CHESAPEAKE BAY TMDL
WATERSHED IMPLEMENTATION PLAN PHASE II
STAKEHOLDER ADVISORY GROUP
MEETING SUMMARY
August 16, 2011
9am-12:00 pm
Senate Room 2, The Capital

The second Phase II Watershed Implementation Plan (WIP) Stakeholder Advisory Group (SAG) meeting opened at nine with a welcome by Assistant Secretary Anthony Moore. It was noted that the United States Environmental Protection Agency's (EPA) latest allocations for nutrients and sediment had been received, albeit a month late. The EPA had committed to making changes with the model, but Virginia has concerns with some of the changes.

Frank Dukes of the Institute for Environmental Negotiation (IEN) reviewed the meeting's agenda and reminded the SAG that members should feel free to ask questions or give feedback. A round of introductions followed. Approximately thirty people from the SAG participated with another two dozen people observing.

Updates

Nutrient Credit Exchange Study

The Department of Environmental Quality (DEQ) provided an update on the Nutrient Credit Exchange (NCE) Study. DEQ reviewed the program and its timeline. DEQ has posted information regarding the Nutrient Credit Exchange online at http://www.deq.virginia.gov/vpdes/NutCrdExStudy.html .

Questions and comments:

- There was a comment regarding sediments and how that will play into the NCE since sediment is not a nutrient. DEQ replied that they are not quite sure how it will come into play, but it is an important factor.
- How DEQ will determine baselines was questioned. DEQ commented that they have examined baselines but must re-examine them with new EPA allowances information, including what urban baselines should be and other similar issues.

James River Chlorophyll Study in Response to Chesapeake Bay TMDL

For the James River Basin, there is a two track approach: 1) a phased implementation to achieve WIP reduction levels, and 2) a detailed, three-year scientific study to gather a more precise chlorophyll standard to help inform targets. For additional information, please contact DEQ.

Slowly Available Nitrogen Study

The Virginia Department of Agriculture and Consumer Services (VDACS) provided information on the slowly available nitrogen study. The study involves an assessment of methods for encouraging the use of slowly available nitrogen in lawn fertilizers. There has been a stakeholder group contributing to the study. The group will compile and submit its report by December 15th. The group is currently discussing the application rates of slowly available nitrogen fertilizer.

Questions and comments:

- Fertilizer from lawns greatly impacts the bay. Non-phosphorus fertilizer is coming online. Do we have any information on the amount of fertilizer that is sold and applied? With no phosphates in fertilizer, will that loading will go away?
    - VDACS replied that there will be new data in 2011 that will help with developing a reporting mechanism.
- Is VDACS looking at modeling price and application rates?
    - VDACS replied that non-phosphorous fertilizers could reduce about a quarter of a million pounds of phosphate loading. It was noted that this number was a back-of-the-envelope calculation. There are two different issues with phosphates in fertilizer: homeowners and commercial applicators.
    - There is a possibility of cost savings in reductions.
    - Cost studies include the costs to customers, production and other factors. Turf grass will not be negatively impacted, and it is still premature to look into this.
- Can someone still get fertilizer with phosphates if your soil test for new lawns allows it?
    - VDACS replied that this was correct.
- Any fertilizer sold in VA regardless of where it is sold is tracked by VDACS regarding its phosphorus content. It is tracked where it is sold, based on the assumption that it will be used locally. The VDACS report will have detail on how much fertilizer is used in each locality.
    - This still does not track use of fertilizer, i.e. – agricultural, urban, and suburban uses.
    - The VDACS report was simply a tonnage report.
    - Tracking for the report is based at the manufacturer level, not the distributer or retail scale.

Resource Management Plans

DCR presented regarding Resource Management Plans for farms. DCR stated that if farmers utilize recommended Best Management Practices (BMPs) as included in the resource management plans, they gain 'safe harbor' as having met Total Maximum Daily Load (TMDL) requirements. Farmers would still have to comply with requirements of any permits they currently have. DCR discussed the future process of the Resource Management Plans.

