

Preliminary 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) recommends 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 two primary questions: 1) should the Phase III WIPs include local planning goals; 2) if there are local planning goals, what are the options for 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 Charge¹ - 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 targets² (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 expressed in a variety of ways, to be determined by the jurisdictions, based on the recommended options provided by the Task Force (see Question #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

¹ To access the full charge, see

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

² The Task Force changed “targets” to “goals” in order to better reflect the range of options of how these goals could be defined.

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. 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 place additional controls on point sources of pollution, such as wastewater treatment plants, large animal agriculture operations and municipal stormwater systems, as well as target compliance and enforcement activities.

The WIPs and two year milestones provide confidence that the 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 WIP.

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 the establishment of local planning goals implies the subsequent delegation of responsibility for achieving those goals to the localities, thereby subjecting them to new or more stringent WLAs, permit limits, or related enforcement directly or indirectly by EPA. The Task Force recommends that EPA directly address this concern in the Phase III WIP Expectations document by including specific language stating that EPA has no intention of taking any federal actions against a local entity with regards to a jurisdiction's establishment of local planning goals, 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 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. Local planning goals can also serve to advance other restoration priorities that have co-benefits beyond just water quality improvements, 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.

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

The Task Force 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 the determination of the scale of local area goals is best made by each of the seven Chesapeake Bay jurisdictions in partnership with their local and regional partners, stakeholders and federal and state facilities. The local area goal should be established 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 state 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 (i.e. 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 as a means of defining local, the Task Force members cannot make a final recommendation for how local should be defined until the tools have been finalized and approved by the Chesapeake Bay Program Partnership by June 2017.

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. All options recommended below are supported by the Chesapeake Bay Program partnership's decision support tools (i.e. 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.

- Percentage of Best Management Practice (BMP) Implementation on land uses defined in the Phase 6 model
- Quantifying implementation goals for particular BMPs
- Programmatic Goals (i.e. 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 (Delivered load of 300 lbs P)
 - Numeric reduction goals for one or more pollutants (reduce loads by 4000 lbs N)
 - Yield based goals for one or more pollutants (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.

Addendum to Draft Preliminary Recommendations of the Local Planning Goals Task Force

Introduction:

On October 3, 2016, the Local Planning Goals Task Force (Task Force) reached consensus agreement that their Draft Preliminary Recommendations would be submitted to the Water Quality Goal Implementation Team for review, along with documentation of all current dissenting opinions and outstanding comments. Future Task Force discussions will seek to address these comments.

Task Force Comments:

Chesapeake Bay Commission Member

Comment 1: If a state jurisdiction determines local planning goals will not be used, what will EPA require – in lieu of local planning goals – from the state to provide reasonable assurance that the two-year milestones and 2025 statewide or segment-shed TMDL targets for unregulated nonpoint source sectors will be met?

Comment 2: The Task Force should continue to work towards a consensus statement with regards to the technical capacity of the Chesapeake Bay Program's Phase 6 modeling suite to support local planning goals.

Comment 3: The Task Force should provide further discussion on the need to focus limited resources, and the role that local planning goals could play in that effort.

Chesapeake Bay Foundation Member

In our view there is still clarification needed when describing the purpose of LATs which have been established in order to provide reasonable assurance about non-point source load reductions which include substantial amounts of voluntary, unregulated efforts. We appreciate that Phase 3 WIP expectations include other requirements such as outreach plans and a responsibility to achieve the basin planning targets, but we do not agree that these requirements ensure the same level of confidence that is provided by LATs. As a result, if targets are not established, our view is that there will be a substantial loss in reasonable assurance and there has been no discussion as to how this would be addressed. We agree flexibility and adaptive management are important components to include in this recommendation, and these topics are already heavily emphasized in this document, but achieving reasonable assurance of the jurisdictions progress is essential and this remains absent from the recommendation. As a result, our support for this recommendation is contingent upon the inclusion of reasonable assurance of the progress of unregulated sectors at the local scale as an overarching goal for local targets.

We would also like to recommend that the package going to the WQGIT should include a summary of consensus, specifically in regard to Question #1 (should the Phase III WIPs include local planning

goals?). Our view is that local targets should be included in the Phase III WIPs in order to provide reasonable assurance, which is a view shared by many conservation partners and other Task Force members. Our vote of yes today, was simply to agree to sending the current draft recommendation amended with a summary of comments from today onto the WQGIT. The view that LATs should be required is still not included or referenced despite the fact that we have expressed this view many times but instead the contrary view is included and portrayed as a recommendation that is fully supported by this Task Force. In order to truthfully portray the recommendation of the group we suggest including all the views that have been expressed in the document and the rationale behind these views.

Federal Agency Staff Member

We understand the need for flexibility, but flexibility sometimes opens the door to inequity. A baseline or minimum threshold for local planning goal development should be established in order to ensure equitability.

Maryland State Government Staff Member

Comment 1: There may be a need to soften the language describing what is meant by a goal. Recommend the following: "A local goal helps the states achieve their WIPs and could lead to more meaningful engagement with local partners in the WIP implementation process."

Comment 2: This recommendations document is currently very focused on implementation. Local planning goals could also play a role in the Phase III WIP development process, and that role should be more explicitly defined in the document.

Comment 3: The Task Force may wish to recommend specific language that they would like to see reflected in the EPA's Phase III WIP Expectations document.

Multiple Task Force Members

The inclusion of federal facilities and state facilities as unique options for defining "local" in Question #2 may be confusing to readers because those options are tied to the land owner as opposed to a specified geographic scale. We suggest adding clarification or qualifying language to ensure understanding that the purpose of these options is to provide maximum flexibility to the jurisdictions when defining "local".

U.S. Environmental Protection Agency Member

EPA commends the Task Force for their thoughtful and careful consideration on the question of whether local planning goals should be developed. We understand the concerns and questions raised with developing local planning goals but also see great value in establishing consistent and equitable goals that intend to strengthen the engagement and contribution of local partners in the WIP development and implementation processes. Therefore, EPA does not support the Task Force's recommendation for the state jurisdictions to unilaterally decide whether local planning goals should be established. However, EPA does support giving the state jurisdictions, in collaboration with their local stakeholders, the flexibility to decide how and where those local planning goals should be established.

Virginia Local Government Staff Member

Under Question #3 (How should local planning goals be expressed), I recommend that we revise the flow-based goals option to the following: “Percent of flow treated in certain tributaries/runoff treated – flow-based goals”. This should avoid concerns about restricting stream flow.

Virginia Local Government Staff Member

I am not comfortable with local planning goals, but I will stand aside at this time and allow the draft recommendations to be sent to the WQGIT for review. I have yet to hear evidence to support that the Phase 6 Model could support any “local” scales, and having an all-inclusive list seems to be endorsing the Model’s ability to support targets at all of these scales.