

# DEVELOPMENT OF GUIDANCE FOR CHESAPEAKE BAY TMDL ACTION PLANS AND LOCAL TMDL ACTION PLANS REQUIRED BY MUNICIPAL SEPARATE STORM SEWER (MS4) PERMITS

## STAKEHOLDER ADVISORY GROUP – MEETING #2

### MEETING NOTES - DRAFT THURSDAY, SEPTEMBER 26, 2013 HENRICO TRAINING CENTER

#### Meeting Attendees

<i>SAG MEMBERS</i>	<i>INTERESTED PARTIES</i>	<i>SUPPORT STAFF</i>
William Bullard – Navy Facilities	Mike Barbachem - URS Corp	Kelsey Brooks - DEQ
Chip England – Hanover County	David Bernard – Sierra Club/Coastal Canoeists	Scott Crafton - DEQ
Scott Flanigan – Chesterfield County	Barbara Brumbaugh – City of Chesapeake	Melanie Davenport - DEQ
Katie Frazier – VA Agribusiness Council	Aislinn Creel - Timmons	Bill Keeling - DEQ
Dan Frisbee – City of Charlottesville	Sarah Diebel - DOD	Bill Norris - DEQ
Normand Goulet – Northern Virginia Regional Commission (PDC)	Benjamin Eib - Prince William County	Ginny Snead - DEQ
Tracey Harmon - VDOT	Alex Forasté - WEG	<b><i>OTHER DEQ STAFF</i></b>
David Henderson – Roanoke County	Doug Fritz - GKY	Fred Cunningham
Steve Hubble – Stafford County	Tom Gallo - ARCADIS	Mason Harper
Adrienne Kotula – James River Association	David Hirschman - CWP	Craig Lott
Jessica Lassetter – Thomas Jefferson Soil and Water Conservation District	Bel B. Pachhai – Prince William County	Susan Mackert
Grace LeRose – City of Richmond	A Parks - EEE	Liz McKercher
Trafford McRae – City of Waynesboro	Gregory Patsch – Timmons Group	Mark Sauer
Jason Papacosma – Arlington County	Chris Pomeroy - VAMSA	Jeff Selengut
Steve Plante – Loudoun County	David Powers - WEG	Bryant Thomas
Peggy Sanner – Chesapeake Bay Foundation	Justin Shafer - City of Norfolk	Derick Winn
Betsy Smith – Fairfax County	Glenn Telfer – Draper Aden	Kyle Winter
Jenny Tribo – HRPDC (Alternate for Leroy (LJ) Hansen)	Christine Watlington - VDOT	Melinda Woodruff
Keith White – Henrico County	Julie Whitehurst – City of Norfolk	
Rick Woolard - Dominion	Randy Williford - Loudoun County	
Weston S. Young – City of Hampton		

NOTE: TAC members not in attendance included the following: Phil Abraham – The Virginia Association for Commercial Real Estate; Leroy (LJ) Hansen – City of Suffolk; Larry Land – Virginia Association of Counties; Richard Street – Spotsylvania County; Joe Lerch - Virginia Municipal League; Mike Toalson – Home Builders Association of Virginia

#### 1. Welcome & Introductions (Ginny Snead):

Ginny Snead, Manager of DEQ's Stormwater Management Program welcomed the members of the MS4 Stakeholder Advisory Group and members of the interested public to this the second meeting of the MS4 TMDL Action Plan Guidance Stakeholder Advisory Group. She thanked Keith White and the

County of Henrico for hosting us and for arranging for the use of the Training Center for today's meeting and for supplying the coffee and water for the meeting.

She asked for introductions of all of the members of the advisory group and other meeting attendees.

She thanked everyone for their comments during the last meeting and since then on the draft guidance document. She noted that those comments have been very helpful in guiding the staff in the development of the version of the draft guidance that we will be discussing today. It has come a long way in a very short period of time and the active participation by the members of the Stakeholder Group as well as other interested parties has been instrumental in the progress that has been made to date.

## **2. Presentation on Retrofit Considerations – Loadings; Table Changes; and Visual Inspection Checklist (Ginny Snead; Bill Keeling; Scott Crafton; Kelsey Brooks)**

Staff provided a presentation on the “retrofit considerations” for the MS4 TMDL Action Plans Guidance. Ginny Snead noted that three specific items related to "retrofit considerations" have been pulled out for today's discussions based on the conversations at the last meeting of the stakeholder advisory group. The three topics that will be highlighted this morning at "loadings"; "table changes" which are based on comments received; and a "visual inspection checklist" which is a new item for discussion. These presentations included the following:

**Loadings:** Ginny Snead noted that staff had a different approach in the first draft that was sent out to the group. There were a lot of good comments on this section of the guidance document. As was noted, there were a lot of "apples and oranges" comparisons used in the first version. There were a lot of comments on what would be the best approach in trying to pinpoint the appropriate loadings. A lot of comments and good suggestions were received. In the end staff decided to use the loadings that are already spelled out in the MS4 General Permit for consistency sake. As you look through the current draft version of the guidance that is what you will find we have changed to. Use of the loadings already addressed in the MS4 General Permit will provide for a consistent approach for all MS4s.

**Table Changes:** Bill Keeling provided an overview of the numerous changes that had been incorporated into the newest version of the draft guidance document prepared for this meeting. He noted the following changes:

- **Table 1a (Line 172):** This table identifies the Clearinghouse BMPs and Efficiencies for the identified practices. You can use this table if the BMPs meet all of the design requirements that are in the Clearinghouse's technical specifications for that BMP; **OR** you can use:
- **Table 1b (Line 193):** This table identifies the Chesapeake Bay Program Approved BMPs and their established efficiencies; **OR** you can use:
- **The Curves (Lines 209 – 217):** The option for use of either Table 1a OR Table 1b OR the Curves is clarified in the current draft of the guidance.
- **Table 1c (Line 195):** This table identifies the Chesapeake Bay Program BMPs – specifically for "Wetland Restoration" and established efficiencies regionally impacted

depending on which physiological region you are located in/where you are located in the state.

- **Table 2 (Line 208):** This table identifies the "BMP Characterization for Nutrient Curves" and provides a listing of Runoff Reduction Practices (RR) but Site Design/Non-Structural Practices and Constructed Practices and Stormwater Treatment Practices (ST). *Staff noted that this table is from the Bay Program Expert Panel Report.*
- **Curves (Lines 209 – 217):** These were discussed at the last meeting.
- **Table 3 (Line 264):** Describes the upland efficiencies that would be applied when a buffer is installed. A buffer treats a certain area uphill of a buffer. It is the area that effectively filters it. These efficiencies are applied at a 2-to-1 ratio for upland acres. If you install an acre of buffer, you would apply these efficiencies reductions to 2 upland acres. You would take credit for the land use change which is in another set of tables plus you would get to calculate this efficiency for 2 upland acres for every acre of buffer. *Staff noted that this is a complicated portion of the guidance document but that 2 examples have been provided as clarification. The examples provide a sequencing of how you would do the BMPs and calculate your reductions.*
- **Table 4 (Line 296) –** Describes the mass reduction/length in lbs/linear feet for stream restoration if you are going to use the "interim efficiency values" or default values if you do not have all of the various information needed to use the "curves". If all you know is that you have x-number of linear feet then you can use this calculation.
- **Table 5 (Line 310) –** This table identifies the Urban Nutrient Management Efficiencies – The expert panel that EPA convened defined the removal rates and efficiencies for urban nutrient management. As noted in the guidance "how the risk for a site is determined" is discussed in the Expert Panel report. Note that if you do not know if the site is a "high" or a "low" risk site there is a "blended" rate provided. The "blended" rate is just a weighted average using an assumption of 80% as a High and 20% as the low rate. As we move forward if you wanted to track those higher risks sites then you could get more credit for doing so.
- **Appendix B – Table 10 – Land Use Change Conversion Efficiency Table (Line 984):** These are really not "efficiencies" but are a "loading rate change" so the title of the table needs to be revised. As you convert land use from one use to another in specific basins you would get the indicated lbs/ac/year credits at "edge of stream".

