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Draft Chesapeake Bay Total Maximum Daily Load

Comment On: EPA-R03-OW-2010-0736-0001
Clean Water Act Section 303(d): Notice for the Public Review of the Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay

Document: EPA-R03-OW-2010-0736-0366
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Submitter Information

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General Comment

The EPA should delay adoption of the TMDL and backstops for at least one year and until no sooner than December 31, 2011 for the following reasons:

• The regulatory development process EPA has used for the TMDL has been too rushed. EPA set unreasonable deadlines and provided inadequate opportunity for comment both from the public and from the states. It is wrong for EPA to fail to establish a reasonable adoption process for this federal program that will cost Virginia residents, businesses and local and state governments billions of dollars. It is illegal for EPA to claim it had to do this because it settled a lawsuit to which Virginia was not even a party.

• The model used to establish the TMDL has three significant flaws: (1) data used for existing impervious surfaces is overstated by a 2.5 magnitude; (2) the model inadequately counts reductions currently being realized from common pollution reduction practices in Virginia; and (3) the model incorrectly accounts for pollutants from different land uses. It is arbitrary and illegal for EPA to establish a TMDL for the Chesapeake Bay until such time as the model is fixed.

• It is arbitrary and wrong for EPA to refuse to consider and incorporate cost-effectiveness into its proposed TMDL. EPA acknowledges it has not used any analysis of costs in the development of its proposed TMDL and says it has not done so because it is not required by law to do so.

• No legal authority exists for the full range of urban/suburban retrofits the EPA draft TMDL or backstops would require of existing properties, including state and local highways. These include installing rain gardens and tearing up parking lots and installing stormwater controls including pervious asphalt. Such controls are far more expensive and achieve far less pollutant reductions per dollar spent than wastewater treatment plant upgrades (which developers pay for too) or many agricultural best management practices contained in the Virginia draft WIP. Agricultural BMPs could be funded through a nutrient trading fund which accepts payments from urban/suburban land disturbing projects.