

VACO 78TH ANNUAL CONFERENCE – NOVEMBER 12, 2012
WAVES OF CHANGE: OCEANS OF OPPORTUNITY

STORMWATER LOCAL PROGRAMS:
MS4 Permit Requirements for
Corrective Action

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Introduction:

Addressing Existing Sources

- **Avoiding Pollution from New Sources:**
DCR Stormwater Management Regulations
 - Local Implementation of State Regulations
- **Corrective Action for Existing Sources:**
Forthcoming MS4 Permits for Local Drainage
 - Far more expensive for localities than DCR regulations
 - Huge liabilities set stream-by-stream, county-by-county
 - Applies to certain County-owned drainage systems (MS4s)
 - Potential for loss of local control over scope and spending

What Is An MS4 Permit?

- **Federal Requirement**
 - Clean Water Act permit for discharges from stormwater systems to surface waters
- **State Lead**
 - Issued by State under EPA oversight
- **Multiple Enforcers**
 - By State, but also by EPA and by private citizens
- **Similar to wastewater discharge permits**
 - Numerous requirements, but this presentation focuses on major capital programs for TMDL implementation

Pending MS4 Permit Requirements

***** NEW REQUIREMENT TO ADDRESS TMDLs *****

- For Bay TMDL, develop and implement a Bay Action Plan
 - For all other TMDLs, also do this (Ex: Bacteria, Sediment)
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- **Plus, expansion of existing programs**
 - Public Education & Outreach
 - Illicit Discharge Detection & Elimination
 - Construction Site Runoff Control (Erosion & Sediment)
 - Post-Construction Stormwater Mgmt (DCR SW Regs)
 - Pollution Prevention/Good Housekeeping
 - Various Monitoring & Reporting Requirements

Which Localities Are Affected?

- **Phase I MS4s with Individual Permits**
 - 5 Counties, plus 6 Cities
- **Phase II MS4s with General Permit Coverage**
 - 9 Counties, plus 9 Towns (2 more counties) & 22 Cities
- **And More in the Future**
 - Additional Phase II MS4s from Growth (2020)
 - Potential EPA Expansion to Others (2017?)

Affected Phase / MS4 Localities (Individual Permits)

Counties

- Arlington
- Chesterfield
- Fairfax
- Henrico
- Prince William

Cities

- Chesapeake
- Hampton
- Newport News
- Norfolk
- Portsmouth
- Virginia Beach

Affected Phase II Counties & Towns (General Permit Coverage)

Counties

- Albemarle
- Botetourt
- Isle of Wight
- James City Co.
- Loudoun
- Roanoke
- Spotsylvania
- Stafford
- York

Towns

- Ashland
- Blacksburg
- Bridgewater
- Christiansburg
- Dumfries
- Herndon
- Leesburg
- Vienna
- Vinton

Affected Phase II MS4 Cities

- Alexandria
- Bristol
- Charlottesville
- Colonial Heights
- Danville
- Fairfax
- Falls Church
- Fredericksburg
- Harrisonburg
- Hopewell
- Lynchburg
- Manassas
- Manassas Park
- Petersburg
- Poquoson
- Richmond
- Roanoke
- Salem
- Suffolk
- Waynesboro
- Williamsburg
- Winchester

Potential Expansion to Other Areas

- **EPA/State Residual Designation Authority (RDA)**
 - May classify more localities as regulated MS4s
 - EPA has VA on its “Enhanced Oversight” list already
- **Bay TMDL Example (PA)**
 - EPA identified 50% of current Nonpoint stormwater load for potential regulation as Point Source (MS4)
- **Other Examples**
 - Long Creek (Maine, 2009): Property \geq 1 acre impervious
 - Charles River (Mass., 2008): Commercial \geq 2 acres impervious area

WHAT IS THE LIKELY IMPACT ON OUR COUNTIES?

