CHESAPEAKE BAY TMDL
WATERSHED IMPLEMENTATION PLAN PHASE II
STAKEHOLDER ADVISORY GROUP
MEETING SUMMARY
April 26, 2011
1pm - 4:00pm
Senate Room 3, The Capital

Assistant Secretary for Chesapeake Bay Restoration Anthony Moore opened the meeting by expressing gratitude for participation of SAG members, with special mention of those who were returning having contributed to Phase I. He then called for introductions. In addition to members of the SAG, there were approximately 20 observers present.

David Johnson, Director of the Department of Conservation and Recreation (DCR) provided an overview of Phase II objectives. He noted that the Phase II SAG is heavily oriented towards local government participation, and that its work will be to shift from a macro scale approach to micro scale implementation. He explained that staff had already begun to create a plan for meeting objectives, and that Phase II efforts can be broken into three areas:
1) Nutrient Exchange Credit Program (led by DEQ);
2) Chlorophyll Study (led by DEQ); and
3) Local government engagement (led by DCR).

Mr. Johnson also explained that a decision had been made to adopt a "project management" approach to coordinating Phase II. He concluded by urging members to offer input, noting that SAG member recommendations had informed Phase I outcomes.

Frank Dukes of the Institute for Environmental Negotiation, University of Virginia, facilitated the meeting. In his introduction he asked if there were any questions about the Phase II SAG Charge, described in a handout provided to members, or about the committee process. The following questions / comments were registered:

- A SAG member asked whether additional meeting dates have been set. The answer was "not yet."
- A member requested that DCR make handout material available on the website or via email far enough in advance of each meeting to be read by SAG members beforehand.

Overview of TMDL Projects

Phases I Overview
Anthony Moore provided an overview of the Phase I WIP and briefly introduced objectives to be met during Phase II. A handout of his PowerPoint was available to attendees and will be posted on the website. He described the major activities for this year, including meeting

milestones by September; designing the Nutrient Credit Exchange; undertaking the Chlorophyll study; developing regulations for resource management plans; and digesting fertilizer legislation to determine if regulations are needed. Details of his presentation are available on the handout.

Recent Legislative Actions Overview
David Johnson provided an overview of recent fertilizer and nutrient management plan laws. Following a productive General Assembly session last year, legislation was created that should move us to accumulate credits towards the WIP and move forward towards meeting milestones. New laws regulate what residents, farmers, and public bodies can apply to the land. Implications of these new laws include:

- By 2013 phosphorous will be no longer included in consumer grade fertilizer. Consumers will still be able to purchase phosphorous-containing starter fertilizer for root development, but this produce will be twice as expensive.
- The USDA is leading a study into the impacts of switching from fast-release to slow-release nitrogen fertilizers as the standard of practice.
- By 2017 golf courses and municipal lands will be required to have nutrient management plans. DCR is developing a cost sharing program to assist golf courses in developing these plans.
- The resource management plan bill sets up a framework for farmers to engage in voluntary self-assessment through cost sharing. Rules will be developed in a regulatory manner so that they are consistently applied throughout the State. Data on farms will be assembled into a score, ranked against a benchmark, and presented to farmers through the Soil and Water Districts along with support to help them meet their obligations. If farmers are already meeting obligations, the State will not apply pressure. If they are exceeding the benchmark, there may be scope for rewarding farmers through a credit exchange program. Details will be fleshed out through the regulatory process.

Discussion following this overview included the following points:

- A SAG member expressed the concern that localities are not empowered to regulate landowners (e.g. shopping malls). DCR responded that this is an issue that may need to be settled during the Phase II process in which the State works with localities.
- A member proposed that municipal golf courses also be eligible for cost sharing support.

Enhanced Nutrient Credit Exchange
Russ Baxter from the Department of Environmental Quality (DEQ) presented on plans to expand the Nutrient Credit Exchange. A handout of his PowerPoint presentation was made available to members and will be posted online. Mr. Baxter explained that the Phase I WIP had allowed for a big role for the Exchange. There is anticipation that there will be broader participation from sectors and a greater ability to buy and sell credits in the future. DEQ is already working on the study called for in the WIP. Issues identified for coverage in the

study include: availability of credits, drivers (what would compel all sectors to participate); baselines (at what point are credits generated); certification, enforcement and accounting; permitting (including trading and offsets in permits); and use of public or private nutrient "banks" or funds.