Questions and comments:

- How do resource management plans differ from soil and water conservation plans?
    - DCR is using the resource management plans in a more holistic approach than just a soil and water plan. If a farm utilizes a resource management plan, they will be eligible for cost share funding. Specifics are still being discussed.
- Water quality plans for farmers are required for Chesapeake Bay Preservation Act localities, but this is a new program.
- Not only are resource management plans a way to gain safe harbor for TMDLs, but also for future water quality regulatory actions (although it does not exempt a farmer from current requirements). This is unique to Virginia, but EPA and other bay states are looking to how these plans work.

- There is expected to be a linkage between nutrient credits and resource management plans.

Phase II WIP and Milestones Project Schedule
The milestones project schedule was reviewed by DCR. The presentation included information that is being asked for at the community level, local engagement and outreach status, and actions by Planning District Commissions (PDC) with member localities. Resource needs are being identified to help localities; resources identified so far come from DEQ, DCR, EPA, and other grants. The local engagement calendar of events is available on the DCR website.

Questions and comments:
- For the requests for proposals (RFP) for grants, is there going to be a quick turn around?
    - So far there is no timeframe, but it is hoped it will be very quick.
- What is the process for accessing EPA support via its programs?
    - Telephone is the best way. Local engagement teams will be sending out information regarding financial and technical assistance and who to approach regarding it.
- There are different resources called upon to assist in the local meetings; who schedules these?
    - The conservation community is working together to organize these. The conservation community is working with local governments and providing resources and support. DCR is providing the information and working with local staff to provide clarification.
- Regarding RFPs (requests for proposals) on grants, how are those communicated out to localities?
    - DCR forwards the information to the PDCs which then distribute it to their local governments. DCR will help give information out directly to some localities.
- The VAST tool will enable localities to look at strategies to determine best achieve goals. VAST is slightly delayed due to the changes that needed to be made with updated Bay Model.
- For August and September workshops, is DCR conducting these?
    - Resources from the conservation community are just to help offset costs. DCR staff will be the ones presenting information.
- Regarding the calendar of events, is there information on when PDCs and local governments are meeting to discuss Phase II plans? This would be helpful for informing constituents so that they can have a voice in the process. So far these have been not as well distributed as possible.
    - DCR will add this information to their calendar of events as much is possible, but this will be only to the extent that DCR receives that information. DCR is not always invited to these meetings by localities.
    - Can the association of PDCs facilitate getting this information out?
        - TetraTech will be getting this information together and this should be able to be provided on DCR's website.
- For the estimate of the cost of local implementation, what can be done with this information, when will it be compiled and available, and how can it be disseminated to localities in a timely manner?

    - DCR is asking localities to give the agency information on what strategies are best and most cost-effective for their locality. DCR will provide this information in aggregate to EPA.
- The Phase II project team is developing examples of implementation strategies and will provide these examples to PDCs and localities. Can the SAG see this information? This is being requested for accountability reasons.
    - This information will be provided to the SAG as requested.
- Regarding discussion about updating and collecting information concerning BMPs for this process (esp. agricultural BMPS), soil and water conservation districts will collect this information. There are two other issues; resource management plans and voluntary BMPs. These will not be completed in time to inform this process. Will this information be added in the future to update the process?
    - DCR will be doing this by adding data to the model and then utilizing it to help inform annual progress runs.
- DCR did not submit information on the annual progress run into the model. This is a serious concern for some SAG members. .
    - DCR will be gathering that data and automatically use it in the VAST tool.
- Local goals are on a fifteen year period. Given this, it would be really helpful to know what other TMDLs are in the pipeline at the local level. Local decision makers writing budgets need to know this information.
    - The City of Lynchburg's anticipated local costs would include a $60 million water treatment plant upgrade. There would also be significant additional costs for that locality.

Overview of Phase 5.3.2 Watershed Model
This overview explained Virginia's perspective on updates to the Bay model by the EPA. Overall changes made in the model allowances reflected that the Bay could absorb more phosphates for Virginia, but less nitrogen.

There is disagreement between the EPA and Virginia and the other states about the validity of the latest model run. We now show a substantial increase in urban land use (non-permeable surfaces). The nutrient management practice was updated in ways that we believe show an increase in loads from the development of nutrient management plans. Discussion with the EPA continues and we will be meeting with them within the next few weeks to understand and reconcile our differences.