**ACTION ITEM: The title of Table 10 needs to be revised to reflect its actual content.**

**The discussions by the group related to the "Table Changes" included the following:**

- Table 1a (Line 172) – For the non-priority devices – how often do you anticipate updating that table? *Scott Crafton noted that this was a moving process – we have not decided how it would be addressed in guidance – the current effort is to establish pathways and guidelines*

*within the Clearinghouse to address changes in efficiencies for these BMPs and to provide a mechanism for manufacturers to get their devices included onto the Clearinghouse and for DEQ to assign the appropriate efficiencies to them. Staff will try to get this guidance and anything developed for the Clearinghouse synced as well as they can. There may need to be some note added here that refers to the Clearinghouse website as well. Staff noted that there is already a footnote that refers to Table 1a which addresses the possible updating of these efficiencies.*

**ACTION ITEM: Staff will look into the addition of a reference to the Clearinghouse website as a way to track and alert permittees of any changes in approved BMPs and devices and changes in approved efficiencies.**

- Language preceding Table 1b (Lines 189 - 191) – "Runoff Storage can be calculated using the "Site Data" tab on the Runoff Reduction Method spreadsheet for the BMPs that are in the Stormwater Clearinghouse..." – The volume provided on that tab is what would be required to meet Virginia standards? *Yes.* That is not specific to a BMP. The BMP runoff storage or some indication on the individual tabs. Might need to clarify the tab reference. *Staff noted that was the reference that was included in the Bay Program Expert Panel Report.*

**ACTION ITEM: Staff will check the "tab" reference to make sure that the correct "tab" is referenced in the guidance.**

- Table 1b (Line 193) – Are there assumptions associated with how these efficiencies are applied in the design of the BMP? *There is a spreadsheet that has been developed that relates to how these BMPs are reported in "model world" that will be presented later in this meeting that will identify the assumptions that are associated with these efficiencies.*
- Lines 148; 149; 150 states that "Depending on the BMP selected, the permittee should use one of the following methods to determine the pollution reduction that will be credited..." It then starts off with efficiency BMPs (Line 151) which makes it seem like the preferred BMPs. While on line 168 for non-propriety BMPs it says to use the Clearinghouse and on line 179 for BMP retrofits that do not meet the design requirements it says to use the retrofit curves. Is the beginning of the section not a preference in terms of order of preference for which calculations you use? *No, those are all options that are provided – there are no preferences as long as you choose the one that makes the most sense for the BMP that you are talking about.* It reads a little like a prioritization list. *Staff noted that there had been a prioritization before that they tried to remove from the document when it was rewritten. It depends on the BMP being selected and how it is being put in – if it is a new design then you would use the Clearinghouse; if it was a retrofit, you would likely use the Chesapeake Bay Program BMPs; if it is a retrofit you are taking from scratch you can use the Clearinghouse – the caveat is that basically that the design has to meet the Clearinghouse Design Criteria in order to use the Clearinghouse numbers.*

**ACTION ITEM: Staff will look at this wording to clarify that these are options and that there is no prioritization intended.**

- Line 151 states: "For structural BMPs the Department encourages permittees to use the performance curves..." That doesn't separate out "retrofits" or "new". That's where we are reading into it that would be the first preference. *Staff noted that the intent of this is to provide a different methodology that the department would find acceptable but are not trying to provide a preference for one over another as long as the methodology that you choose makes sense for the BMP that you have selected.*
- Forest Buffer examples (Lines 389 & 412): The examples are clear but are really not based on reality. A 2,000 acre MS4 is smaller than the Town of Herndon. Should use something more relevant to the existing MS4 program and the MS4 Community. *Staff noted that these examples are strictly a way to provide examples of how the calculations are done and how the numbers are generated not real world situations.* It is misleading to someone that doesn't know that there are not too many 2,000 acre MS4s out there. The other thing is that a constructed wetland on a 50 acre site is not practical – a smaller size site example would be more realistic. *Staff noted that the examples were generated as a way to get the concept out there.*

**ACTION ITEM: Staff will look at the examples provided and attempt to develop new examples that are more related to real-world situations.**

- Urban Stream Restoration – Are there going to be any qualifying positions on these types of projects (stream restoration) as far as being able to use the "interim efficiencies"? What documentation is going to be required? *Staff noted that was a good question – if the question is if EPA were to do a BMP audit and come to the developer and say show us this 1,000 feet, what types of information would they require?* The question is what would DEQ need to see? *Staff noted that this needs to be thought of as one and the same – documentation is everything – the more relevant documentation that can be provided the better. From a historical perspective there may not be a lot of supporting information/documentation available. Today – going forward – you should use your best professional judgment of the information and/or documentation that you provide. The more information and documentation that you can provide related to a BMP the better. In EPA's next calibration of the new model, they will have a new calibration period and that will become the "historical record".*
- Urban Stream Restoration (Line 271): The term "historical" is used. Does this refer to the 2009 Progress Run? *Staff noted that they would look at clarifying the use of the term "historical".*

**ACTION ITEM: Staff will look at the use of the term "historical" and clarify its meaning throughout the document.**

- Documentation – If you look at what is spelled out in the "Special Condition" and what is included in this guidance document – there is not a lot of detail provided as to what is actually needed – what is to be reported? There is no design information or required backup data specified if you had to prove that the practice was what they said it was. Is there an expectation that some of that type of data would be submitted with the action plan? Or when we are reporting a practice that has been put in place that we are claiming credit for? Or are we expected to just have that information in our records/files should we need to produce it at some point. *Staff noted that you would be expected to have the supporting documentation, but as far as how much data and information is needed would be up to your "best professional judgment" as to what may be needed to be included in your annual report. You would need to maintain sufficient information to support your "best professional judgment". Not having the specific information requirements/components in the permit but indicating the need for information and documentation in guidance allows a greater level of flexibility in what documentation is maintained.*
- Urban Nutrient Management Efficiencies – High/Low/Blended – Is this option only eligible for lands that do not drain through our MS4s? Only on unregulated lands that you can claim credit for nutrient management? *No, it is lands that might drain to your MS4 that may be "residential" or otherwise might not require a nutrient management plan. Outside of otherwise legally required nutrient management.*
- Table 5 – Where is Table 5 referenced in the text of the guidance document? The last table reference appears to be for Table 4 which is on line 273. *Line 308 doesn't specifically say Table 5 but does refer to the risk levels – a reference can be included in that sentence.*

**ACTION ITEM: A reference to Table 5 will be added to the text of the guidance document in lines 307-308.**

- Clarification of terminology – "regulated" vs. "unregulated": For most of us "unregulated" means those areas outside of the MS4 service area. Can you clarify what is meant by "inside the MS4 service area" but "not municipal land required under your permit"? *It is land that is regulated as part of the MS4 but otherwise is not regulated.* "Regulated lands" are referenced on line 139 and "unregulated" in this section – Can you clarify these terms – they are not how the MS4 community normally looks at "regulated" and "unregulated". How would a private school that has sports fields fall into this distinction? How does this affect a MS4 claiming credit for nutrient management for these types of "unregulated" sites?
- Line 298 seems to indicate that nutrient management is only applicable to unregulated lands. Need to make it clear that it is regulated municipal facilities. It may be as simple as saying that "nutrient management is not otherwise required".

**ACTION ITEM: Staff will look at the use of the terms "regulated lands"; "regulated municipal lands"; and "unregulated lands" "in the service district" in the guidance document and clarify what is meant by the use of those terms and look at the consistency of their usage throughout the document.**

- Is there still a one acre minimum? *There is a one acre minimum for what is required for "regulated lands".* If nutrient management activities are implemented on lands that are less than 1 acre, can those activities be reported? How are the requirements for residential areas versus municipal areas of less than one acre different?

**ACTION ITEM: Staff will recheck the requirements of the Expert Panel report on "minimum acreage" requirements and how an area of less than one acre of contiguous land is handled.**

**ACTION ITEM: Staff will clarify the differences between the requirements for less than one acre of "residential lands" versus "municipal lands" and how those are to be addressed in the action plan.**

- Street Sweeping: Needs to be included in the list. *The Expert Panel is currently redoing the original "street sweeping" standards. Practices that were on panels were not included in the draft guidance document. It is an approved practice, but not everyone can meet the qualifying conditions.*

**ACTION ITEM: Staff will revise the document to include "street sweeping" and its current qualifying conditions on the list of approved practices. A footnote will also be included related to the findings of the current Expert Panel related to "street sweeping".**

- "Urban Nutrient Management" should probably be its own section because "BMPs implemented on Unregulated Land" is a different issue.