Mr. Baxter reported that three bills were passed in the last general assemble session that will effect the program (details available on the handout).

The Study Committee had its first meeting on April 13th, and it is currently scheduling future meetings. Documents, agendas, and materials will be posted online at:

www.deq.virginia.gov/vpdes/NutCrdExStudy.html

Members can contact Russ Baxter directly (russ.baxter@deq.virginia.edu; 804-698-4382) if they wish to receive periodic email updates.

Discussion following this presentation included the following points:

- A member asked whether there is a plan to include sediment in the Exchange. DEQ responded that they are aware of this issue but sediment is not currently included in the program.
- A member noted the absence in the presentation of the importance of ensuring that local water quality be maintained. This individual asked what tools will be available to localities to assess possibilities in relation to water quality protection. DEQ responded that it is currently illegal to impair local waters with the Exchange Program, and that tools will be available to localities to help ensure this.

Chlorophyll Study
Al Pollock from DEQ presented an overview of the Chlorophyll Study. A handout of his PowerPoint presentation was available to members and will be posted online. This scientific study has been initiated because of a concern that the EPA chlorophyll cap for the James River basin is much lower than the approved standard set in 2005 and expected by Virginia. It is hoped that the study will present data to form the basis for setting new allocations. In the meantime, the rate of nutrient reductions expected by EPA will continue during the study period.

Mr. Pollock reported that the General Assembly approved $3 million for the study. These are funds that would have gone to localities for water quality improvements (through existing grant agreements).

This presentation generated one member comment, and DEQ confirmed that the study was based upon a reevaluation of site specific criteria.

Overview of Phase II Goals and Virginia Approach

Phase II Goals and Objectives
Joan Salvati of DCR presented an overview of Phase II objectives, milestones, and timeline. Her PowerPoint was available to members as a handout and will also be posted online. Ms. Salvati reported that the State has decided to work through local government for implementation. She explained that there are 200 local government entities and 39 segment sheds in the Sate. Virginia has opted to assign load allocations to the segment sheds, but these local targets will serve as benchmarks rather than regulatory mandates. DCR intends to help localities relate EPA's model to their local data and circumstance through use of a "Community Conservation Information Process" tool that helps to identify existing best management practices (BMPs) and determine to what extent they meet local goals (described in greater detail below). Ms. Salvati also reported that the process of facilitating local engagement has already begun through a series of meetings with 16 Planning District Commissions (PDCs), with the hope being that PDCs will be able to facilitate involvement by local governments.

Ms. Salvati explained that an Inter-Departmental Phase II Team has been established to generate implementation ideas. Representatives from DCR, DEQ, DOF, VDACS, VHD, and VDOT meet bimonthly.

Comments following this presentation included:

- A member asked for more detail about EPA's Model 5.3.2 and how it will inform the local planning process. There were several minutes of discussion aimed at clarifying whether or not new, local data could be entered into the Model 5.3.2, which is an upgrade that takes into consideration some aspects of agricultural nutrient management and urban land use changes that were not picked up in earlier models and will result in revised allocations for Virginia. It was explained that the algorithms for the model cannot be changed during this phase, but that new local data could be inputted. This represents an opportunity for localities to make corrections to the allocation data.
- There was some discussion on the role of Planning District Commissions (PDCs) in the local engagement process. A member asked how TMDL implementation would fit into the powers and duties of a PDC. DCR replied that they are in the process of determining to what extent PDCs desire and have the capacity to participate in the process. Their role would be one of assisting, coordinating, and convening stakeholders, but they will not be responsible for executing implementation plans or meeting TMDL goals. Local governments may wish to work directly with the State or via PDCs, and there is an expectation on the part of DCR that there will be a range of configurations.
- A member asked about whether there would be assistance for localities to provide their own data on land use practices already in place. DCR responded that they hope to provide a user friendly tool to help localities to input their BMPs. A follow-up question hinged on the need to know what localities will be expected to do (e.g. set budgets, pass ordinances, etc). DCR responded that, because the timing of the first milestone is tight, the State will take a relatively "top down" approach initially, and

the next milestone will incorporate more local strategies. DCR reminded the SAG that this will entail a fifteen-year plan.

