding. One thing we’ve struggled with in the Local Government Advisory Committee (LGAC) is the lack of local government engagement and buy-in towards achieving goals, and we have an opportunity here to achieve local government buy in by giving jurisdictions flexibility to work with their local governments to decide if they should be developed and how to do so in a way that works best for them. I think by not allowing flexibility you are setting yourself up for failure. I think this draft document allows jurisdictions flexibility and provides the best opportunity for local buy-in.
- I agree with the previous comment. I like the direction the Task Force is heading with this document. Flexibility is key, and I like the comment about adding monitoring to Question 3, “How Targets Could be Expressed”. My concern is, for us, agriculture is the biggest thing. Looking at how these targets are expressed, how we address the agricultural component is difficult to get a handle on, even though we have cost share programs. The cost share program has a time limit on it that concerns me. I think we are going to need to do more work in that area.
- I appreciate folks who have offered their input from the state level. I think it will be difficult to get our supervisors to buy into any goals or targets. However, if we have something structured so we can walk the path towards targets or goals, I think there are gains that can be made through agricultural reductions.
- I would like to say the document we are seeing today certainly meets the needs of most local governments that we have heard from in Virginia. Any time there is a target there is potential to put a number or compliance on that, and I don’t think local governments should be held 100% responsible for things that are out of their control, and cost share is about all we can do with agriculture right now. I agree these should be goals and each state should work with local governments to decide if a goal should be established for any locality.
- I will say that we have been talking about how we’ll be writing the Phase III WIPs and who to involve, and an approach we like is documenting efforts already going on that are protective, and plugging those into CAST and seeing how far that gets us to our planning targets. Having stakeholder efforts gathered up and called a goal is fine, but it seems like we could also just do it the way we have been. I think what we did last time is working. We are trying to keep an open mind for how to improve, but I don’t want to cause a lot of complications and develop new processes to satisfy something that I’m not so sure our stakeholders want.
- I agree with the previous point. Maybe in the document, make a distinction between WIP strategies states are identifying, and local goals and how those relate to our reporting for the two-year milestones. The distinction between WIPs, milestones and local area goals will be important. With that clarification, we can take it and talk to our local area officials.
- I like the way the doc is currently being written, and will again support flexibility. What is the expectation of EPA and others who are measuring our progress, in terms of the role of the states in enforcing these local goals? If we had local goals that are detailed in the WIPs and are

included in the two-year milestones, currently if we are missing targets, EPA works with the state to encourage us to get back on track and in some cases even places us in enhanced oversight if we are not achieving certain milestones. I would want to understand if there is an expectation of the state to play that role with the local governments. If we established local goals and they fell short, but the state was meeting its overall reduction goals, I would be concerned and would hesitate for our state to fill that role.

- In response to the previous concern, EPA can only hold states accountable. EPA cannot hold local governments accountable for local goals, but states would be developing local goals to better implement the state planning targets as part of the Phase III WIPs. The WIPs and milestones provide reasonable assurance that the TMDL will be implemented, and local goals could be used to better demonstrate reasonable assurance. Every two years we have an opportunity to see if strategies are working, and if not, how to adjust. Adaptive management is key to the process and I don't see us holding the states accountable for not being able to enforce something.
- Will the Phase III WIP Expectations document make that statement explicitly?
 - I am not sure. I think it would help with clarification and to ease concerns. I am not sure what EPA will decide in the end. It would be a good comment to make for EPA consideration.
 - EPA can't say definitively at this point what will go into the final Expectations document because it needs to go up the management chain. To clarify that the local goals are not regulatory would be very helpful and we can raise that to our management.
 - It might be good to add that clarification as part of the language distinguishing between the difference between local goal and allocations.
 - I think that goes to the point of changing language from target to goals. If EPA won't hold localities accountable, it is a goal.
- The Chesapeake Bay Foundation (CBF) doesn't view these as regulatory, so following up on an earlier concern that these might become regulatory down the road, it would be great to clarify that that won't be the case. I think establishing the consequences would be helpful so there is no confusion that they would be something that they aren't. We endorse flexibility in how targets or goals are expressed, but not in whether they are established or not. Localized goals help with local implementation, they are not regulatory, and they help us plan. We believe that while they should be flexible with how they're established, tying them to Bay TMDL implementation is important. If they aren't somehow tied to the Bay TMDL, we don't think the value will be quite as strong.
- How would CBF define local?
 - We are open to flexible options for how a state chooses to define that range, but I think that it should be smaller than at the state basin scale.
- With the flexibility to choose different approaches, it makes sense if you have different approaches for agriculture and urban stormwater, but if you approach targets differently in a particular subwatershed, how do we ensure equitability?
 - My thought is that you are correct, the devil is in the details. The state would try to be sure that there is a level of equity between local jurisdictions, but it is a real balance because we do have some localities, as others do, where there is not a lot of development or urban uses and others where there isn't a lot of agriculture. So it is a

balance. Whether we give them a numeric goal or percentage BMP implementation goal, we will work with our stakeholders to make sure we design goals/targets in a manner that is equitable.

- When talking about being equitable across states, we also need to keep in mind if there are areas already exceeding current goals and targets, especially when other areas are not addressing loads as they should be.
 - My opinion is that we have already introduced the concept of equity into the partnership, and I would recommend avoiding trying to define what equity is in this document. Place the burden on the states to ensure their process is equitable.
- The document states, *“Accordingly, the Task Force recommends that the determination as to whether or not there should be local area planning targets is best made by the seven Chesapeake Bay jurisdictions, in partnership with their local and regional partners, stakeholders and federal and state facilities.”* I support the statement, except for jurisdictions who, in the latest EPA progress evaluations, have one or more sector oversight statuses of “Enhanced oversight” or “Backstop Actions Level.” If a jurisdiction and its local and regional partners are having problems meeting their milestones or implementation trajectories, communicating implementation targets to the local partners seems like a reasonable action to set expectations and establish a dialogue to ensure that feasible targets are assigned and resources are in place to meet them.