**ACTION ITEM: Staff will look at separating the "Urban Nutrient Management" and "BMPs Implemented on Unregulated Land" sections/information.**

- Can you take credit for BMPs outside of your regulated areas if you treat lands outside your MS4 area? *Yes, if you meet the baseline first – anything above and beyond the baseline can be claimed.* By baseline you are referring to the regulatory requirements? *Anything above the .41.*
- Table 10 - Land Use Change – What is meant by "pervious to grass" in the "Land Use Change Table"? *In "model world" they have a land use category of "hay without nutrients" so this category of "pervious to grass" refers to "unfertilized grass", natural; unmanaged' unfertilized grass. The assumption in "model world" is that all "pervious" is being fertilized; so you are going from that condition to an "unfertilized" condition – allowing it to naturally grow.*
- Table 10 – Land Use Change – What is "impervious to pervious"? *The BMP would be "impervious surface reduction" or "pervious pavers".* Not "vegetated pervious"? *It*

*could be ripping up a parking lot and putting turf down. "Pervious" would mean also that it would be "fertilized".*

- Can we use the terms "managed" and "unmanaged" when we start talking about "turf"?

**ACTION ITEM: Staff will look into adding some clarifying language and definitions related to what is meant by the use of terms such as "fertilized" and "unfertilized" and "managed" versus "unmanaged".**

- Table 10 – Land Use Change: Do the numbers provided in Table 10 represent a "reduction"? *Yes, the numbers that are provided are the reduction that is achieved in lbs/ac/year for TN; TP and/or TSS for that conversion activity in that river basin and should be used in your calculations.*
- Buffers: If you put your buffer in, do you automatically get to claim 2 upland acres or do you actually have to have up to 2 upland acres draining to your buffer? *You would need to have up to 2 contiguous upland acres that are actually draining to the buffer to claim the credit. Does this assume that you would have "sheet flow" across the buffer? Yes, the assumption is that the buffer is properly designed to maintain "sheet flow" across the buffer.*

**Visual Inspection Checklist:** Ginny Snead indicated that this was a new concept that was being promoted for inclusion in the guidance document. This comes from some conversations with folks who have been trying to use the Bay Expert Panel Report on retrofits and go out into the field and apply it. Specifically, input has been received from the Center of Watershed Protection regarding what needs to be included and considered as part of this process. This adds an option for BMPs that you have in the ground – historical BMPs that you may be considering for a retrofit. The Expert Panel Report looks at these BMPs that you are looking to retrofit or enhance and provides a mechanism where you can claim a credit for the delta between that BMPs previous efficiency and what has been added as an enhanced efficiency. The Expert Panel Report provided a table of efficiencies that could be used to claim credit for the enhancement of this category of older BMP. This provides an option for those BMPs that really weren't functioning at all or were functioning below the efficiencies established by the Bay Program for that type of BMP that could be enhanced to improve their functionality so that you could take more credit – once enhanced for having that historical BMP in place. This could also encourage and target those BMPs for retrofit activities. This is currently a work in progress and will be refined and distributed with the next version of the guidance. Best Professional Judgment will be needed to use to identify those historical "nonfunctioning" BMPs that could be retrofitted or enhanced. The checklist that is being developed will serve as an aid to help you document those BMPs and what its previous functionality was versus its enhanced functionality so that the department can help determine what that delta for credit should be. The more information the better to be able to determine what credit you could claim.

**The discussions by the group related to the "Visual Inspection Checklist" included the following:**

- Is the draft language related to this checklist included in this version of the guidance? *Yes, the draft language is included starting at Line 225 – Structural BMP Enhancements or Conversions. This is still a work in progress but is designed to encourage the enhancement of*



*those historical BMPs. This is intended to enhance a BMP that is currently not functioning as originally designed. A "discount factors" list is being developed for common problems with existing BMPs that are being identified. Since this is guidance, these "discount factors" will be suggestions that could be used.*

- How will "old farm ponds" and other practices that were never designed or counted as BMPs in the past as part of the base-line model be handled? *Farm ponds were never included in the base-line model, only very large reservoirs are.* How about very large reservoirs? Not looking for an answer but suggesting that they might be part of the consideration. Some of the bigger reservoirs that are not regulated in any way, if they fail, they go away. If they are taken into this system and currently retrofitted, they would only be getting "delta" for the credit factor. Could there be some consideration for additional credit for those previously MS4 unregulated facilities? *Right now the conversation has been doing this for dry detention ponds, as far as extending this to other types of BMPs, staff will need to consider the implications for that action.*

**ACTION ITEM: Staff will look into the implications and possibility of including other previously MS4 unregulated facilities into this category for credit for retrofit and enhancement credit.**

- In the Expert Panel Report there are two references to the "discounting concept" that are a little different than the "discount idea" that is being discussed. On page 9 of the report it talks about BMPs restoration not previously reported to EPA it is considered as a new retrofit and on page 17 of the report it says if it is being converted from a dry detention pond or flow control structure that is currently providing no water quality treatment then you can take full credit for the facility. *This provides an option that considers what is actually in the field and gets away from the confusion over "what was reported" versus "what was not reported" that was discussed at the last meeting.*
- Line 239 – "However, the percent modification may not be acceptable in all cases." – Does this mean that there are some ponds or BMPs out there that should not be considered? And if those are known then we shouldn't be putting the effort into identifying and including them? *That is not the intent of this language.*
- Related to the checklist - The Expert Panel Report talks about enhancing and actually modifying existing something or bringing it back to what it was designed to do or what it was supposed to be to start with while some of the things that are being considered for inclusion on this checklist appear to be on the "maintenance" side. If you were to take approach and bring a facility (a BMP) back to life, then you would be reporting it as a discounted BMP one year and take credit for it the next. It appears that everything in this category is being looked at as an enhancement when in some cases you are actually only doing maintenance on the facility.

**ACTION ITEM: Staff will work back through the examples of activities being considered for inclusion on the checklist to exclude those items that are strictly maintenance and are not actually enhancements or conversions.**

- The "qualifying conditions" for restoration versus retrofits need to be considered.

### **3. Update on Historical Reporting (Ginny Snead/Bill Keeling):**

Ginny Snead noted there had been quite a bit of conversation about this at the last meeting of the SAG. Bill Keeling provided an update and overview of "historical reporting" to the group. He presented a draft of a spreadsheet related to "historical reporting" to the group. His presentation included the following:

- The spreadsheet could be posted on the DEQ website.
- The spreadsheet would have a series of "Tabs" which would contain various reporting components, including: a list reporting fields, current as well as historical; the second tab describes each of these fields as to what information is being requested – this is where it is noted that if you provide latitude and longitude information that you don't need to provide the county or HUC information (if the lat/long information is not provided then the County and HUC information is required); the next tab is the CBPO Release BMPs tab – this is what is in the National Environmental Exchange Network (their Appendix A); the next tab is the CBPO Draft BMPs tab – this is where there are currently Expert Panels that are ongoing and you can't report these for progress because they are being worked on but you may still be doing them – this shows the type of information on those practices that we would be looking to collect; the next tab is the CBPO BMP Field Descriptions for the National Environmental Exchange Network.
- Would having a tab with "definitions" of all of the practices that the Bay Program considers BMPs be helpful? There was little or no response from the group at this time regarding adding this as an additional "tab" to the spreadsheet. Later discussion and questions from the stakeholders seemed to indicate that this information would be helpful.