- A member asked about the timeline and responsibility for engaging the public. DCR responded that they envision two opportunities for local involvement: 1) PDCs or the State will convene round tables to bring together local entities in facilitated discussion; and 2) the State Plan will include a public comment period (February 2012 – March 2012).
- A member expressed concern that local government will not be able to work quickly enough to meet the necessary milestones. DCR responded that there are a variety of options available to localities to work through the processes they have in place. DCR also stated that the initial goal would be the delivering of a strategy, which will not necessarily have to be completed by the deadline.
- A member noted that there are a number of significant process questions the SAG and State should not ignore. For example, there was a concern that the State will be calling for public review only after the EPA has had the chance to review Virginia's preliminary milestones. In other words, will there be EPA recommendations before the public has a chance to comment on Virginia's draft? DCR responded that there may be some confusion and underscored that the Phase II WIP and the milestones are essentially two separate processes.

Project Management Approach
James Davis-Martin of DCR briefly introduced the rationale behind adopting a "project management approach" to coordinating Phase II. He explained the benefits of this approach for planning, organizing, and managing execution of various tasks. Mr. Davis-Martin is serving as the project manager and will be using a project management software tool—www.project.net—that allows flexibility for progressive elaboration and alteration to the approach.

A member asked whether this tool would be available on the website for SAG members to view. DCR explained that access to the fee-for-subscription tool was restricted, but that project status reports would be regularly circulated to the SAG.

Phase II Local Government Engagement Process

David Sacks of DCR presented in more detail on the local government engagement process and invited feedback. The PowerPoint used was available as a handout and will be posted online. Mr. Sacks explained that 15 of Virginia's 16 PDCs have already received an initial visit from Anthony Moore to alert them about Phase II WIP efforts and gauge interest levels in working with the 96 localities to facilitate planning. As of the end of April, 15 preliminary visits should have been completed. Mr. Sacks reported that there has been very good participation and feedback thus far. Mr. Sacks explained that DCR does realize that capacities and resources will vary among PDCs, but DCR hopes that at a minimum they will be able to convene meetings of local staff. He noted that DCR is also aware of the time constraints at the local level.

There were no SAG member comments or questions after this presentation.

Phase II Community Conservation Information (Process and Tool)

James Davis-Martin of DCR introduced the Community Conservation Information tool the Department is hoping to provide to localities to assist with compiling local data on BMPs and comparing existing allocations with the assigned benchmark, thereby reconciling local data with EPA model data. DCR hopes this tool will allow localities to update the model with information they believe better represents their locality, and to develop and evaluate various implementation procedures in relation to meeting allocation targets. He invited feedback for developing and refining the tool. The provided handout includes several slides that detail process steps for the tool and examples of the kinds of tables and charts it can generate for each locality. The reader can access these details by referring to the handout, which will be posted online.

Advisory Group Comments
The remainder of the meeting involved SAG discussion, with several comments and questions regarding the make-up and availability of the proposed tool:

- A member commented positively about the capacity of the proposed tool to generate a crosswalk of the allocation goal, current allocation, and current activities towards reduction, all in one view and for each locality.
- DCR clarified that the tool is spreadsheet based (not GIS), making it more user friendly. Localities can use any additional GIS or other tools they have as well.
- DCR clarified that this tool will be available as of June 2011 and updated when new EPA model data are available.
- A member asked whether acreage data are available now in EPA's Model 5.3. DCR confirmed this is the case.
- A member suggested that as much baseline data as possible be made available to localities as soon as possible. Specifically, localities would like to see the input BMP data assumptions. DCR responded that they have already started setting up meetings with some some PDCs to get the data to them as soon as possible.
- Two members asked whether the tables generated by the tool could be made available interactively (online/electronic), rather than just in hard copy. DCR responded that they would be comfortable with an online / electronic format once the format most accurately represents the WIP.
- A member echoed the previous comment and stated that DCR should make the data available interactively.
- A member applauded DCR's efforts to put the data into a format that "brings it down to the local scale" and expressed the hope that this information will also be made available to the public at the local level.