MS4s in Chesapeake Bay Watershed

- **Enforceable Mandate**
 - To implement VA Watershed Implementation Plan level of pollutant reduction
- **3-Phase, 15-Year Implementation Schedule**
 - 5% progress by end of 1st 5-year permit term
 - 35% progress by end of 2nd 5-year permit term
 - 100% progress by end of 3rd 5-year permit term

***The Permit Makes the Bay TMDL/WIP Enforceable
Against the Locality MS4 Owner***

VA Cost Estimate for Bay TMDL

Senate Finance Comm. Rpt. (Nov. 2011)

	Projected Total Cost (\$ in billions)	Who Pays	Potential State Costs (\$ in billions)	Potential Sources of Funding
Wastewater (including CSOs)	\$1.4	State Govt./Local Govt./Rate-payers	\$0.3 (plus \$78 million for CSOs?)	WQIF, State GF, Bonds /Local GF, Bonds/Tax Assessments, Sewer Rates
Agriculture	\$1.2+	State Govt./Farmers	\$0.8+	WQIF, State GF/Agribusinesses
Stormwater	\$9.4 to \$11.5 (including VDOT)	Local Govt./Property Owners/VDOT	\$2.1 (VDOT Share)	Local GF, Bonds/Utility Fees, Assessments/Transportation Trust Fund
Onsite/Septic Systems	\$1.6	Property Owners	Unknown What Role State May Play	"Betterment loans", Potential for Tax Credits or Grants
Bay TMDL Total	\$13.6 to \$15.7	Potential State Total	\$3.2+	

Virginia Cost Example (cont.)

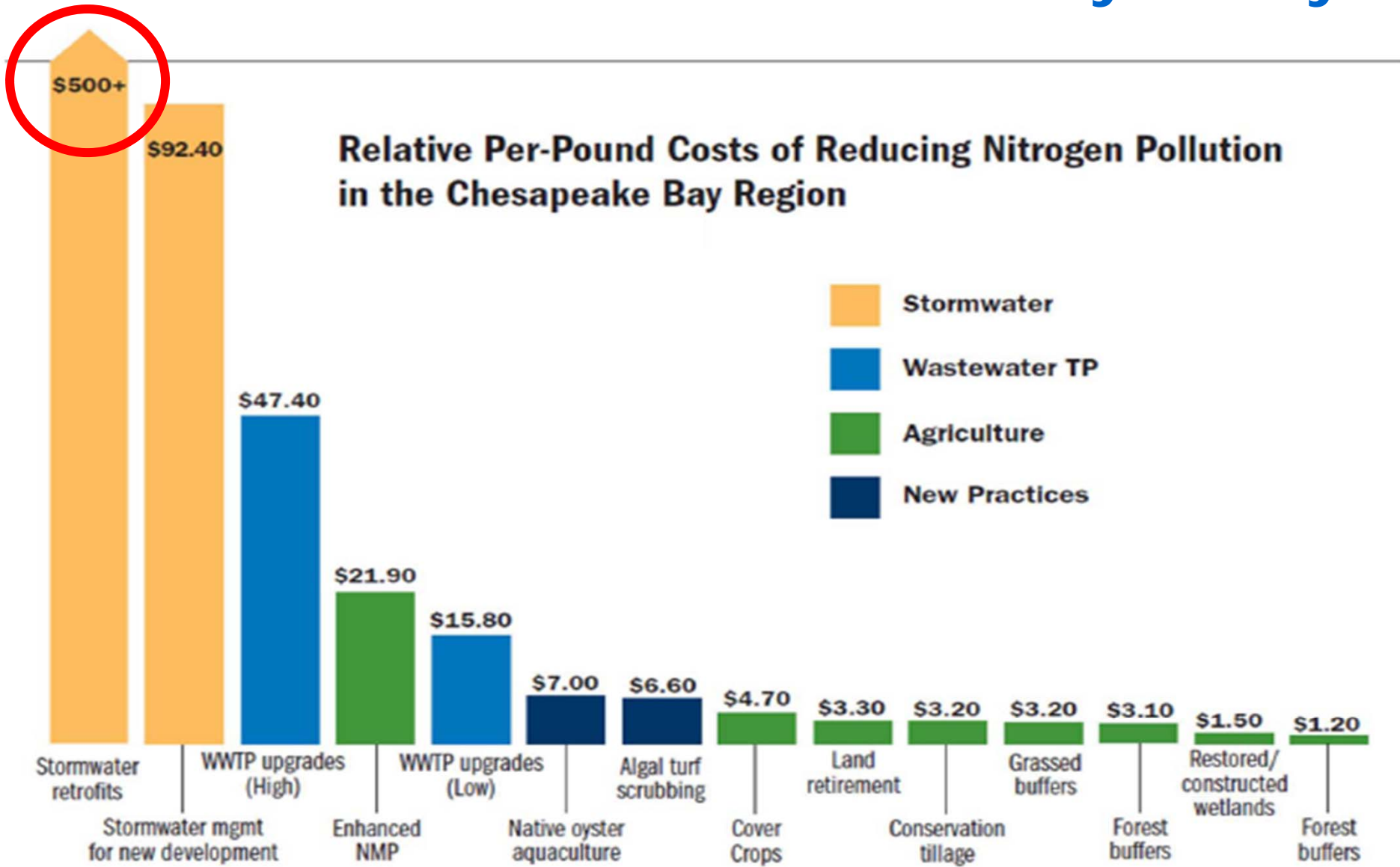
Chesapeake Bay TMDL Costs	Range (\$ in billions)
Estimated Total Local and VDOT Capital Costs	\$9.4 to \$11.5
Estimated Annual Costs*	\$1.0 to \$1.2
Estimated Average Annual Stormwater Bills	Range (\$ per year)
Residential House	\$240 to \$300
Convenience Store/ Gas Station	\$2,200 to \$2,900
Neighborhood Shopping Center	\$14,500 to \$19,100
Regional Mall	\$217,400 to \$286,800