**ACTION ITEM: Staff will develop an additional "tab" for "definitions" of BMP practices for inclusion in the spreadsheet.**

**ACTION ITEM: Staff will distribute a copy of the draft spreadsheet to the stakeholders for their review and consideration.**

#### **Discussions by the group included the following:**

- Is this related to "Historical Data" indicated on line 540 of the current draft guidance? *Yes.*
- The key thing to consider is that the Phase 6 is going to be coming on line in 2017 it is going to be important to have an accurate representation of what is actually on the ground as opposed to what is in the model now otherwise there could very well be a shift in the loads and the next permit could look very different. *With where EPA is going with the verification requirements, the history that was in there that was created for the calibration of the model has basically got*

*to go away. It is up to each state to clean up their history. There is a need for an actual record of what is actually on the ground so that real records can be used.*

- The issue of historical information was discussed at the last meeting. There was a lot of conversation of what did DEQ and DCR have versus what records the localities had and how are some point that all needed to "true up". It sounds like what is being discussed today is wiping the slate clean and starting over again by going back to the localities for information and their records. *That is an option that is being considered.* Object to the concept of wiping the existing record clean. *If you look at the records of what we have as data reported before 2009 it is very spotty, there is a big up spike in electronic reporting of BMPs in 2009 so more data was reported regarding BMPs. Before that there is very little actual on the ground data. In 2001 there was zero and in 2002 there was some data.*
- If there is nothing else the "squeeze then you squeeze" the locality – we all have enough on our plates to comply with the permit – it is grossly unfair to require localities to provide this new information. *The bottom-line – the reality is that there is going to be a new model and a new calibration and potential a loading rate established. The better information that we can provide to go into the process the better it will be for our urban localities. The better the new loading rate will be. It was noted that we do have some digital records – we are not saying throw out all of the data – we need to clear the current records of any "created" or "created" data or history so that we are able to justify the numbers we have. There is no way to use the guesstimated data.*
- We had previously discussed the notion of not changing the base-line – of not changing the bar. Don't like the idea of the bar being raised. *Not saying that the bar will be moved but during the next cycle of the model run and calibration the bar could go either way – higher or lower.*
- Don't want the "risk" of that bar changing. We have to plan. *The reality is that the better and more complete data and information we have available for what is actually on the ground the better it is for the localities.* There is a lot of verification and documentation that is going to be required and there will be costs associated with it. *Consistency is what we are looking for – we need better verification and better documentation to ensure that any new loading rate that is established is based on real data.*
- Lines 547 and 548 – "This may have a direct impact on the permittee's pollution reduction requirements in subsequent permits." – This seems to be a threatening statement. *It is not meant to be. The reality is that we are only requiring 5% in this permit cycle, but are acknowledging that there may be changes in the future.*
- It is great to – and as a group we should get credit for all of the BMPs that were in the ground for calculation of a base-line number. The problem is that are some folks who did a lot more work in the past than others in collecting and documenting their existing BMPs. It is not that an individual locality will get credit for those documented BMPs but we will get credit for that additional verification and documentation work as a group. *Staff wrestled with that when they developed the permit conditions. The "line-in-the-sand" then was set at 2009. Anything that you put forward since that time, you should get credit for not just in this permit cycle but also*

*moving forward from this point. The actual loading figures will depend on the next model that is developed.*

- Lines 547 and 548 – "direct impact": You as an MS4 locality will get credit for this work but also everyone else in that river basin will also get the credit for work that the MS4 locality did on documenting and verifying the existence of those BMPs. *That credit would be factored into the loadings.* It is not just the permittee that may be impacted but it is all permittees in that river basin that may be impacted. *Yes, they will get that credit in their loading rate.*
- What percentage of the information are you going to get from the system mapping? Outfalls, BMPs, etc, How far does the information provided through that process get you? *They are related but are not exactly the same thing. Have to have the mapping component to know what your system is. The permit requirements are not as detailed or as specific as what we are looking for in the guidance. This information is what we would like to see and to be able to report to the Bay Program. If we don't have the information on your BMPs then we will not be able to report it to the Bay Program which may ultimately affect any new loading rate that is developed during a future model run.*
- Understand the benefit of the generation of improved data, but feel that the burden should be shared with DCR; DEQ and the locality, because we have been reporting these BMPs as part of our annual reports. But to now say that we are going to hit the restart button and say that the data was not good enough or that we didn't keep good enough records and have to start over is just a little bit unfair. Ask that you consider whether that burden for better detailed information be a shared responsibility by both the department, who was responsible for collected the data in the first place and the people who have to provide the data. *The issue is that the data that is reported to the department in the annual reports is not up to the level of detail or not specific enough to be able to report it. The reality is that some of the data that we have is usable but is not specific enough for the current requirements or to report to the Bay Program.*
- Can the department post on their web-site what data they did report by locality so that some of that mystery is relieved? *Yes.* It is disappointing that it appears that you have data that has been reported that the department didn't use. Posting that information (the information that was reported to the Bay Program) will help everyone understand where the data is missing. *The bottom-line for the MS4s is that if it wasn't in the permit then they assumed that they weren't required to report it.*
- VDOT noted they had repeatedly asked during the Phase I and Phase II WIPs for what information – what data the department needed and they did not get an answer. *We are trying to let you know now what information is needed based on the current program. We are talking about the information available or that was reported or not reported for each locality during the period of 2005 – 2009.*
- Happy to see a consistent reporting document and format for what the state is sending to the EPA, because the localities were never involved in that process. Disappointed that the burden to fix this data gap is being placed on the localities, when they were not given an opportunity to participate in the process prior to the Phase I WIP or Phase II WIP. The localities reported data

on the MS4s permit status – that was given to the state – additional data was submitted to the state a few years ago and now we are going to go back and have the localities take that information that they gave to the state and rework that information into this format and give it back to the state. Glad that the data gap is finally being closed but it just seems that there should be a better and fairer process to do it rather than placing the burden on the localities. *Appreciate the comments. Yes, there were different approaches that were taken in the past, but this is where we are now. A big part of doing this guidance is to get out a consistent process and to correct the way things were done in the past, going forward. We hope to have a better, more consistent way of collecting information from MS4s in a better format. That is what we are trying to do here. What we need to do now is to try to move forward from this point and not dwell on any miscommunications or approaches taken in the past that didn't provide the needed data. The data collected during WIP 2 was submitted to the EPA and we talked about that at the last meeting of the SAG. That data was submitted to the state in aggregate form. We will commit to taking the data that we submitted to EPA and making that available to you. But at the end of the day the onus is going to be on the localities because they know what they actually have in the ground.*

**ACTION ITEM: Staff will post what data was reported to the Bay Program for each locality where sufficient data was made available in the locality annual reports.**

- The Special Condition does not require this kind of data. *No, it doesn't.* If that is the case, then why is it being included in this guidance document? Shouldn't we be focused on what is actually required to meet the requirements of the action plans? *It is a related requirement – this is the Chesapeake Bay Reporting Requirements that we are talking about not a permit requirement. Having this information all in one place helps clarify the requirements and what we want to see. This is not a permit requirement but we are telling you that this is the type of information that we would like to see.*
- It appears that the scope of the guidance document has changed. It is supposed to be for developing the current action plan. This goes way beyond the action plan requirements. *Staff is trying to make this guidance as comprehensive as possible.* The scope of the guidance document has changed but the description of the scope has not changed. There appears to be some "scope creep" taking place. It needs to be changed to be consistent. You need to revise the documentation wording to make it clear that this guidance addresses items that go beyond the requirements for the action plans. *At this point we will not be changing it. It is our belief that all of this guidance is guidance that the MS4s need to have in front of them.*

**ACTION ITEM: Staff will look at rewording the guidance statement and description to note that it goes beyond just the requirements for development of action plans but addresses issues and information and documentation needs that MS4s need to be aware as we move forward with this program and to keep-up with possible changes in requirements in the Bay Program.**

- The question is what is the level of documentation that is to be expected with this data? If we are talking about it being for our Action Plans then we are talking potentially about a lot of documentation and rightly so since we will be getting credit for it. For older BMPs is it not just reporting them but what documentation do we also need to provide? From a practical standpoint, the documentation in itself is going to be a lot of work. Because of other permit requirements this cannot be a top priority for localities. *We are not saying that this has to be a top priority; it is just one of the things that we are including in the guidance.* We just need to identify the specific documentation requirements of providing this data which is likely to be similar to the documentation requirements for meeting the current 5%. *The purpose of including all of these items in this guidance is to provide a framework for you as you go through the development of your Action Plans and look forward to what the expectations are for reporting.*
- There was reference made during the discussions that the preference would be looking at BMPs for the "2005 – 2009" period in the historical reporting context. If that is the case, can that distinction be included in the guidance document as a clarification? *Yes.*

**ACTION ITEM: Staff will clarify in the guidance document that for the purposes of "historical reporting" that we are looking for BMPs that were on the ground during the "2005 – 2009" time frame.**