There were several comments about the proposed tool in relation to EPA Model 5.3.2:

- A member expressed concern that Virginia has reversed its policy that EPA's model could not be used at the local level. How will a single goal not be spun into a regulatory issue that results in permitting? How will the State differentiate among the three pollutants? How will we handle sediment given that we cannot regulate it? Is EPA on board with revising its model data based on local input? Furthermore, how will the State entice a local government to adopt these goals?
- A member echoed this concern, pointing out the problem of asking local government to go through the effort of attaining BMP data from local farmers, for example, without a guarantee that their data will change the 5.3.2 Model outcomes. DCR responded that, yes, EPA Model 5.3.2 will be locked down for a period of time and is currently locked down. However, DCR has been told that the model will be reviewed in 2017 and EPA will consider changes to land use. DCR will be clear with local governments that their local data will be inputted later. A second DCR representative clarified that, while the algorithms for Model 5.3.2 are now set until 2017, the output can be refreshed by running new local data.
- A member expressed anticipation of long-term confusion in trying to explain to local governments and source sectors that there are two different sets of data. DCR responded that this entire process is about giving localities an idea of what they need to do to generate strategies for 2017.
- A member asked about the difference between a goal and regulatory approach and wondered how the State will deal with the gap between what the local government feels comfortable implementing and what the allocation goal actually is. DCR responded that this is where the planning enters the process. The intention is to see where localities currently are in terms of meeting the goal, and then help localities to generate and commit to additional practices within the framework. After that point, the SAG and the State will determine what additional state-level strategies will be needed.
- A member asked how the process of reconciling local data on BMPs will happen on the ground. DCR responded that there already exists a decent accounting on the agricultural side, and that local governments will have some data for urban land use. PDCs and Soil and Water Conservation Districts will hopefully assist. DRC commented that there likely will be 96 different approaches.
- A concern was voiced about the timeframe, and it was noted that a pilot project for six Soil and Water Conservation Districts is starting this year with funding for others to roll out over another year. DCR emphasized again that this is a 15 year plan and that local data will be inputted into an assessment tool rather than a model. DCR is not intending that a scenario builder be generated for each locality. Rather, this is envisioned as a user-friendly assessment tool. DCR noted that local data will be immediately useful for informing localities in their planning process. In the longer term, Virginia will work with EPA to get data inputted into their process. DCR anticipates that, as compared to allocation data, the BMP side will be more quickly incorporated, and the State can take any progress to the EPA for incorporation into next year's progress run of the model.

- An observer clarified that 2005 is the calibration period for the model, so in order to incorporate additional BMPs they must have been established later than 2005. Furthermore, EPA is working with USDA and NRCS on procedures for verifying non-cost share BMPs through 2012.
- DCR commented that if Virginia can identify a collection of BMPs that are commonly used throughout the State but are absent in the model, we may be able to work with EPA to update the model.

There were several comments and concerns about the tight timeframe and limited resources of local government:

- DCR clarified the timeframe. They expect to hear back from local governments about strategies for 2017 by November 1, 2011.
- Two members expressed skepticism about the capacity of local governments to respond within the timeframe because a) local budgets have been cut, resources trimmed, and people retired; and b) there is confusion about the data. DCR responded by conceding that the timeframes are very tight.
- A member emphasized that localities will be forced to hire staff in order to simply get to the point of setting the baseline. This will be a very difficult task given that most local governments are currently trimming staff. DCR noted that they do not have many resources at the state level but are looking into how to provide assistance to local governments.
- It was proposed that the State provide a rotating team of environmental engineers to serve localities.
- One individual asked whether the State will have the authority to require local compliance with this process. A member added that local governments will not be regulating agriculture, and that those with MS4 permits will have the most weight.
- A member expressed the hope that a message of consensus will be broadcast to local governments.
- A member expressed skepticism about the decision to approach localities through PDCs. This individual recommended that the State realize there will be a "denial period" before local elected officials are even willing to become engaged. DCR asked whether elected officials sit on PDCs, and SAG members responded that, while they have elected representation from the localities they represent, none have all the officials we need to reach.

