



November 8, 2010

Mr. Tom Thornton
Maryland Department of the Environment
1800 Washington Boulevard
Suite 540
Baltimore, MD 21230

Dear Mr. Thornton:

The Maryland Association of Counties (MACo) represents all 23 Maryland Counties and Baltimore City. MACo recognizes the need to halt and reverse the ongoing deterioration of the Chesapeake Bay and its tributaries, but does have several concerns relating to the State's proposed Phase I Watershed Implementation Plan (WIP). As the Phase I WIP establishes the structural framework that will be built upon and refined by the Phase II WIP, it is important that the Phase I WIP address the following shortcomings.

- *Local Flexibility to Meet the Goals:* While the draft Phase I WIP outlines target reductions by sector, it is important to allow counties the flexibility to meet their goals in a manner that is most efficient and best for them. Maryland's counties are very diverse and some counties may be able to achieve their goals by targeting greater reductions in agriculture and septic systems while other counties may be able to realize the bulk of their goals by focusing on wastewater treatment plant upgrades. Mandating set reductions or actions in each sector will increase the implementation costs and the risk of failure.
- *Counties Need Many Quantifiable Nutrient Reduction Tools:* Similarly, counties are going to need a wide range of nutrient reduction "tools" in order to be successful. There are likely going to be many new and innovative nutrient reduction methods proposed stakeholders in both the public and private sector and there must be a process for allowing the testing and use of these methods.

These tools must be easily quantifiable, both in terms of accounting for the nutrient reductions resulting from their use and their cost. For existing best management practices or those proposed in the Phase II WIP, the State should conduct a cost/benefit analysis. The State must also develop a "vetting" process that both it and the counties can use to judge new nutrient reduction strategies and assign a value on their effectiveness. The WIP must encourage flexibility and allow for the use of such a vetting process.

- Bay Model Should Not Be Sole Determinant for Progress:* If many “tools” are made available to the counties, then there also needs to be consideration of how to account for those tools. The Chesapeake Bay Phase 5 Watershed Model continues to show improvements and refinements over previous versions, but ultimately the Model is still limited, being subject to inaccuracies and “best guess” estimates. Given that the Model is still imperfect but that county governments are being asked to undertake precise nutrient reduction tracking, the WIP must show some flexibility in allowing counties to present data and that may not be incorporated or accounted for by the Model. For example, nitrogen and phosphorous data used for some of the counties, such as Queen Anne’s, is outdated and predates many of the best management practices currently being employed. In short, the Model should not be the sole measure of data analysis.
- Counties Need Fiscal Support:* The estimated costs of implementing the TMDL requirements and achieving the target loads are enormous. In Maryland, costs for potential stormwater retrofits alone could run in the billions. Even in prosperous times that figure would be daunting, but when the State’s local aid has been significantly reduced and counties are still feeling the effects of the recession, it becomes unattainable. Some counties anticipate having to double their planning staff. There is no way certain counties could raise taxes or fees to a level that would cover their anticipated TMDL costs. While MACo is also advocating for federal aid, the WIP must address some revenue source to cover the implementation and reporting/tracking costs for counties. The General Assembly will likely consider an increase to the Bay Restoration Fee in the 2011 Session, but this only addresses one small piece of the total cost. Cost is a critical practical factor that must be addressed in order for the State and counties to reach their TMDL goals.
- Counties Need Technical Support:* In addition to the significant cost burdens imposed by the TMDL on local governments, there is also a need for technical assistance. Local governments lack the scientific expertise necessary to fully comprehend the impacts of the many nutrient reduction strategies that will be proposed and implemented. As previously noted, counties expect the private sector and even some in the public sector to propose many new and innovative strategies for achieving the TMDL goals and they need help to analyze the effectiveness of these strategies and develop adequate tracking systems. The WIP must provide a system for State technical support to county governments.
- Use of Growth Offsets:* The proposed Phase I WIP adopts a hybrid method for addressing future growth: it builds a certain amount of growth into the TMDL numbers and also requires the use of nutrient reduction offsets. The amount of offset activity that must occur is based on the per capita nitrogen loading, with high population density areas on water and sewer having to do the least offsets and low population density areas having to do the most. While MACo acknowledges that the use of growth offsets may be necessary to accommodate future growth while still meeting State and local TMDL goals, MACo is concerned that the proposed offset system may unfairly penalize rural jurisdictions. Maryland has been a leader in Smart Growth but while our Smart Growth model works well for urban jurisdictions, it has never recognized or adequately addressed the different growth patterns and needs of rural areas. The proposed offset model may work for urban jurisdictions but must be refined before being applied to rural jurisdictions.

The offset system also needs to provide counties ample elasticity, so that a county may mandate the required levels of offsetting versus the level of post-development retrofitting. Clarification is also needed about how the offset system will interact and mesh with local comprehensive plans and permit issuances.

Finally, offsets assume the availability of land to receive the offsets. In many instances, this will be farmland. Study is needed to fully understand the impact an offset requirement will have on agricultural land and whether the requirement will unintentionally contribute to the depletion of productive farmland.

- *Nutrient Trading Must Be Clarified:* There has been much discussion of using a nutrient trading plan, but the specifics of how such a plan would work in the TMDL context needs to be provided. It is not clear how the trading is going to be tracked and how the local jurisdiction where the trading is occurring is going to be notified. While some of these details can be addressed in the Phase II WIP, it is troubling that the Phase I WIP places significant reliance on nutrient trading while providing little additional information.
- *Separate the TMDL Targets From NPDES MS4 Permits Until Phase II WIP Completed:* One issue that has recently arisen is MDE's enforcement of new NPDES criteria, without consideration of how the permits fit into the TMDL framework. Clearly, NPDES permits will play a role in the overall TMDL strategy and this should be clearly delineated in the Phase II WIP. However, counties face confusion over conflicting standards and possible litigation in the meantime. The Phase I WIP should make it clear that NPDES permits remain separate from TMDL requirements until the matter is settled during Phase II. Also needing clarification: whether NPDES requirements will vary based on county population, how existing projects will be grandfathered, and how retrofit projects will be credited.
- *Do Not Eliminate Forest Conservation Act Fee-In-Lieu Program:* The fee-in-lieu program under the Maryland Forest Act allows counties to target larger tracts of ecologically significant forest and areas with designated use impairments, which would not be possible without the program. The result can provide a bigger net increase in forest acreage than if each individual development project had to do its own mitigation. Eliminating the program would remove a useful and effective tool from county governments.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Knapp Jr".

Leslie Knapp, Jr.
Associate Director