- Is the spreadsheet available and is this a final version? *No, it is not currently available on the website. This is identified as a "Draft Version". It doesn't currently have definitions included.*
- Can the spreadsheet be distributed via email to the stakeholder group for review? *Yes. If you are able to query your database then this draft spreadsheet identifies the type of data that you should be looking for.*

**ACTION ITEM: Staff will distribute the draft of the spreadsheet to the stakeholder distribution lists.**

- Beyond the issue of the burden on the locality – It is in everyone's best interest, the state and the localities to get information on the actual BMPs that are on the ground into the model. There needs to be an effort to get this information pulled together and submitted.
- With EPA's verification process if it doesn't exist then it is not included in the new model. There will be a 10-year (once every 10 years) verification efforts – if you can't verify it and don't have sufficient data or documentation to verify a BMP then you can't include it in the model.
- Knowing that the BMP is actually on the ground is important.
- This initial ground-truthing is essential to the process.
- Loading rates should be as reflective as possible of what is actually on the ground and be as accurate as possible. It is important for localities to report as much data as possible because it impacts other localities. *It is in the best interest of the localities to put forth this data.*
- Does this mean that the current "historical data" is going to be thrown out? *No, only that data that is questionable or guesstimated data.*

#### 4. Overview and Discussion of Draft Guidance (Kelsey Brooks/Ginny Snead)

Kelsey Brooks provided an overview to the group of the changes that had been made to the draft guidance document based on the comments that had been received. In her "walk-through" of the document she noted the following:

- Added the front page of the guidance document and the standard disclaimer has been added: **"This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations."**
- There have been some language changes to the introduction – the text is mostly the same – The following text has been added:
  - Lines 53 & 54: "This guidance is specific to the first reissuance of the Phase I MS4 permits and the 2013-2018 General Permit for Discharges of Stormwater from Small MS4s ("General Permit")."
  - Lines 58-60: "For reference, a copy of the Special Condition from the General Permit is provided as an attachment to this guidance (see Appendix A)."
- A number of comments were received regarding the use of the term "locality or jurisdiction" - that has been changed to MS4 permittee or MS4 operator throughout the guidance document.
- II. Calculating Required Reductions section starting at Line 65: The "Current Land Use" section was removed from the current version of the guidance. Also, an attempt was made to remove any language that referred to year to year updating to eliminate that concept of a "moving target".
- Line 70: Changed to include "2009".
- Line 73: Updated to include: "Permittees do not need to account for the expanded areas that were identified in the 2010 U.S. Census during this permit cycle. However, permittees should begin to plan for those areas and will need to include them in the updated Action Plan that must accompany their permit reapplication. Where there is incomplete data concerning either the extent of the MS4 system or the number of pervious and impervious acres served, permittees should use their best professional judgment to make the best estimates possible."
- Lines 89 – 94 revised and updated to read: "For Phase II permittees, jurisdictional boundaries may be used as a conservative estimate of the area the MS4 serves. That data can be refined as the permittee completes the mapping requirements of their permit (Section II B.3.a. (3) of the General Permit). When estimating the MS4 system, the permittee should not include in its service area the conveyances that belong to an adjacent MS4 system. For permittees that have interconnected systems, MOUs should be considered as a method to clearly differentiate which operator is responsible for which part of the system."

- Lines 95 – 96 – reference to 2010 Census added: "Any expanded areas that resulted from the 2010 census do not need to be accounted for in this permit cycle."
- Lines 102 – 119 regarding mapping resources and resolution have been updated.
- Line 120 – A section on "Using the Calculation Tables has been added: "Once the amount of regulated pervious and impervious surface is estimated, the operator can use the appropriate table(s) provided in the permit to estimate the existing source loads for the pollutants of concern (POC): nitrogen, phosphorous, and sediment. The first table provides an estimate of the total pollutant loads entering the applicable river basin based on the 2009 Progress Run. The second table allows the user to calculate the total reductions required during this permit cycle in pounds. This is the 5% reduction that the permittee must implement within this permit cycle."
- Line 127 – Section on "Projects with a Land Cover Greater than 16%" has been added: "For development and redevelopment that disturbs greater than one acre, has a land use cover condition greater than 16%, and initiates construction between July 1, 2009 and June 30, 2014 the permittee will need to calculate the difference between the previously established phosphorous loading rate (0.45 lbs/TP/year) and the loading that resulted from the higher land use cover. Permittees will need to offset 5% of the difference between these two values during this permit cycle. An explanation of how these calculations may be performed can be found in *Example 3.*"

"In addition to this requirement, permittees must also offset any increase in POC from grandfathered projects that initiate construction prior to July 1, 2014. Those increases must be offset prior to the completion of those projects in accordance with Section 1.C.3.c of the general permit."

#### **Discussions by the group included the following:**

- Introduction: When you talk about the "action plan" what is the expectation as to the level of detail? Specific BMPs? *In the "action plan" is where you will be doing the planning so we are looking for you to use your "best professional judgment" as to the level of detail that is included. The more documentation the better especially for the first time that an "action plan" is submitted.*
- The sole or primary purpose of this guidance is for the Chesapeake Bay TMDLs, but there is language in the guidance that indicates that it might also be appropriate for other TMDLs as well. There needs to be some language somewhere that recognizes the fact that for other TMDLs the "action plans" are going to have to be a whole lot less detailed. In fact for the first permit cycle, we might just be in a study phase for those non-Chesapeake Bay TMDL action plans. We spent a decade and how many millions of dollars studying the Bay to get to this point. Most TMDLs across the state that are outside of the Chesapeake Bay area have little or no information besides what was done in the TMDL studies themselves. In order to develop a program, that is going to be cost effective, there is going to have to be a lot more study done



before we get to implementation. This statement in the guidance that it can be used for other TMDLs Action Plans is of concern. There has to be some language that recognizes that other TMDL action plans are not going to be as advanced as the Chesapeake Bay TMDL action plans. Because there is not as much historical data or background information available. *A separate section (VII. LOCAL TMDLs) that starts on Line 580 has been added that attempts to address those TMDL Action Plans outside of the Chesapeake Bay. Not comfortable adding the type of disclaimer that is being suggested because a lot of those other TMDLs have been approved and have been around for a long time.*

- Besides the Chesapeake Bay TMDL, the other localities represented on this advisory group have other TMDLs that they also have to meet. Do those localities have sufficient data or information on those streams to the same level of detail that you have for the Chesapeake Bay to address those in the same level of detail in the action plan? *The department is not asking for the same level of detail in the action plans.*
- Line 56: When the guidance talks about "...how the full reductions may be achieved by the end of the third permit cycle..." that appears to be beyond the scope of the current permit. Also on Lines 57 & 58: The special condition refers to submitting an action plan but does not address "updating" that plan. The special condition says we are to submit the action plan and then implement the action plan. If we are going to have to continually update that action plan throughout the permit cycle we will have to deal with a moving target. We are not required to submit updates. *That is true; you are not required to submit updates. You are required to submit your initial action plan and then if you want to deviate from that plan then you need to submit an update to the action plan in your Annual Report.*
- If your action plan includes 5 BMPs and then you decide that you want to add 2 more, does that require the submittal of an updated action plan or is simply providing that change and adding that information in your annual report? *It is certainly something that you would include in your annual report but if you want to start taking credit for those changes or additions then you would need to update your action plan as well.*
- If the contemplation is that an action plan could be changed will there be any opportunities for additional public comment on those revised action plans? *Staff had not considered that point – this guidance doesn't address public comment.* The action plan becomes a permit obligation so any changes in that plan should provide an opportunity for the public to comment on those changes. Some clarification of those opportunities would be appreciated. *The action plan is subject to the same provisions as your program plan.*

**ACTION ITEM: Staff will look at the permit language related to any revised action plans and how opportunities for additional public comment would be handled. Staff will clarify the public comment opportunities required in the permit for this type of change.**

- Line 70 – In addition to the addition of 2009 – this should state "June 30, 2009".
- Line 70 – Should also be revised to include the word "permitted": "The size and extent of their permitted MS4 system as of June 30, 2009.

