

**CHESAPEAKE BAY TMDL  
WATERSHED IMPLEMENTATION PLAN PHASE II  
STAKEHOLDER ADVISORY GROUP**

**Meeting Summary**

November 7, 2011

Pocahontas Building, Richmond, Virginia

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The meeting began introductions and a brief discussion of the meeting guidelines. The meeting agenda was then outlined. Meeting agenda items included Virginia's schedule for achieving compliance with the Environmental Protection Agency's (EPA) requirements and if the state is on track, the Chesapeake Bay model, issues and guidance for localities, and the community conservation information.

A SAG member commented that they had read the correspondence between the Department of Conservation and Recreation (DCR), the Department of Environmental Quality (DEQ) and the EPA. The member noted that the EPA was present at this meeting. The member wanted to know about where the Phase II WIP process was at this point. There were a large number of local governments and others representing various districts at the meeting and the member wanted to ensure that their concerns were addressed at this meeting. Other SAG members seconded this concern.

**Updates**

**Nutrient Credit Exchange Study**

The study committee met on October 12<sup>th</sup> and created a draft framework document, which is now on the web. DEQ has received many comments and were finalizing the document. The study appears to be further defining the ideas contained in the Watershed Implementation Plan (WIP).

The committee will meet again on November 16<sup>th</sup> to discuss reasonable areas for expansion. The meeting will include discussion of how to clarify the state code with regards to individual agencies. In particular, this clarification will include nonpoint source credits and stormwater and the use of allocations of MS4 permits to stormwater treatment plants. DEQ is also looking at expanding credits with regards to potential future wastewater users. The anticipated deadline is to finish the report by the end of November.

**James River Study**

The study has a two track focus: both the scientific and regulatory needs of the James need to be addressed. A scientific advisory panel has been established and met twice in August. Workplans have been created and are being implemented. Virginia Commonwealth University (VCU) has been contracted to develop some of the scientific aspects.

**Slowly Available Nitrogen Study**

The Virginia Department of Agriculture and Consumer Services (VDACS) reported on the status of the study. Lawn fertilizer and lawn maintenance fertilizer definitions are critical to addressing phosphorus in these products. VDACS has been asked to evaluate five items in its study. VDACS gathered a wide variety of interests to participate in the study. Three meetings were held

in Richmond, and the study group's conversations focused on application rates for slowly available nitrogen products. Recommended application rates will be incorporated into the Department of Conservation and Recreation's Nutrient Management Standards and Criteria. This has been determined as the best way to address the application rates and will include recommendations for “slow or controlled release fertilizer” and “enhanced efficiency” lawn maintenance fertilizers. VDACS believes that there would be no cost increase to producers. Draft findings will be circulated one more time to the study group prior to being submitted to the public.

### **Resource Management Plans**

The panel in charge of developing the Resource Management Plans has not yet concluded its work. There are some difficult issues the panel needs to address and these issues will take additional meetings to resolve. The panel must develop a regulation to control how resource management plans are constructed, what they look like, and how they are implemented. Virginia is one of three states using this approach. There have been broader discussions around “agricultural certainty” and this process has received a lot of attention. Accountability needs to be worked into this system, especially how the best management practices will be accounted for in the Chesapeake Bay Watershed Model. It is anticipated that the panel will work through these issues and proposed regulations will be issued early next year.

### **Phase II Planning and Outreach**

Outreach is continuing with local governments through Planning District Commissions (PDCs). Five deliverables have been asked for from local governments.

- First, localities should review the model data provided to them to determine correct land use information.
- Second, the current mix of best management practices (BMPs) already implemented has been requested. Ground-truthing on the local level is being requested to ensure localities receive credit for what has already been implemented.
- Third, a local scenario of BMPs that meet the 2025 level of implementation has been requested. This request allows localities to create the best mix of BMPs for their specific areas.
- Fourth, strategies for how localities will implement their requirements for 2025 are requested.
- The fifth deliverable is the resources needed to enact these strategies.

