

**Testimony of the United States Environmental Protection Agency before the Joint  
Pennsylvania Senate Environmental Resource & Energy and the Agricultural and  
Rural Affairs Committees**

**March 17, 2010**

The Chesapeake Bay is a national natural resource treasure that has been seriously degraded from nutrients and sediments over the last several decades. In spite of significant efforts of the Commonwealth of Pennsylvania, the numerous and diverse sources of nutrients and sediments in Pennsylvania remain major contributors to the loadings reaching the bay. Therefore, with the cooperation of the bay state partners, EPA will be establishing the Chesapeake Bay Total Maximum Daily Load which will serve as the foundation for years of implementation of controls leading to the restoration of the Bay.

EPA expects the six watershed states and D.C. to identify how they will reduce pollutant loads to levels necessary to meet water quality standards. EPA expects detailed schedules for implementing cleanup actions and achieving pollution reductions. Progress will be measured through benchmarks every two years, and EPA may impose federal actions for inadequate plans or failure to meet the performance milestones.

It is important to note that to the extent that local point and non-point controls throughout the watershed are necessary to restore the Chesapeake Bay, those same local controls greatly benefit the local waters and all waters downstream of the controls.

**EPA is establishing the Total Maximum Daily Load (TMDL), but with full participation of our Bay partners-** Under the Clean Water Act, TMDLs are a

determination of the maximum loading allowable to achieve state water quality standards. TMDLs are to be established when water monitoring shows that state water quality standards are not met and technology based effluent requirements for NPDES point sources are not adequate to achieve that water quality. The Chesapeake Bay and its tidal tributaries have been identified by the states on their impaired waters lists (303d lists) as not attaining state water quality standards for dissolved oxygen, clarity, chlorophyll a, or submerged aquatic vegetation. Therefore, under the Clean Water Act, a TMDL needs to be completed for the impaired waters. Consent decrees in Virginia and the District of Columbia charge EPA to complete all TMDLs listed as impaired, as of the time of the consent decree, no later than May of 2011. However, the Principals' Staff Committee (PSC, a committee established under the Chesapeake Bay Program of EPA, the State Environmental and Natural Resource Secretaries from the Bay signatory states, including Pennsylvania, the District of Columbia and the Chesapeake Bay Commission) and the non-signatory states of New York, West Virginia and Delaware have charged EPA to complete this TMDL by December 31, 2010. While the TMDL will be completed this year, EPA and our state partners have agreed to implementation of needed controls, in 2 year increments, with all needed controls being in place no later than 2025.

One reason that EPA will be establishing the TMDL is the interstate nature of the impaired waters and the fact that those waters are impacted by interstate sources of pollutants. EPA is developing the most significant aspects of the TMDL through teams of EPA staff, Bay scientists, representatives of all Bay states, and other stakeholders. While EPA generally chairs these teams, EPA seeks consensus from our state partners,

the District of Columbia, and the Chesapeake Bay Commission on many aspects of the TMDL. As an EPA action, EPA retains the final decision making authority on the TMDL.

The process for the development of the bay TMDL has 3 basic steps. They are:

1. Determine the total allowable loading of nitrogen, phosphorus, and sediment that can enter the Bay and its tidal tributaries while attaining the water quality standards for these waters.
2. Distribute that loading, based on measures of equity, to the 6 bay states and the District of Columbia, and within each jurisdiction, further divide the allowable loading for the major basins in each jurisdiction. For example, for Pennsylvania the loading was distributed to the Susquehanna basin and the Potomac basin.
3. Further distribute the loading to individual sources or source categories.

EPA has led efforts to arrive at agreements with the states and the district on steps 1 and 2. Step 3 is left entirely to the states to make the distribution of the allowable loadings to various sources, subject to oversight by EPA as described in November 4, 2009 <sup>1</sup>and December 29, 2009 letters. <sup>2</sup>

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<sup>1</sup> Letter from William Early (then acting Region Administrator, EPA Region III) to Preston Bryant (then Chair of the PSC).

<sup>2</sup> Letter from Shawn M. Garvin (Regional Administrator, EPA Region III) to Preston Bryant (then Chair of the PSC).

**States have the lead and much flexibility in determining where to achieve the needed**

**load reductions-** As mentioned above, the states have been given significant flexibility, with appropriate EPA oversight to make the determination of which sources need to reduce what amounts of nutrients and sediments. This is a key part of the process, which EPA believes is best left to the states in consultation with local governments and other stakeholders. The states will make these decisions as part of the watershed implementation planning (WIP) process. Among other things, the WIPs developed by the states are expected to:

1. identify the allowable loadings for the individual sources or source sectors,
2. commit to loading reductions over time to ultimately achieve the allowable loadings in the TMDL, and
3. identify the program enhancements states will pursue to assure that the controls will be installed and maintained. Such enhancements could include additional funding, additional regulations, and so on.