**ACTION ITEM: Staff will incorporate the recommended changes to line 70.**

- The additions to lines 92 – 94 is helpful language related to MOUs, but it still doesn't address an underlying issue of what is there is a VPDES permittee that discharges into the MS4, how is that load going to be addressed, not just accounted for? Since the definition of a service area defines what the load is that the MS4 has to address this is a critical issue. What is happening to include other VPDES permittees? *There are separate provisions in the MS4 permit that deals with this scenario.*

**ACTION ITEM: Staff will clarify where and how this scenario is addressed in the MS4 permit provisions.**

- Line 92: Needs to address "areas that drain to conveyances that the permittee does not own" or at minimum "the parcel that is otherwise regulated". Needs to address areas that are covered under another permit. *Changes being proposed in the Industrial Stormwater General Permit propose that if a locality believes that additional controls are needed to address an industrial stormwater discharge that they can impose those additional controls through their local ordinances. (Only if the locality is more restrictive/more stringent than the state requirements – there are only one or two jurisdictions in the state that are more stringent.)*

**ACTION ITEM: Staff will look at rewording Line 92 to address those areas that are otherwise covered under another permit and will discuss how this concern can be addressed.**

- If DEQ's response to localities is "that you fix it" – that's not a "fix". Put a reduction requirement in the industrial permits and make each permitted facility deal with its own.
- Line 88 – "Shared responsibility" is really not a response – we want to segregate or delegate the responsibility and not have a "shared responsibility". We may develop MOUs to work together to meet your individual responsibilities but there shouldn't be a requirement in the permit for "shared responsibility". A "shared responsibility" is actually "not responsibility" since you can say someone else is responsible and nobody actually is responsibly. The language in this paragraph needs to be revisited and cleaned up to clarify how this is to be addressed.

**ACTION ITEM: Staff will look at the language of this section and attempt to clarify the intent and requirements of the section.**

- Line 118 – There were discussions regarding the difference in scale from the Bay Model to what is being recommended in the guidance.

**ACTION ITEM: Staff will look at the language related to minimum resolution.**

- If you have data but it might not be complete or you are missing some components how do you address that? What information do you need to provide? *This falls into the category of the use*

*of "best professional judgment" and providing the best available information based on the data that you have.*

- It might be useful to establish definitions for threshold resolutions. At some point in time you have to clarify that this is our "definition" and move forward.
- Imagery that you are using has to be analyzed. Imagery scale and analysis scale could be different. Would like to see a target as to a specific "resolution level".
- Landscape data was discussed.
- Data gets analyzed – are we looking for every square foot of impervious cover or not?
- A bigger discussion of the land use is happening at the Bay Program level. There are different resolutions in different mapping data sources. A lot of details still need to be worked out as to what the standards for local governments should be. How the local land use data is going to be incorporated is still being discussed. The Bay Program is trying to identify data standards. Unfortunately that work is not ready yet to be incorporated into this document. You have to know what resolution you are doing your analysis at. Need more information on what the standards should be over and above what the resolution of the raw data is.
- Line 103 refers to "total acres" – the tables in the permit required that you report "total impervious" and "total pervious" acres but not "total acres". In most MS4s in the Bay program model only deal with "impervious" and "pervious" acreage and all "pervious" land was assumed to be managed turf. The current assumption is that you are only dealing with "impervious" and "managed turf" acreage in those MS4s. Not true – but that is the assumption that is used. Forest was excluded from the calculations for allocations assigned to the MS4s through the Bay model.
- Line 103 should refer to "the number of regulated impervious and regulated pervious acres" – these may not add up to the "total number of acres" because there is "forest acres" in those sub-watersheds.
- Line 103 - Can you provide a definition as to what is actually meant by "pervious"?

**ACTION ITEM: Clarifying language will be added to this section. Staff will add language to clarify what is meant by "regulated pervious" and "regulated impervious".**

- Line 89 – Can you define what is meant by "jurisdictional boundaries"?

**ACTION ITEM: Clarifying language will be added to this section.**

- Line 128 refers to both "development and redevelopment" shouldn't that just refer to "new development".
- Line 134 regarding "grandfathered projects" – what is meant by this? What projects would fall into this category?

**ACTION ITEM: Staff will clarify what is intended by the term "grandfathered projects".**

- Line 135 should refer to "after July 1, 2014" not "prior to".

- Need to clarify the use of the terms "developed" versus "redeveloped" and how they relate to "new sources". Redevelopment is not a "new source".

**ACTION ITEM: The use of the terms "developed"; "redeveloped" and "new source" will be reviewed and clarified as to what is intended.**

- The differences between the concept of "nutrient neutral" and "no net increase" was discussed by the group.
- What is the difference between what was "redeveloped" and what was "load reduction"?

**ACTION ITEM: Need to clarify specifically what is meant by "redevelopment".**

## 5. BREAK FOR LUNCH

## 6. Continued Overview and Discussion of Draft Guidance (Kelsey Brooks/Ginny Snead)

Kelsey Brooks continued the overview of the changes that had been made to the draft guidance document based on the comments that had been received. In her continuation of the "walk-through" of the document she noted the following:

- Line 137: Changes were made to section III. Meeting Required Reductions.
- Line 143 & 144: Added: "As BMPs are approved by the Bay Program during the permit cycle, they may also be used to meet the implementation requirements of this permit."
- Line 145 – 148: Added: "**The calculations provided to the Department should show that, based on the information available at the time the Action Plan is completed, the BMPs the permittee implements will meet the reductions required for this permit cycle for the Special Condition for the Chesapeake Bay TMDL for this permit cycle.**"
- Line 162 – Added section on Virginia Nutrient Credit Trading Program.
- Line 164 – Added section on Nutrient Management.
- Line 167 – Efficiency BMPs – The explanation on how to use the curves is the same as before – it will conform to the tabs provided in the spreadsheet – Added clarifying language: "**In order to be eligible for these efficiencies, the BMP must meet all the design requirements that are in the Clearinghouse's technical specifications for that BMP.**"
- Line 225 – Structural BMP Enhancement or Conversions – This is related to the "Visual Inspection Checklist that was previously discussed.
- Line 243 – Land Use Change BMPs – received a lot of comments of why these were the only three BMPs identified – Revised to read: "Land Use Change BMPs will be credited by the number of acres converted. There are three types of land use change that are applicable to urban lands and that have been approved by the Bay Program. As more land use change types are approved, they may be employed by permittees:
- Line 256 – Forest Buffer – clarified to read: "Forest Buffers can be credited as both a land use change and efficiency BMP. The land use change component should be credited in accordance with the applicable section of *Table 10* in Appendix B. The efficiency is applied at a 2-to-1 ratio

for upland acres. For instance, if 1 acre of buffer is installed, the efficiency can be applied to and credited for 2 upland acres treated. The following established efficiencies for TP, TN, and TS should be used (*Table 3*):"

- Line 269 – Urban Stream Restoration: Mostly unchanged. Did revise to read: "For historical urban stream restoration projects and those that cannot conform to the protocols described below, permittees should use the interim rates developed by the Bay Program to calculate credits. These efficiencies can be found in *Table 4*." Table 4 can be found on Line 296.
- Line 298 – BMPs Implemented on Unregulated Land: Needs to be clarified as far as what "unregulated" means.
- Line 318 – Nutrient Trading – Included what was in the permit without any elaboration.
- Line 322 – Treatment Train section has been revised to allow use of "treatment train": "Although BMPs should be reported to the department individually, the permittee may receive credit for BMPs that are implemented as part of a treatment train. For treatment trains composed of BMPs from the Virginia Stormwater Clearinghouse the Runoff Reduction Method Spreadsheet can be used to account for the impact of the treatment train. If the retrofit curves are used, the permittee will need to use their best professional judgment to identify the predominant BMP that will be credited. If BMPs with Bay Program approved efficiencies are used, the permittee may calculate the reduced loading rate that will flow to each BMP in the treatment train to determine the appropriate reductions for each step (see *Example 2b*)."
- Line 330 – IV. Examples: The examples are new – the link has now been added.
- Line 335 – Example 1: Walked through the example.
- Line 389 – Example 2a: Walked through the example.
- Line 412 – Example 2b: Walked through the example.
- Line 435 – Example 3: Walked through the example. Need to address the previous discussions related to the use of the terms "development or redevelopment". Need to delete the term "redevelopment" from the example.