The deadline for this information to be submitted to DCR is February 1, 2012. There have also been nine workshops to present and clarify the deliverables as well as tools that can be used to assist in the development of the deliverables. Workshops included PDCs, Soil and Water Conservation Districts (SWCD), federal government representatives, and other stakeholders.

There have been three training seminars regarding the Virginia Assessment Scenario Tool (VAST). Trainings have had a large number of participants.

The EPA and their consultant TetraTech has also provided technical assistance. EPA's Circuit Rider program, through the Center for Watershed Protection, are also available to assist localities with the Phase II planning process.

Recently there has been a grant opportunity provided to PDCs and local governments. Fourteen proposals from PDCs were received. The grants are being finalized.

There were many questions regarding the Phase II Planning Outreach:

- There was a request that the stakeholders be provided information regarding the progress localities have made for each of the five deliverables.
  - Many localities are working toward achieving the deliverables, but there is no checklist or manner in which to assess the progress statewide. Many localities have submitted the requested information. Land use information is probably the least completed. Providing the BMP information is more complicated as are the BMP scenarios.
- It was commented that many smaller and more rural jurisdictions might have problems fulfilling these deliverables. A checklist or some other method that would enable a locality to prioritize the deliverables was requested.
- The state was asked if there is a strategy in place to engage local government bodies and local elected officials. There is evidence of correspondence at the staff level, but it was asked how inclusive this is.
  - The process started with meetings with local PDCs which introduced the process and deliverables. Communications have been sent out to local governments and senior elected officials. Another letter will be sent out by the end of the week to senior elected officials and administrative officials detailing expectations.
- It was noted that on October 5<sup>th</sup>, a letter was sent out by the EPA clarifying that confidence levels in the model are higher at larger scales. However, the state is focusing on the local level. Localities are looking at the Phase I WIP to assess the appropriate mix of BMPs. Local governments will be reluctant to commit precious resources at the staff level to develop these five deliverables without clear guidance on the state's and EPA's expectations.
  - A SAG member asked if localities can work at the major basin scale, combine all the data and efforts and submit that to the state. Other members agreed with this idea.
  - A SAG member stated that they are aware of a number of local rural communities that may not be submitting anything, as very little of their locality is under regulation, such as a MS4 permit.
  - A SAG member representing a rural community commented that the first three deliverables were possible. However there are no resources available to complete the last two.
- It was commented that everyone knows the Bay model is complex. The first three deliverables are beneficial for localities to complete. However, the differing communications from both the state and EPA are making this process difficult to implement. Additional tools, assistance, and guidance are needed to move the process forward.
- It was noted that it would make more sense to focus on the BMPs now instead of the numeric reductions in the model. The Phase I WIP has required practices and should be the focus.

- A SAG member mentioned that the water quality of the Bay has been an issue for twenty years. A management infrastructure is necessary to track these deliverables, what they are, and who is working on them. That will help set accountability.

Regarding the submittal of input decks for the model at the local level, the state has no desire to require input decks and will not be submitting them. On September 16<sup>th</sup>, DCR met with the EPA leadership, management, and technical staff. Concerns were heard from all sides. Following the meeting, EPA provided a list of potential options for how Virginia proceeds with the Phase II process. The October 5<sup>th</sup> letter appeared to remove the local target requirements and allowed for local loads to be developed at the basin scale. The state will be looking at strategies and BMPs that work and will not submit an input deck regarding loads. If the outputs are not going to be reliable, the state does not need to provide inputs. The state will be focusing on procedures and processes. The final part of the WIP will show the results and findings of these efforts. Implementation of WIP efforts will continue on the ground. VAST can help determine land use and BMP scenarios. A template for strategies and resources is also being provided. The focus will not be on loads, but instead on process and strategies.

Questions and comments continued.

