PUBLIC SUBMISSION

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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-2010-0736-0390
Comment submitted by Fred Fultz, on behalf of Municipal Authority of the Township of Union, Pennysylvania

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Submitter Information

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Organization: Municipal Authority of the Township of Union, Pennysylvania
Government Agency Type: Local
Government Agency: Municipal Authority of the Township of Union, Pennysylvania

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General Comment

COMMENTS FOR EPA TMDL…
Will jurisdictions be given more time to adequately develop the final WIPS?
The length of time provided to the jurisdictions for the development of the Watershed Implementation Plans was wholly inadequate and inappropriate, given the level of detail needed by EPA to satisfy "reasonable assurance". The nutrient allocations were released from EPA on July 1, 2010 and the sediment allocation on August 13, 2010. This is significantly later than the scheduled 2007 release of Phase 5 of the model and corresponding allocations to the jurisdictions! Draft WIPs were due to EPA on September 1, 60 days after receiving the nutrient allocations. So while EPA was able to substantially miss their schedule by years, jurisdictions were not afforded any additional time. Additional time must be provided to the jurisdictions to complete their WIPs in order to adequately address issues and avoid the unachievable backstop provisions that EPA has placed in the draft TMDL.

The Public Comment Period needs to be extended beyond 45 days.
The truncated public comment period of 45 days is totally inadequate and inappropriate. On September 24, 2010 EPA made available the draft Chesapeake Bay TMDL. The body of the report is 365 pages in length with 23 appendices totaling 262 pages that include seven tables with a total of approximately 22,000 rows of data and information in those tables. Three of these tables list cap loads for all point sources, significant and insignificant. There are 4,390 insignificant point sources listed in these tables that are unlikely aware of their inclusion and their need to review and comment on the TMDL. Forty-five days is not adequate to ensure that contact is made with appropriate representatives of these dischargers.

Given the reality of the economic situation that exists for all in the Bay watershed and beyond, the

implementation of the actions needs to restore the Chesapeake Bay will not occur unless there is sufficient funding by the federal and state governments. This was the conclusion of the Blue Ribbon Finance Panel created by the Chesapeake Executive Council in 2004. Will the recommendations of the Blue Ribbon Finance Panel be implemented and, if not, what effective funding and financing efforts will be made?
In an effort to identify the financial resources essential for cleaning up the nation's largest estuary, the Chesapeake Executive Council in December 2003 called for the creation of a Blue Ribbon Finance Panel to make recommendations for the effective funding and financing of the Bay clean-up effort. The Panel reached an early and strong consensus, however, that simply improving existing programs alone will not be sufficient. The Panel recognized that something more substantive and dramatic will be required. The Blue Ribbon Finance Panel proposed that the six Bay watershed states and the District of Columbia create a Chesapeake Bay Financing Authority, capitalized by the federal and state governments, with the capacity to make loans and grants. Their conclusion was that the Federal government should provide $12 billion and the seven jurisdictions together should contribute $3 billion. The Chesapeake Bay has been rightly called a National Treasure but the draft EPA TMDL is requiring the ratepayers of point source wastewater treatment facilities to unfairly bear the majority of the cost for restoration.

EPA cannot provide "Reasonable Assurance" that placing significantly lower limits on point sources (with many industrial point sources below the limit of technology) will be implemented and successful.
Just because EPA has placed severely low nitrogen and phosphorus limits for point sources into the model and the model results show that Pennsylvania's allocations for nutrients can be met, does not provide "Reasonable Assurance" that this approach will be successful. Just because EPA can place these low limits in NPDES permits, does not mean that there is "Reasonable Assurance" that this approach will be successful.

This approach nets a fraction of the needed reductions from Pennsylvania and carries a huge financial burden to the rate-paying public. More Draconian is that many of the industrial point sources are listed as having nutrient limits that appear to be arbitrary and are well below the limit of technology. This approach exasperates the unstable economic conditions that exist today. This approach will likely lead to multiple legal actions that will result in significant delays to the restoration of the Bay.

Given that 48 percent of the nitrogen load in streams in the Bay watershed is transported through ground water and that this information is not included in the Chesapeake Bay Model, how can the current Model have sufficient accuracy?
The accuracy of the Chesapeake Bay model should be in question because the model does not accurately account for ground water as a source of nitrates. The United States Geological Service (USGS) conducted a multi-year study in the Chesapeake watershed of nitrate in ground water. The 2002 report (USGS Fact Sheet FS-091-03) states:

"An average of 48 percent of the nitrogen load in streams in the Bay watershed was transported through ground water, with a range of 17 to 80 percent in different streams."

The study also reports that due to lag time, the median age of this groundwater is 10 years with 25 percent of the samples having an age of 7 years or less and 75 percent of the samples having an age of up to 13 years.

During the March 25 EPA TMDL webinar, a question was asked about whether this ground water nitrate data was accounted for in the Chesapeake Bay model. Mr. Richard Batiuk answered the question stating that it was not currently part of the model but that the model was designed to accommodate that information when it became available.

COMMENTS FOR PENNSYLVANIA WATERSHED IMPLEMENTATION PLAN

Pennsylvania must adequately address the issues raised by EPA within the PA Watershed Implementation Plan to avoid the EPA Backstop provisions.
Pennsylvania needs to work closely with the EPA to assure that the issues identified in the 8-page document, EPA Comments on the Pennsylvania Draft Phase I Watershed Implementation Plan, are addressed. The Backstop provisions in the draft EPA TMDL for the Chesapeake Bay are severe and in some cases unachievable. The Backstop, if implemented, will create severe hardship on most of the residents and businesses in our community and beyond. The actions will likely be legally challenged and progress towards Chesapeake Bay goals will be further delayed.