Are there any bullets you would like to see added/removed/edited in Question #1 (Should Local Area Targets be Included in the Phase III WIPs)?

- I suggest adding language to say that “if yes”, there should also be a way to track and report progress.
- No other comments were raised. All other Task Force members felt that Question 1 was appropriately framed, or felt comfortable with the general direction and planned to look more closely at the document.

Are there any bullets you would like to see added/removed/edited in Question #2 (How should local be defined)?

- Federal and state facilities should not be listed together in the first bullet.
- Please consider adding “Federal Facilities” to the bulleted list, unless they fall in the category of “Regional Entities,” in which case you may consider including them in the examples listed in that bullet.
- Could bullet #7 cover the full range of options by itself?
 - The Task Force felt that it probably does, but that having the full list is instructive and can provide some good ideas for options.
- I will reiterate previous comments on the Phase 6 Model not supporting this level of “local”. Having an all-inclusive list like this seems to be endorsing the Model’s ability to support targets at all of these scales.
- Options 4, 5 and 6 don’t really have a political structure with local authority that could provide guidance, oversight, funding or even public accountability. As a result, those options would be less preferred in our view.
- There needs to be a font change to #7 to make it consistent with the rest of the document.

- No other comments or concerns were raised with Question #2.

Are there any bullets you would like to see added/removed/edited in Question #3 (How should targets be expressed)?

- The last bullet that is listed for further discussion on quantity versus quality, do we need to distinguish between these two? I think more quality-based goals could be added to the list, but do not know what those would be.
- The last paragraph before the bullets is good, and may be a place to add information about the monitoring data option. On the second to last bullet on percent of flow (yield-based targets), I don't know if yield is right terminology. You might mean flow-based.
- My local governments do not want to see numeric goals as an option.
 - If we did something along the lines of BMP implementation levels that was not a numeric target, what would be the response?
 - I think they'd see that as the same thing. I think programmatic goals would be most agreeable, because otherwise I think it translates quickly into permit conditions. While EPA says they won't hold anyone accountable, once it is in a permit there is no choice.
- Just because some local governments are not interested in numeric targets, doesn't mean it should come off the list. It would be good to have it as an option.
- The Task Force agreed to leave numeric targets as an option under Question #3.
- Our view comes back to equity. Bullet #4, or numeric targets, or tying it back to an effort level consistent to TMDL implementation is very important to us. It can be expressed different ways, but the basis of the goal should be tied to, and be consistent with, the TMDL. We think it is perfectly reasonable to use the Phase 6 Model to develop those numeric goals, especially since they are non-regulatory.

Wrap-up and Next Steps

- Is this a consensus document?
 - The WQGIT asked us to provide recommendations on whether there should be local area targets, so it would be framed as the Task Force's recommendations. We would certainly like to have full consensus on the document, but if we can't achieve that, we would look for a majority in-favor. If there is objection, we would certainly note that to the WQGIT.
- Will EPA be weighing in on these recommendations as part of the group, or as moderators? Will EPA have a specific stance on each of these issues?
 - Yes, EPA does have a formal member on the Task Force and will be part of the consensus-building process.
- Could we go back to terminology of "target" versus "goal"? I heard several folks speak against the term target in favor of goal. Could everyone live with the term "goal"?
 - From a local municipality standpoint, my concern would be that a goal has the connotation of being less likely to be achieved.
 - From my perspective, a target implies a numeric target, where goal is a bit broader. I'd prefer goal throughout.

- I would personally prefer goal. To achieve buy-in from other local governments, then I think it needs to be a goal.
- If local governments adopt a goal, providing additional incentives like a first shot at a pot of money would help provide an incentive.
- I do think locals should earn an incentive if they meet a goal or a target, whichever we call it.
- I am going after whatever has the most positive connotation that would emphasize common ground and partnership as opposed to putting people on the defensive.
- In the Phase II WIPs, we developed what we called targets and I don't remember the word itself being a barrier. Whatever word we come up with, it is more important how it is conveyed to localities and what tone is used.
- When we started developing the Bay TMDL, we had a basin-wide target that was divided by state basin. That was given out as planning targets that were used to develop the WIPs. States brought WIPs to EPA and we used those to develop the wasteload allocations and load allocations. Now we are gearing up for Phase III and we will be going through a similar process. However, jurisdictions want to use local goals, they are just tools in the toolbox. Given all of the implications with the term "targets", maybe we should use a different word. I am ok with whatever word we use, but I agree that the communication that goes along with it is crucial.
 - You described a process in Phase I where the states developed WIPs and that those WIPs essentially became the TMDL allocations. If states include local goals in their Phase III WIPs, will those become allocations?
 - First, I don't know if we will make any changes to the TMDL. That decision won't be made until after the Midpoint Assessment and the Phase III WIPs are submitted. WIPs are how we think we can get implementation completed. If the TMDL is revised, the load allocations would be described by the states. We would need the information on the permits for the wasteload allocations. I don't see us giving wasteload allocations to local entities.
- Please check on the date of the November conference call, there may be a conflict with the Army Corps of Engineers meeting.

ACTION: The Task Force will be polled via email to decide whether the recommendations document will use the word "targets" or "goals" or some other alternative.

ACTION: The draft recommendations document will be revised to reflect the feedback received during this conference call and redistributed to the Task Force for their review and continued discussion.

Adjourned