- A SAG member asked if the SAG could hear from the EPA their reaction to the October 5<sup>th</sup> letter. EPA was also asked to respond to the letter from DCR Director David Johnson on what local governments need to provide?
  - The intent of the October 5<sup>th</sup> letter was that localities understand what they need provide to the state, and the information provided did not need to be in modeling format. EPA wanted to see what BMPs will need to be implemented in localities, how the BMPs will be implemented and what future actions localities will take over the next fifteen years to meet the TMDL. The EPA does not want localities to have to create their own input deck. It is important that Virginia and its localities receive credit for all BMPs implemented, as long as those BMPs are implemented to design standards and specifications. The EPA also noted that for the October 17<sup>th</sup> letter, the changes are being made in partnership with the Chesapeake Bay Program and the EPA is not making unilateral changes. It was acknowledged that the use of certain terminology was increasing the confusion.
- It is difficult to tell local partners how percentages of implementation are supposed to be determined, especially if numerical targets for load reductions are not required. In order to find the percentage of implementation, an input deck is needed to run the VAST model.
  - The EPA responded that input decks are a way to determine the effect of practices at certain locations. There is a connection between types of BMPs, location and percent of land cover in BMPs and the reductions of loads. EPA still wants there to be a way to determine what mixture of practices are being implemented and what needs to be implemented in order to meet water quality standards.
- A SAG member commented that what is missing is the mechanism for aggregating at the state level. In order for the state to aggregate this information, it needs input from the local level, which can be accomplished through the use of VAST.
- EPA mentioned that each of the Bay states were implementing Phase II in slightly different ways. Pennsylvania provided localities with information at the basin level,

rather than the county/city level. Pennsylvania attended locality meetings with this scale of information which informs localities as to what actions are needed.

- A SAG member asked for a description of the difference between Pennsylvania and Virginia.
  - Pennsylvania has four big watersheds. The state uses the watershed boundaries to determine stakeholders.
- A member asked if the June 14<sup>th</sup> letter's objectives will be substantially changed by the new letter that is slated to come out.
  - There is no substantial change from the June 13<sup>th</sup> letter. The new letter will focus on the February 1st, 2012 deadline. It will explain the shift for deliverable three from developing local target loads to focusing on BMP implementation scenarios similar to the Phase I WIP. The letter will not create any new demands.
  - The state further noted that there have been some anomalies in the model. Virginia has been working with the EPA since June to address the anomalies. The focus has shifted from local targets and input decks to implementation of BMPs. Only the state needs to create an input deck. The Commonwealth is trying to give localities guidance on strategies for improving water quality.
  - The implementation actions do not have to be the same as the Phase I WIP, but they have to have a similar level of input. The state will then use these implementation scenarios and VAST to create the Phase II WIP. VAST includes pollutant loads, but it can be used to levels of BMP implementation.

Questions and comments continued.

- A SAG member questioned whether there was a way to do provide implementation scenarios outside of VAST? VAST has three broad types of BMPs and there are different BMPs with different efficiencies within each of those broad types. It would be helpful to have much more specific information on those BMPs and their efficiencies.
  - Using loads is the easiest way to measure a similar level of effort, but the state is moving away from that. The state will work to determine an alternative system.
- It was asked what happens to localities that choose not to submit this data. Additionally, what effect does moving away from loads do to the trading program?
  - For those localities that choose not to submit this information, the Phase I WIP numbers become the default. The model and data available to assess efficiency of BMPs and how that relates to what is needed in the model can be used with the trading program.
- Will DCR aggregate local government BMP implementation scenarios and data to submit as an input deck to EPA?
  - DCR will aggregate local government BMP implementation scenarios.
- DCR was asked what happens when information is submitted to the state that does not meet the requirements for the level of effort of BMP implementation. What is the resolution process?
  - If the basin scale planning targets are not being met, DCR will need to adaptively manage those planning targets. DCR does not have confidence in the outputs from the model. The state is going to look at and utilize interim BMPs to address our concerns, absent a revision of the model, .