Some members wondered what exactly localities were being invited to produce and why they would wish to participate in this voluntary process:

- A member asked whether there are actual decisions to be made at the local level. In other words, is there real planning to be done, or is this an accounting and inventorying exercise? DCR responded that it is both an inventory of what is on ground and an opportunity for local governments to "tease out" areas for

improvement. The product we must deliver to EPA is an overview of the strategies that local governments can implement by 2017.

- A member asked to hear what argument is given to convince localities to participate. DCR responded that, in some cases (e.g. MS4s), localities may not have to do anything beyond what they are already doing. In non-MS4 areas, the State will be looking to local government to assist in generating strategy. DCR clarified that there is local flexibility in this approach, with the possibility of internal trades between urban and MS4 areas, for example.
- A member emphasized the need to translate this effort into terms that will make sense to elected officials, like cost per household.

There was some discussion about broader public participation and communication to the public:

- A member asked about how we will ensure that local stakeholders are aware of local government planning. DCR suggested that they can circulate information (about PDC meetings, etc.) through SAG members, local elected officials, and on the website.
- A member asked if DCR can communicate to stakeholders in the localities through the project management software tool. DCR commented that, as they talk to PDCs, they are emphasizing the importance of local governments convening any relevant local stakeholders in roundtable forums.
- A member requested that PDC meeting presentations be posted on the website so others can use them, and DCR agreed.
- A member requested that a calendar of meetings be posted on the website.
- There was one comment that there should be a letter sent out to each city manager or local administrator after local goals are settled in June.
- A member requested that DCR make available, as soon as possible, a list with leaders for each of the 96 localities and a date for when the PDC discussion process is completed. This will allow local stakeholders to begin work with the leads.

Finally, there was some discussion about the possibility of a locality deciding to shift the cost burden to a sector. DCR responded that this could only happen within the context of an MS4. It was proposed that this discussion continue outside of the meeting.

Next Steps / Next Meeting

Frank Dukes of IEN invited any SAG meeting process suggestions to be sent directly to him at FrankDukes@virginia.edu or to DCR staff (Christine Watlington Christine.Watlington@dcr.virginia.gov).

Anthony Moore will continue to follow up with PDCs and hopes to have a list of leads by the middle or end of May, after which point they will reconvene the SAG.

If SAG members identify opportunities for DCR to meet with a particular group, please contact Joan Salvati of DCR at Joan.salvati@dcr.virginia.gov.

A member requested that DCR generate a draft message that each SAG member can send out to his or her network. This idea was seconded by another individual, who proposed that the draft be circulated for review by email among all SAG members before it is broadcast more broadly.

A member, in recognition of the importance of local officials, invited SAG members to bring their local officials to a May 26 one-day seminar on Bay Restorative Efforts, sponsored by the Virginia Association of Counties and the Virginia Municipal League, to be held at Hanover County Board of Supervisors auditorium. This event hopes to attract elected officials who are not on PDCs. There is a nominal registration fee.

The meeting ended with a statement from an observing citizen. The individual emphasized that, although it was little discussed in the meeting, the question of funds for implementation will be the key problem. To paraphrase the comment: *I live in Richmond and pay $640 for water, sewage, garbage, and stormwater tax. If you're serious about cleaning up the bay in 15 years, you had better be telling your citizens to get ready for doubling of fees for all this. It will take $1,350 per capita for all 6.7 million Virginians. How you are going to raise the money to do that is your major problem. You have got a major problem.*

DCR responded that they are looking into addressing this, and that there are caveats in the WIP that if the State does not have the money to implement, then they do not have to do so.