**ACTION ITEM: Delete reference to "redevelopment" from the example.**

- Section V. Reporting Control Measures – Line 513 – Received a number of comments that this section should match up with what is requested in the section should match up with what is required by the post-construction stormwater management BMP reporting requirements in the Phase I permit. The section has been revised to include that information.
- Section V - Table 6 – The purpose of Table 6 is to clearly define what the area to be treated means and what the reporting element means.
- Line 540 – Historical Data.
- Line 563 – VII. Reapplication Requirements section: No new requirements. Taken directly from the permit.
- Line 580 – VII. Local TMDLs section: This relates to facilities/practices that are not in the Chesapeake Bay Area and includes reference to encouraging the use of "best professional judgment".

**Discussions by the group included the following:**

- Lines 138 – 141: "Elements that are required elsewhere in the permit..." Does that include "street sweeping"? *Anything included in the table with efficiencies can be used.*

**ACTION ITEM: Based on previous discussions "street sweeping" will be added back into the efficiencies table with the current efficiency knowing that it is going to be changed based on the Expert Panel findings.**

- What about other structural or programmatic elements that are part of a locality's program? How will those be handled? Are they going to be excluded? *Not everything that you do in your permit will be "creditable". Only those things that are acknowledged by the Bay Program.*
- Line 139 – use of the term "regulated lands" – Another case where clarification is needed as discussed previously.
- Line 145 – the use of the term "calculations" – changing this to refer to "The means and methods provided by the department..." might be more consistent with what has been discussed.

**ACTION ITEM: Revision of term from "calculations" to "means and methods".**

- 5% through BMP implementation – when can you get credit for BMPs – based on when they come on line?

**ACTION ITEM: Staff will look the 5% implementation requirements in the current permit and clarify that in the guidance.**

- Line 149: Change the term "determine" to "estimate".

**ACTION ITEM: Change the term "determine" to "estimate" on line 149.**

- Starting at line 151 - Retrofit aspects – How do you deal with the 16% issue for new development and redevelopment and retrofits – a retrofit is not "development or redevelopment". This needs to be clearer in the guidance.

**ACTION ITEM: Clarify what is meant by "retrofits" and what is required.**

- Line 138 refers to "implementation": What does this refer to: redevelopment? Retrofits? Needs to be clarified. Credit for redevelopment? *According to the permit language, implementation means an "in-the-ground BMP" but it doesn't have to be in the ground any specified amount of time prior to the permit.*

**ACTION ITEM: Clarify what is meant by BMP implementation and what it includes or does not**

**include.**

- Line 149-151 states that "...the total acres treated cannot exceed the total acres served by the MS4." Projects outside of MS4 credits?
- Retrofits and redevelopment before 2014 concept was discussed. How does this apply to new development related to the greater than 16% limitation?
- Table 1c – Line 195 – When would that table be used? *When you are implementing a wetland restoration BMP.*
- Need to include definitions in the spreadsheet.
- Line 167 – Efficiency BMPs refers to "non-proprietary BMPs – How are "proprietary BMPs" going to be addressed. *Staff is in the process of developing language to address the use of "proprietary BMPs" for inclusion in the guidance documents.*
- Line 165 – use of the term "unregulated". Previously discussed in the "regulated" vs. "unregulated" discussions.
- The use of the "curves" was discussed with issues related to "dry extended retention" ponds. If you use the curves to determine reduction efficiency for a dry extended retention pond you end up with a higher efficiency than the practice actually credits itself. *Runoff reduction practices put water back into the ground – dry extended retention basins do not put water back into the ground.*

**ACTION ITEM: Staff will look back at the calculations and the curves regarding their use and resulting efficiencies for dry extended retention ponds. Staff will revisit the tables and the entries to clarify them.**

- You are not supposed to use the curves for dry extended retention ponds according to the Expert Panel report – Table 2 Line 208 specifically addresses only stormwater treatment practices.
- How do you apply the efficiencies in Table 1c? *It was originally treated as a land use conversion practice.*

**ACTION ITEM: Staff will look at clarifying the text related to wetland restoration and the use of the estimated efficiencies.**

- Lines 170-171: Specifically states that you can use the design efficiencies if all of the Clearinghouse technical specifications are met. In lines 179-180, if they don't meet the clearinghouse then you use the curves. It begs the question that is they are not meeting the technical requirements of the Clearinghouse what requirements are they meeting or are they required to meet? Is that spelled out anywhere? Is it up to the locality in their plan review process? Are their Bay Program standards or other standards that they are required to meet? *This came out of the discussions at the last meeting regarding the question of "what if I am trying to meet the Clearinghouse Design Technical Specifications but I don't have the room to meet the specifications or just can't meet some aspect of the specifications but can meet others but not all, how do I get credit for the practice?" Our answer was "use the curves". You are*

*using the Clearinghouse design specifications as much as you can, but you can't meet the full specifications. The department would review what is submitted and request additional information if needed to complete review and approval of the practice.*

- Regarding the question about constructed wetlands – isn't that addressed in Table 6 found at line 561? That appears to address what we are supposed to be reporting on. The Constructed wetland 1&2 practice identifies the reporting element as "area in acres of constructed wetlands" all of the other reporting elements refer to "acre in acres treated by" some practice.
- Line 151 – regarding the list that starts – might want to include a catch-all phrase that addresses "other BMPs duly approved by the Director of DEQ" – the stormwater regulations give that kind of authority.
- Flexibility is great but there should be "identified BMP minimum requirements". *Staff will look back at these requirements but at the end of the day the probable best bet is to address the Clearinghouse Technical Specifications as much as possible. There might be some minimums that we can compile.*

**ACTION ITEM: Staff will look at the inclusion of possible "minimum BMP requirements".**

- The concept and use of "Best Professional Judgment" needs to be clearly stated in the guidance document.
- Would it be useful to have standards for the use of "Best Professional Judgment" so 95% of practices have to be achieved by meeting the technical specifications and then 5% could be achieved through the use of "Best Professional Judgment" because they meet most of the specifications but not all of them? You wouldn't want to have 50% of your program based on standards and specifications that were not clearly defined. *It is anticipated that the majority of the credits will be taken for retrofits whose efficiencies will be taken from the "curves".*

**ACTION ITEM: Staff will look to see what kind of boundaries can be put on the use of "Best Professional Judgment".**

- Lines 209 through 217 – CURVES – In addition to the curves there is actually an equation that can be used instead of just fitting it on the curve. The curves have an equation – you plug in the runoff depth and it spits out the efficiency. The equations were sent to DEQ.

**ACTION ITEM: Staff will look back at the information related to the equations related to the curves.**

- Need to clarify the use of "retrofit" versus "restoration" language.
- Line 251 – "Tree Planting" versus "Reforestation": Needs to be clarified.

**ACTION ITEM: Staff will look at clarification of the use of the terms "tree planting" versus "forest" or "reforestation".**



- Line 298 – BMPs Implemented on Unregulated Land – Need to clarify the use of the 0.41 lbs./acre baseline for new development versus the .45 lbs per acre baseline for retrofits.

**ACTION ITEM: Staff will clarify the difference between the use of the .41 and the .45 baseline figures.**

- Line 304 – References "performance curves above" – which curves are being referred to? *Staff will clarify.*

**ACTION ITEM: Reference will be revised to reference the "figure number" instead of the "curves above". Staff will clarify what is being referred to.**

- Example 1 – Is there an assumption that you did not meet clearing house specifications? *Yes.*

**ACTION ITEM: Staff will add clarifying language to indicate that in this example the clearing house specifications were not met.**

- Example 1: Can you provide an example for a scenario where there are both new development and redevelopment land area?
- Example 1: What is considered as development as opposed to redevelopment?
- Example 1: What is meant by "structure"?
- Page 561 – Table 6 – Is it the footprint or the drainage area that is of concern? The reporting elements for "constructed wetlands" is "area in acres of constructed wetlands".

**ACTION ITEM: Need to clarify whether it is the footprint or the drainage area.**

- Credit for redevelopment was discussed and the use of permitting authority approved efficiencies at the time.
- Will there be a resource at DEQ to get questions answered as they come up. *Yes.*
- Example 1: It would be clearer if the runoff depth treated was something other than 1 inch. Because if it was 1 inch you probably wouldn't use the curves.
- If you have a locality that is split into multiple major drainage basins and you have to get this 5% reduction does it matter which particular watershed you take it in?