Questions and comments:

- The line about "comparing between model versions may be misleading due to calibration process" means that when a model calibrates, it adjusts the process to account for measured outputs. One calibration shows a different 'reality' from another one.
- Despite the model's increase in urban land, there is not a similar increase in urban load.
- Comparing 5.3.0 against 5.3.2, can you provide that information to us?
    - It is not really possible to compare two very different models to each other.
- Can the EPA come to this meeting to provide their perspective on this issue?

    - This was a public meeting and everyone is invited to attend. In numerous conference calls had in the weeks prior to this meeting, EPA was made aware of this meeting.
- For individual nutrient management plans, it is possible that loading rates could go up. For example, a pasture may not have had sufficient fertilizer added until a nutrient management plan was developed. Nutrient management plans should not be about rate, but about proper use of nutrients.
    - There is correlation between application rates and edge of stream loads, delivery vectors and delivery loads to the Bay. Pasture, hay and cropland can increase loads with a management plan. The 'problem' counties that would see an increase in loading with a plan are mostly these crops.
- Is a nutrient management plan considered an effective BMP on the ground or in the model?
    - A nutrient management plan is a good BMP on the ground, and we want to see that reflected as such in the model.
- Fertilizer is the only differential in model, what about manure?
    - This varies depending upon local conditions.
- The model was recalibrated to match actual monitoring data. If application rates were changed, what other adjustments were made to actually match the monitoring data?
    - That is why there were shifts in source specific loads as was discussed at the beginning of presentation.
    - The nutrient management patch would be a quick, easy short-term fix, probably added as though it were an efficiency-based BMP.
- The model seems incomplete, the numbers constantly changing. With this problem, a plan will not be set and goals can never really be achieved.

Release of Data to Localities

The SAG was asked to offer advice about two questions: 1) do localities want the data as soon as it is available, or only when the concerns have been addressed? This could mean that the data would have changed or this waiting period may not result in any substantial changes. 2) Do localities want the data as it comes in piecemeal, or do they want it when it is in a complete form?

One SAG member stated that they need data as soon as possible so they can start planning. As long as the information does not take us a step backwards, we want whatever we can get as soon as we can get. We want the data, but we want the data qualified.

Others expressed different views. Some localities want it only when it is all available, some want it as portions become available. There is no single answer regarding when data should be released.

Specific comments and questions follow. All items that are sub-bullets are the Commonwealth responses.

- Ideally, we would want the data as soon as possible if the deadline remains the same. But we do not want data that will change repeatedly. We would like to have something like the land use data. That would give us a baseline to see where the problems are and make comparisons. Then we can give this information back to the state to help.
- Since the next time EPA will not open up the model until 2017, will there be any changes in data if the model is not opened?
    - The EPA would be releasing the patch to help address these issues before it opens the model up again.
- It is hard to put the model's information together in a way that shows the program, options, and reasonable benefits in a manner that it can be explained to local elected officials.
    - Localities can use the VAST tool to help meet long term goals; however, with changes that occur in the different model runs it is hard to determine specifics. The process will evolve as we get results from VAST and evaluate to see where we are as a state. The EPA timeline is a serious constraint to figuring out the process.
- With different ways to calculate reductions and a changing model, it is hard to gather support for efforts when there is no clear answer.
- For MS4s (municipal separate storm sewer systems), there was an increase in urban land, and so there needs to be an increase in MS4 loads at same level. This has not happened. How will this be fixed?
    - At a meeting with EPA, the bay states expressed frustration. The EPA's response is to hold a 'model summit' with technical people, administrators, and other management staff. This will allow for technical and administrative processes to be resolved in same place with open communication.
- Can the state take fixing the MS4's to the EPA as a priority issue with the model?
    - EPA understands that there is a mistake in those numbers but will not revise the TMDL to address that issue.
- It appears that Virginia has a chance to make changes in the Phase II process. Local governments want to be involved in the process to make it smart, efficient, and official. Can local governments get their voice to the EPA to say we need more time to figure this out?
- With new allowances of phosphorus available based on new EPA model numbers, how do we distribute this new allowance across the state? There is a very substantial issue with a price tag involved. Can DCR please look at that?
    - DCR is currently working on preparing the "local target goals" with the data received from EPA. Once all the data is received, the distribution to individual localities will be completed and shared with the PDCs and localities.
- Discussions in our locality have been about whether we should be an early adopter or wait and see? It is hard to know with the confusion over information. Right now I'm not so sure I can get credit for positive actions. We don't want to be caught in the middle; we want to do what is best for the bay and for taxpayers. It is difficult to go to elected officials and say "the numbers have changed again" since this makes everyone look foolish. Elected officials want a mandate so if we do X we satisfy Y.
- We have a model that has never been validated or accredited. Before we spend money, we need to know that it will be worth it and not be changed quickly. This is especially