*Assumes financing over 30 years at 5.5% interest rate and O&M costs estimated at 5% of construction cost.

Source: Greeley and Hansen Environmental Engineers

Urban Nutrient Controls Are Very Costly

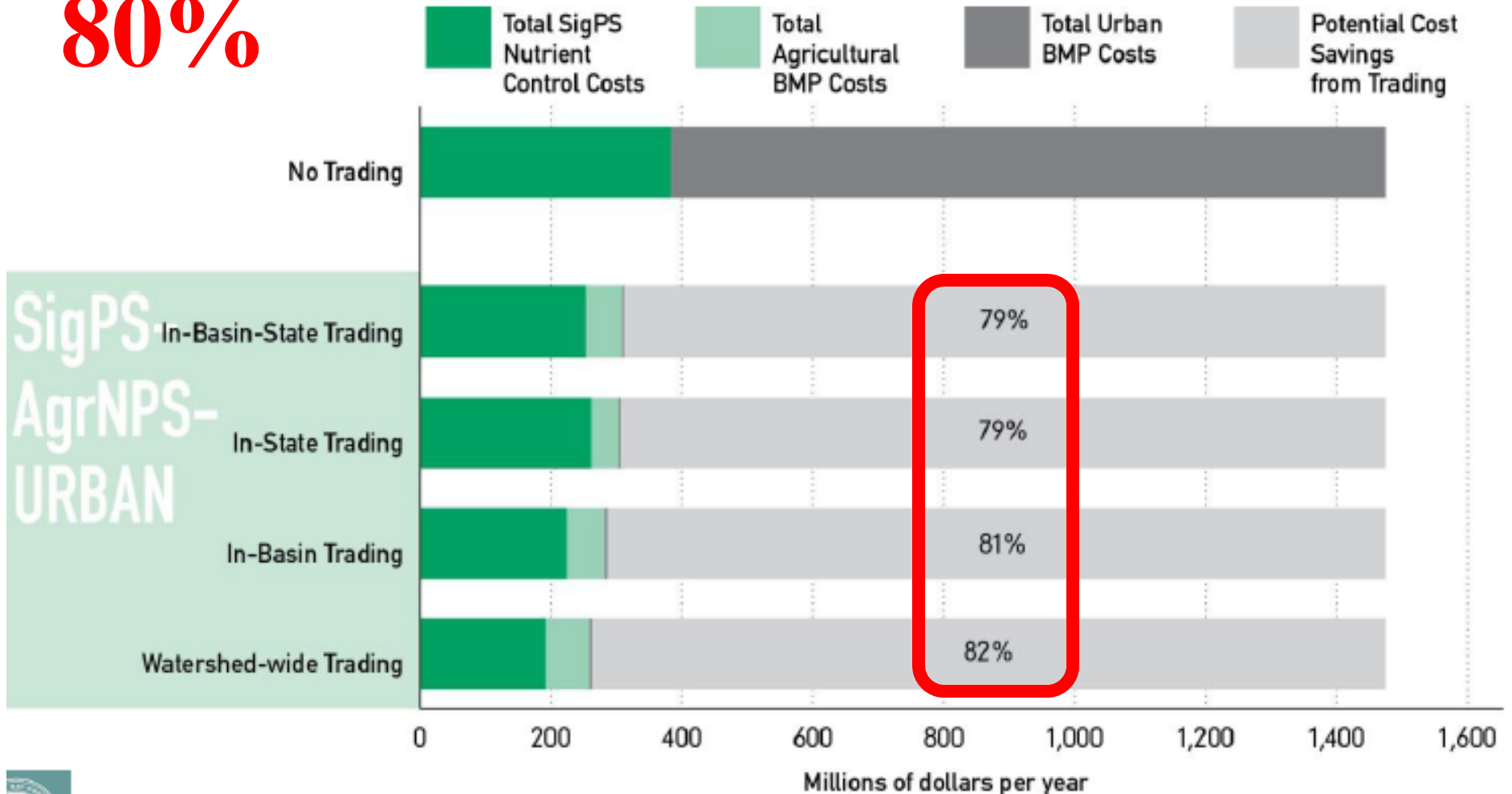


Source: World Resources Institute

January 2010

Costs of Meeting SigPS and Regulated Urban Stormwater Load Reduction Targets

Save
80%



Chesapeake Bay Commission, May 2012

Other TMDL Plans (It's Not "Just" the Bay)

- **Examples of Types of TMDL Cleanup Plans**
 - Bacteria (very common)
 - Sediment / Benthic Impairments (very common)
- **"Adequate Progress" Requirement**
 - Adaptive iterative approach over multiple 5-yr permit cycles
 - Identify BMPs and implementation steps for next 5 years
- **Similar Permit Mandate as Bay TMDL**
 - Large scope of work
 - Mandatory implementation

OBSERVATIONS & COMMENTS

Expect the Current Regulatory Climate to Continue

- **EPA Policy**
 - A very aggressive EPA, both nationally & regionally
 - Aggressive Chesapeake Bay policies directed at localities
 - Pushing States to issue very stringent permits to localities
- **EPA and State Enforcement**
 - High frequency of enforcement in VA and MD
 - EPA pushing DCR to enforce more
 - DCR enforcement is preferable to EPA enforcement

Expect (cont.)

- **Increasing Citizen Group Litigation over Permits**
 - Appeals of recent permit re-issuances
 - Ex: Montgomery County (MD) MS4
 - Ex: District of Columbia MS4
 - Ex: Bay-related WWTP Permits (Town of Onancock, VA; and Phillip Morris USA, Chesterfield, VA)
 - Aggressively “working” VA localities’ permits right now
- **Citizens Enforce as “Private Attorneys General”**
 - If EPA or State does not enforce, citizens may do so
 - Good will and discretion of your regulator is not enough

Manage Like Wastewater, Maintain Control

- **Huge Scope of Work**
 - Fixed end date makes Bay TMDL “regulatory super-priority”
 - Plus, EPA and stakeholders will press on other TMDLs too
