

VML/VACO
Joint Committee Meeting

Chesapeake Bay TMDL Cleanup Plan:

**CRITICAL ISSUES & IMPLICATIONS
FOR VIRGINIA'S LOCALITIES**

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Presentation Overview

- EPA's Plan
 - Scope (large and stringent)
 - Schedule (short and fixed)
 - Enforcement (already promised)
- Local Implications
 - Wastewater Service
 - Stormwater Management
 - Economic Development
- What VA's Localities Should Do in 2010

EPA's Plan: Scope (or Stringency)

- What is the required extent of the cleanup?
 - As of 2005: \$10 Billion for Virginia alone
 - In mid-stream, EPA is strongly considering expanding the scope (i.e., tightening the requirements adopted in 2005)
- Law of diminishing returns will painfully apply to any additional burden added at the margin
 - Required level of effort (and rates and taxes on citizens) increase far in excess of water quality benefits

EPA's Plan:

Schedule for Implementation

- Short, first-ever hard regulatory deadlines for implementation by States and sources
 - 60% by 2017 (frontloaded schedule)
 - 100% by 2025 (finish within 15 years)
 - Meet 2-year milestones over 15-year schedule
 - Highly unusual for TMDL to mandate schedule
- VA's Annual Implementation Cost (all sources)
 $\$10 \text{ Billion} \div 15 \text{ Years} = \$667 \text{ Million per yr (est.)}$
(this is only for 2005 Tributary Strategies)

EPA's Plan: Enforcement of Scope & Schedule

- Point Sources – Meet new permit limits
 - Wastewater
 - Municipal Stormwater
 - New Development (Construction)
 - Concentrated Animal Feeding Operations
- Nonpoint Sources
 - Not regulated, but must comply, or else EPA will impose “consequences” on State & Point Sources

Enforcement: “Consequences” That EPA Threatens

- Expand NPDES coverage
 - E.g., impose MS4 permits on very small unregulated towns
- Oversee/object to State permits
 - E.g., add further implementation requirements to localities by leveraging Treatment Plant permits
- Require additional offsets for new/increased discharges
 - E.g., block construction permits (commercial, residential, industrial, highway, municipal) until offsets can be found

Enforcement: “Consequences” That EPA Threatens (cont.)

- Reduce Point Source allocations
 - E.g., cut the allocation for your Treatment Plant, which means higher costs and effective loss of sewer capacity
- Increase enforcement (penalties/orders)
 - E.g., take formal action over violations that today are not deemed to warrant such action
- Condition/re-direct SRF capitalization grants to States
 - E.g., EPA’s favored projects will get the low interest loans rather than those selected by VA DEQ under VA criteria

Implications for Wastewater Service

- VA Nutrient Regulations were adopted in 2005
 - Approximately \$2 Billion of construction-in-progress
 - “Regulatory Stability” for Treatment Plants is a Necessity
- Risks to State and Localities
 - Loss of Treatment Plant allocations if VA’s caps are so tight that VA can’t show EPA an achievable NPS Program
 - Same loss if VA’s caps are so tight that State/NPS don’t meet each 2-Year Milestone
- Implications
 - Redesign/rebuild recently completed Plant upgrades
 - Another “round” of major sewer rate increases
 - Effective loss of sewer capacity for economic development

Implications for Stormwater Management

- Regulatory Authority & Trend
 - State/EPA regulate Municipal Stormwater Sewers (“MS4s”)
 - Major expansion of permit requirements in progress
 - You may need to establish a Stormwater Utility to generate the revenue needed to comply with increasing requirements
- Key Issue: Existing Development “Retrofits”
 - EPA favors mandates on localities (MS4s) to retrofit existing development to provide treatment for stormwater
 - Very expensive, and extremely so in urban areas
 - Among least cost-effective things VA can do for Bay

Implications for Economic Development

- In General
 - Wastewater capacity constraints and higher sewer rates
 - New/higher Stormwater Utility fees (or equivalent taxes)
 - Less development/redevelopment under tougher standard
- “Offset” Requirements
 - Availability of offsets is currently very low, and future supply and cost is highly uncertain
 - A lack of offset availability would equate to development moratoria requiring disapproval of new projects
- If EPA cuts allocations from today’s levels, there will be more costs and development restrictions

Special Caution for James and York River Basin Localities

“Allocations for VA’s York and James ... set at previously established tributary strategy nutrient cap load levels since each basin has minimal impact on mainstem Bay water quality conditions, and their influence on tidal water quality is predominantly local.”

- VA Secretary of Natural Resources W. Tayloe Murphy, Jr., Memo (4/25/03)
- **EPA wants to ratchet down on VA’s James & York basins**
 - EPA unilaterally changed key underlying elements of the 2005 agreement that VA stakeholders broadly supported
 - Poor science and poor policy
 - Ironically, if EPA has its way, James may turn out to be most stringently regulated basin in entire Bay watershed

What VA Localities Should Do During 2010

- Begin now urging Federal & State governments to
 - Provide a stable regulatory environment
 - Maintain VA's basin-wide allocations for all basins
- For Your Wastewater System
 - Support VA's proposal to maintain wastewater caps now
 - Determine cost & capacity impacts of any cuts now
- For Your Stormwater System (MS4s)
 - Watch out for existing development "retrofit" mandates on you (beyond improvements from normal redevelopment)
 - Enhance your program & anticipate funding needs
- Comment on VA Plan (June-Aug) & TMDL Plan (Oct.)