To further enhance state flexibility, EPA has agreed that for non-tidal states, like Pennsylvania, that meet EPA's expectations (see references 1 and 2 above) the Bay TMDL may establish consolidated gross wasteload allocations (covering individual point sources) gross load allocations (covering non-point source sectors). One of EPA's expectations is that each non-tidal state would provide specific cap loading information for significant point sources and nonpoint source categories in the state Watershed Implementation Plan.

**State actions from the legislative and executive branches is likely needed.-**

Pennsylvania has committed significant resources to the installation of point and non-point controls of nutrients and sediment for the protection for local waters and the Chesapeake Bay. Most recently, to comply with recent modifications or reissuance of certain Pennsylvania NPDES permits, many municipal wastewater treatment plants are in the process of costly upgrades for the control of nutrients. Furthermore, the Pennsylvania legislature is an important member of the Chesapeake Bay Commission. EPA appreciates all of the Commonwealth's support to the Chesapeake Bay. In spite of these efforts, the Chesapeake Bay remains impaired and more controls are needed. Simply put, in order to achieve the necessary nutrient and sediment reductions, stronger and more comprehensive pollution control program tools are necessary. As to what tools are the best fit and what sources should provide additional nutrient and sediment controls? This is an issue that is best addressed by the states in the first place. But it is likely that these tools may be programmatic, regulatory, as well as legislative. For this reason, EPA is hopeful that the state legislature continues its active participation in the restoration of local waters and the Chesapeake Bay.

**EPA is providing a comprehensive set of support actions-** While the critical decisions on how to achieve the loading reductions is best addressed by the states, EPA is taking proactive steps to provide needed support and appropriate oversight. Those actions include:

1. EPA has increased the Chesapeake Bay funding to the all states by over \$11 million and to Pennsylvania by \$2.7 million, more than doubling the Chesapeake Bay funding to the states from 2009.

2. EPA has offered contractor support to each state to assist in developing the WIP's.
3. EPA has offered additional contractor support for local pilots in assisting with the development of the WIP's.
4. EPA has developed extensive expectations on what the WIP's should contain.
5. EPA will continue to provide modeling and other technical support for the development of the WIPs.
6. EPA is initiating regulatory actions to further support the control of stormwater and animal runoff.

**EPA is seeking much greater accountability of results from the states-**

For many years, the Chesapeake Bay program was driven largely by voluntary efforts. Time has proven these efforts to be insufficient. In the Chesapeake 2000 agreement, the Bay partners committed to restoring the Chesapeake Bay by 2010. In spite of best efforts and a significant shift towards regulatory actions under NPDES permits, the Bay remains impaired.

So with this TMDL, EPA is committed to an extensive framework for accountability in achieving the necessary controls to restore the Bay. This accountability framework is built on the following steps:

1. Developing comprehensive WIP's which identify needed load reductions, commitments for achieving these reductions over time, needed control measures, program enhancements and a progress tracking process.

2. Developing a Chesapeake Bay TMDL which identifies the bay loading diet and how the allowable loading is divided into small geographic areas and source sectors.
3. Develop and implement 2 year milestone plans for the iterative implementation of the state WIP and Bay TMDL.
4. Monitor state progress
5. Implement EPA 'backstop' actions, as necessary.

**To backstop state actions, EPA is prepared to take more aggressive actions to further support the attainment of the Total Maximum Daily Load.**

As part of the accountability system, EPA sent a letter to the states on December 29, 2009 that identifies the potential actions that EPA is prepared to take if a state does not deliver on its commitments. Those commitments include development of a comprehensive WIP, and 2 year milestone plans, attainment of the 2 year milestone loading commitments, prompt issuance of relevant NPDES permits with appropriate nutrient and sediment controls, and the development of appropriate mechanisms to ensure that non-point source load allocations are achieved.

If a state does not deliver on these commitments, EPA is prepared to take necessary actions, including:

1. Expand NPDES permit coverage to currently unregulated sources
2. Object to NPDES permits and increase permit oversight

3. Require net improvement offsets
4. Establish finer scale waste load and load allocations in the Bay TMDL
5. Require additional reductions of loadings from point sources
6. Increase and target federal enforcement
7. Condition or redirect federal grants
8. Promulgate federal local nutrient water quality standards.

In summary, significantly more nutrient and sediment controls are needed to restore the Chesapeake Bay. EPA sees the Bay TMDL and the accountability framework as the process that is needed to plan for, implement, and track these controls. Implementation and much of the planning will occur in 2 year increments with the 2 year milestones. In order to achieve the needed reductions, it will be necessary to develop a bigger, more comprehensive tool set than currently exists, for the control of nutrients and sediments, particularly for non-point sources. If a state is unable to fulfill their commitments for planning or implementation, EPA is prepared to take actions that would further drive the implementation of needed controls. EPA believes that this planning and implementation framework provides for state flexibility, adaptive management, and meaningful tracking and accountability to achieve the needed nutrient and sediment controls to protect the Chesapeake Bay and local waters.