- **Regulatory Analogy: Combined Sewer Systems**
 - Corrective action often among most expensive capital projects in history of affected localities
 - Ex: Cities of Richmond and Lynchburg, Others Nationally
- **Keys to Maintaining Control of Your Program**
 - Developing and securing approval of achievable **permits** and **TMDL action plan** 5-year “installments”
 - **Implementation** and **documentation** of same

Strategically Position Your County to Succeed

- **Work Your Permits, TMDLs & Action Plans**
 - Know the worth of an ounce of prevention is worth
 - Ensure upfront that permits and plans are all “doable”
- **Identify & Plan Projects (esp. Bay TMDL)**
 - “Hit the ground running,” “pick low hanging fruit for first 5%”
- **Consider Revenue Options**
 - Ex: Stormwater Utility Fee Systems, Tax Rate Dedication
- **Hire the Right Staff & Consultants**
 - This are complex, high dollar challenges
 - Retain and apply good leadership, management, technical and regulatory capabilities

Understand How and When To Use or Allow Nutrient Trading

- **Different Trading Types & Local Decisions**
- **For MS4s**
 - For compliance with your Permit's Bay nutrient reductions
 - Opportunity to optimize benefits of your WWTP and MS4
 - Ongoing permits → Trades are temporary in nature
- **For Developers**
 - For compliance with DCR Stormwater Regs
 - Land development → trades are permanent in nature
 - Protecting local water quality over long term

Conclusions

- **Management-Level Issue for Affected Counties**
 - Treat Your Permits & TMDL Plans Like Contracts
 - Understand Your Obligations & Liabilities
- **Chart a Strategic Course**
 - Develop and Implement Your Regulatory Strategy
 - Develop and Implement Your Financial Strategy
 - Maximize Your Local Return on Investment
- **Maintain Compliance from the Start**
 - To Maintain Control for the Future

FOR MORE INFORMATION

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