- A concern was raised by a SAG member that localities are expected to collect a lot of information for use with a model that does not work. At some point, a new model will be created that will be more accurate. Without a known target, it is not known how any goals will be met, how much it will cost, and how to check progress towards the unknown goal.
  - While the concern is understood, the state is required by EPA to submit a Phase II WIP.
- Is there an expectation for non-MS4 urban areas to meet reduction goals? What is the state's plan to achieve the sixty percent reductions by 2025? What are reduction needs early on instead of just the 15 year goal? Can early needs become a suggestion?
  - DCR responded that the levels of implementation required have not changed.
- Local governments leaders may have issues with information that is not completely credible. Clarity, direction, and consistency would toward assisting localities and the state in determining what needs to be implemented now.
  - The Commonwealth is working to make this a less complicated process given the timeframe. EPA and Virginia are working to resolve these issues.
- It was asked if each locality had been notified of what their default BMP implementation scenario contains if no additional information is submitted to the state. It was asked if defaulting to Phase I WIP actions was the state's imposition of backstops on localities. Furthermore, a SAG member asked if the imposition of Phase I WIP actions was the first in a series of consequences for localities.
- Localities had been notified. The planning process is voluntary. Future backstops actions will come from the EPA and will be directed at the state level. For example, the EPA could choose to be more stringent with state permits, such as MS4s, confined animal feeding permits, and construction permits.
- It was noted that some localities never received letters informing them of their requirements.
  - The state responded that the June letter was sent to localities that, in initial meetings, requested such a letter.
- The member asked if the state has the ability to make adjustments to the 2009 baseline data, the process for voicing concerns to the state and EPA, and how the state will meet its WIP deadlines.
  - Virginia responded that the model concerns were not just a problem between EPA and Virginia. Other states have concerns with how the model handles nutrient management plans. This has been communicated to EPA by many of the Bay states. The issue of changing targets has come up repeatedly and the EPA has taken note of these concerns. The state has not been given any leeway in changing the schedule despite its preference that anomalies be resolved prior to the assignment of deadlines.
- It was asked what the status was for regulated community reductions versus unregulated reductions. The state replied that no analysis to this effect had been done.
- A member commented that the concerns and comments being made at the meeting showed that the state was aggressively engaging localities. Despite the difficulty, positive efforts and engagements were being made. A visible tracking system, especially at the local level, would be appreciated.
  - The state made note that a system like this could be useful.

## **Overview and Discussion of Preliminary Milestones**

Preliminary milestones and progress towards them were discussed by the responsible agencies. Questions and comments on those milestones are outlined below.

### **Department of Conservation and Recreation – Anticipated BMP Implementation**

- A SAG member asked if there was a way to track yearly BMP implementation to see the current level of implementation and to identify implementation levels needed in the future.
  - It is possible to use VAST to analyze such information.
- It was suggested that for stormwater, new development and redevelopment should remain separate.
- Clarification was requested regarding private construction projects and accelerated compliance.
  - DCR responded that it hopes new legislation, authorizing a new single permit for both erosion and sediment control and stormwater, would be moved forward this Session. This would increase compliance.
- DCR was asked if there would be funding for local governments to help with compliance.
  - DCR responded that stormwater management permit fees will be much higher and grant funds would potentially be available to assist localities with this effort.
- It was asked if there will be money available to incentivize agricultural BMPs.
  - About \$14 million will be available January 1, 2012.
- It was asked when it will be known whether any of the budget surplus will go towards water quality improvement.
  - Agencies will make recommendations based upon existing funding and the capacity for each agency to spend the funds. That decision lies with the Governor's Office. Agricultural BMPs have funding for this year, but what is available next year is still undetermined.
- A member noted that there has been a proposal to reduce money provided to localities for assistance. Furthermore, there has been no investigation into the cost for localities to collect data and administer these programs.

### **Virginia Department of Transportation Milestones**

- Has there been an assessment of costs and impacts on construction and maintenance?
  - VDOT replied that all actions will be done during normal operations and no retrofitting will occur unless it has already been planned.

### **Other Comments**

- It was requested by the Stakeholder Advisory Group that communications be shared with the entire group, rather than only certain organizations. Additionally, more timely dissemination of information to the group would help when consulting with members.
- For information being sent to the group, it would be helpful if a brief context would be helpful.

The meeting was adjourned.