important due to the financial side of the issue. In this fiscal environment, why would you pass on the data if it is not credible? The data needs to be validated and accredited.
    - The state is working with EPA to correct these problems. The EPA is having trouble with putting together information in such a short time frame to help us make good decisions.
- We are like a dog chasing its tail. The model has fundamental problems but there is not time and money to correct these problems well. This is especially true because we have a large model that works well for the whole Bay area, but that does not work well at all on the local level where more precision is required. It was not designed for this. Since the numbers will never be right, we need to create plans to improve water quality that we can start implementing now.
- There is a disconnect between what the model can do and strategies that can be built off of this. Local level is where water quality is known and where changes happen. TMDLs give localities the opportunity to leverage modest resources to make significant local water quality change. Local aggregation of positive water quality changes will help the state achieve allowance levels. Can we get DCR and DEQ to build in what we know about water quality into this process and work from there? We need to be open about it's limitations.
- Many localities are in a "wait and see" mode. Localities with fewer resources may not be equipped to give even smallest bits of information that DCR is asking for. We have to find ways to communicate imperfections of the model to local governments.

The SAG Process

Some SAG members expressed disappointed in the process and how it was rushed. One member noted that the SAG has a broad array of stakeholders, but not all the information needed to make effective decisions. The member suggested that we use data we have already, and start making decisions, since the model is never going to be perfect. We can move forward with the data that we have while we continue discussions with the EPA. We also need more time to discuss the issue properly.

Assistant Secretary Moore responded that Virginia has been asking EPA to explain changes in the model, and it has been difficult to get responses. The state has been trying to adhere to a timeline with stakeholders and keeping them informed and involved so they can understand what to do.

Another SAG member stated that they were thankful that the meeting was held. The SAG member had been wondering what has been going on in the process. The meeting and information is appreciated. However, with such a huge concern regarding agriculture, it is difficult to move forward in good faith. SAG members' constituencies are willing to do their part, but want to do only their part. The process should be right the first time so that the process does not always go back to the drawing board. It is time to let the EPA know that stakeholders will fulfill their obligations once the EPA gets them the right data. Can anybody tell the agricultural community, fundamentally what this means to a farmer in the field? Will my nutrient plan be different if I ask for it today or next year? What should agriculture tell its membership?

The agencies replied that the basics of nutrient management plans have not changed at all from the 5.3 to 5.3.2 model. The nutrient management plans would be the same no matter what.

There was a question about what SAG members should tell their constituents regarding the Augusta scenario builder workshop, especially with such glaring issues as nutrient management still pervasive. The state could not answer since it is an EPA project.

David Paylor of DEQ commented that Virginia wants to figure out the issues with the model and not just have the EPA keep running it until it appears favorable to Virginia. The state is also sticking to the TMDL and the milestones. Virginia is not trying to slow the process down; the state just does not fully understand the model at this point and would like it clarified.

2012-2013 Milestone Strategies

DCR discussed the development of the milestones. Milestone actions, contingencies, and relevant new state programs were reviewed. The presentation also gave an overview sample milestones currently under consideration.

Next Steps

- The next meeting likely will be in October and will cover milestones.
- It may be beneficial to get information from people and groups not attending the workshops on strategies. This could help with cross-fertilization of ideas and strategies and get more people involved. To set up workshops and meetings contact James Davis-Martin or Joan Salvati of DCR.
- DCR will communicate to the SAG about what is going on with data dissemination.

Assistant Secretary Moore closed the meeting was and expressed appreciation for the time spent on the meeting and work done through the process so far.