**ACTION ITEM: Staff will look at what needs to take place in a locality with multiple major drainage basins and the claiming of the 5% reduction.**

- Example 2a: Practices for "unregulated" land – also a base-line issue – might be good to have an example on how the base-line is calculated.

**ACTION ITEM: Staff will look at the possibility of developing a "base-line" example to include in the guidance document.**

- Example 2b: Would be good to have an example that looks at various ponds or BMPs in a row or a string of BMPs that are being retrofitted.
- Example 3: Issue with example in general – about who this provision applies to?

**ACTION ITEM: Staff will attempt to clarify the example as to who it applies to – it applies to everyone.**

- Section V – Table 6 – Will the issue related to earlier discussions regarding the reporting element for construction wetlands be addressed? The reporting element for "permeable pavement" also refers to area in acres of practice not area in acres treated as is the case in the remaining elements in the table.

**ACTION ITEM: Staff will look at both "constructed wetlands" and "permeable pavement" in Table 6 and revise as needed.**

- The state should be actively involved in coordination of the development of the local TMDLs. Any guidance specific to local TMDLs would be appreciated. Important to have all the players together and can create a lot of variability if not coordinated. There is a need for guidance for the development of local TMDLs.

**ACTION ITEM: Staff will look at continuing a discussion about guidance specific to local TMDLs and ways the work on individual TMDLs can be coordinated.**

- The current wording of the regulation is that a locality has to do individual TMDLs for each stream by impairment. The reality, when we get into implementation, is that a locality is going to have a certain budget for the locality to spend. Is it DEQ's intent that we have to spend the money equally across all of the localities TMDL impacted streams or will there be some consideration to allow a locality to concentrate their available funds on one impaired stream or specific areas so that they can show actual improvement to their citizens? By concentrating on one stream they would likely not get to other streams until a later period of time. Not sure where that flexibility is. *There is currently a lot of flexibility – the department encourages you to be looking at the actions that best suit your individual locality.*
- These action plans are individual and implementation is going to be budget driven – there needs to be linkages between these individual plans. For example there may be 14 action plans but 10 may say that no efforts are going to undertaken to meet the action plan because the available funds are being used on 4 priority action plans in order to show progress. It would be beneficial if a locality could target a specific watershed and concentrate the resources there to be able to show progress and therefore potentially gain greater support for the efforts from the citizens as the program moves forward.

**ACTION ITEM: Staff will discuss the needs for a greater scope of guidance for those local TMDLs outside of the Chesapeake Bay program area.**

- If you have a local TMDL that is a legacy contaminant and in addressing that you achieve reductions in Bay TMDL specific pollutants, can the MS4 claim that credit. *Yes.* It would be nice to see that spelled out somewhere.

**ACTION ITEM: Staff will look at language to address a MS4 claiming credit for achieving a reduction in a local TMDL.**

## **7. BREAK**

## **8. Continued-2 Overview and Discussion of Draft Guidance (Kelsey Brooks/Ginny Snead)**

Kelsey Brooks continued the overview of the changes that had been made to the draft guidance document based on the comments that had been received. In her continuation of the "walk-through" of the document she noted the following:

- Line 595 – Part II – Action Plan Format & Requirements – Added permit language into the guidance sections to clarify the text. Appendix A which includes the Chesapeake Bay Special Condition has also be added.
- Line 599 – Clarifies that the action plan must be completed no later than 24 months after the effective date of the permit.
- Line 600 – Clarifies submittal of the action plan with the subsequent annual report.
- Line 611 – Current Program and Existing Legal Authority – added a reference to use of review of the current MS4 program for compliance with this program.
- Lines 634 & 635 address the question of new legal authorities.
- Line 642 – Means and Methods to address discharges from new sources – Adds definition of "new sources".
- Line 654 – Estimated Existing Source Loads and Calculated Total Pollutant of Concern (POC) Required Reduction.
- Line 678 – Means and Methods to meet the required reductions and schedule – this is the section that contained the table that we discussed removing at the last meeting – the table in question has been deleted from the document.
- Line 698 – Means and methods to offset increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014.
- Line 718 – Means and methods to offset increased loads from grandfathered projects that begin construction after July 1, 2014.
- Line 737 – A list of future projects, and associated acreage that qualify as grandfathered.
- Line 753 – An estimate of the expected cost to implement the necessary reductions.
- Line 770 – Public comments on draft action plan (General Permit Requirements).
- Line 779 – Public comments on draft action plan (Phase I Permit Requirements).

**Discussions by the group included the following:**

- Why are the checklist items identifies as a "compliance checklist"? It seems more appropriate to identify them as "Action Plan Review Checklists". *It is a "compliance list"*. The use of the term "approval" rather than "compliance" would be more appropriate.

**ACTION ITEM: Staff will look at the use of the terms "compliance" versus "approval" and make a determination regarding revising the text accordingly.**

- Line 597 refers to the Chesapeake Bay TMDL Action Plan – shouldn't the title of the section reflect that it is the Chesapeake Bay TMDL Action Plan Format & Requirements.

**ACTION ITEM: Staff will clarify the title of the section and revise accordingly.**

- Line 611 – Regarding "legal authorities" - Does that mean to reiterate the existing legal authorities? *If no new legal authorities are needed say so – refer to the list of authorities already included in other sections of the annual report don't have to regurgitate the list – only need to list the new legal authorities needed – if there are any.*
- Line 647 – New sources is not redevelopment.

**ACTION ITEM: Staff will clarify that "new sources" is not "redevelopment".**

- Line 663 – Change "calculated" to "estimated".

**ACTION ITEM: Staff will look at the use of the term "calculated" and replace it with the term "estimated" where appropriate.**

- What is the difference between #3 (Line 642) and #6 (Line 698)?

**ACTION ITEM: Staff will provide language to clarify the differences between #3 and #6 in the text and in the titles of the subsections.**

- Line 718 - #7 – How can we estimate what is going to be grandfathered? *This is actually for planning purposes – just use your best professional judgment.*
- What is meant be "initiate construction"? *Initiate construction is the beginning of land disturbance.*
- Could DEQ put together a list of common VSMP activities that need to be considered?

**ACTION ITEM: Staff will develop a list of common VSMP activities that should be considered.**

- Line 739-740 – The VAC number is incorrect.

**ACTION ITEM: Staff will correct the VAC reference number in this section.**

- This is really not a list of all grandfathered projects it is actually a list of additional reduction requirements.

**ACTION ITEM: Staff will look at this list to see if actually needs to refer to projects where additional reductions are required.**

- Line 737 – This requirement is a waste of resources at the local level – If you have a permit you are not grandfathered. Is this necessary?

**ACTION ITEM: Staff will look to see if this language can be clarified.**

## **9. Other Comments:**

- Can the group receive a "word" version of the document to be able to send a markup? *A pdf is preferred – we would prefer to get written comments.*
- Only meeting twice – would suggest that the group meet at least one more time. *Intent was to not meet another time. Have not heard anything that would require a third meeting. Staff will consider a third meeting based on need after seeing the comments received.*
- *Comments are due back by October 11<sup>th</sup> – there is a possibility that we could send another draft back out for another round of comments.*
- The formatting of the document was discussed.

**ACTION ITEM: Staff will look at reorganizing and reformatting the document based on comments from the stakeholder group.**

- Will meeting notes be available from this meeting?

**ACTION ITEM: A draft of the meeting notes from today's meeting will be distributed to the group's distribution lists as soon as they are available.**

- Can the response for comments deadline be extended to "two weeks" from the time that the group receives the "meeting notes"; the "spreadsheet"; the "revised document" and the "response to comments" document.

**ACTION ITEM: Staff will look at the possibility of an extended comment period based on when the materials are sent to the group.**

## **10. Stakeholder Comments and Response Summary**

Kelsey Brooks reviewed the stakeholder comment summary and response document that was incorporated into a spreadsheet. She went over a very brief explanation of the comments received and responses.

- A request was made that the summary of comments and response document be sent out to the group prior to the October 11<sup>th</sup> comment deadline.

**ACTION ITEM: Staff will send out the "Summary of Comments and Responses" document will be sent out to the group's distribution lists.**

**11. Public Comments:**

No public comments were offered.

**12. Adjournment:**

Ginny Snead thanked all of those in attendance for their time and participation. She adjourned the meeting at 3:25 P.M.