

The localities within the Hampton Roads Planning District Commission continue to have serious concerns with the content of Section I.C – Special Conditions for the Chesapeake Bay TMDL. Our major concerns center on the use of the Basinwide loading rates from the 2009 Progress Run to calculate a locality's baseline load and pollutant reduction targets. The use of the Basinwide loading rates from the 2009 Progress Run presents 3 major problems for localities.

1) They are Basinwide averages.

Because the loading rates being used are an average of an entire Basin, they misrepresent the impact of the stormwater BMPs installed and penalize the localities subject to the Chesapeake Bay Preservation Act (CBPA). Due to implementation of the CBPA, the 38 localities in the tidal portion of the Chesapeake Bay Watershed, including 14 within the HRPDC, have been requiring developers to offset nutrient and sediment loads by installing stormwater BMPs since 1990. This should result in lower nutrient loading rates in the tidal portion of each river basin. Using the same loading rate for an entire Basin dilutes the water quality benefit of the BMPs implemented by a few localities, and gives credit to other localities who have not implemented any BMPs.

2) They are State-derived numbers.

The BMPs included in Virginia's 2009 Progress Run do not accurately reflect locally documented implementation levels. During the Phase II WIP process, local government staff spent considerable time and effort collecting data on local BMP implementation in order to groundtruth Virginia's BMP inventory. Localities found significant discrepancies between local and state BMP data and reported this information to DCR in February 2012. Therefore, the use of the 2009 Progress Run loading rates does not accurately reflect BMPs on the ground. For example, one HR's locality contains 3,000 acres of developed land. According to DCR's 2009 Progress Run, BMPs treat 300 acres, but locality data indicates that BMPs treat 900 acres.

3) The 2009 Progress Run only counted BMPs implemented prior to 2009.

Because the 2009 Progress Run only includes BMPs implemented prior to 2009, localities are not receiving credit for all BMPs implemented prior to the commencement of this General Permit. The current language within the Special Conditions for the Chesapeake Bay TMDL section does not include an opportunity for localities to report BMPs implemented between 2009 and the start date of this General Permit – July 2013. If this is not corrected, then localities could be required to implement more expensive stormwater BMPs than should be required to reduce their pollutant loads.

Localities understand that significant efforts from all sectors are needed in order to meet the Chesapeake Bay TMDL, but they also expect to be given credit for all stormwater BMPs that have been installed to improve water quality. Localities cannot continue to expend tax payer dollars on BMP implementation if they cannot be assured that they will be counted towards Bay TMDL implementation.

We request that Section I C be edited to instruct localities to calculate their baseline loads and pollutant reduction targets using loading rates from the 2010 No Action Model run. Localities would also submit data on the BMPs installed and the resulting pollutant reductions from 2006 through July 2013 and receive credit for these reductions beyond their baseline load.