

Chesapeake Bay Total Maximum Daily Loads (TMDL)

Issue

EPA will establish and oversee achievement of a strict "pollution diet" known as a Total Maximum Daily Load, or TMDL, to remove pounds of nitrogen, phosphorus, and sediment from the Chesapeake Bay and its tributaries. A TMDL will "cap" the amount of pollutants a water body can receive and still meet water quality standards. The Bay TMDL will include a combination of 92 smaller TMDLs for individual tidal Chesapeake Bay segments. TMDLs will be divided among all 6 states (Virginia, Maryland, Pennsylvania, Delaware, New York, West Virginia) and the District of Columbia according to their major river basins. Virginia is expecting to be 35 TMDLs with which to comply. EPA will work closely with the Chesapeake Bay Program to draft each TMDL. TMDL decisions will be processed through the Water Quality Goal Implementation Team and Principals' Staff with EPA having final authority.

Each of the seven jurisdictions must present a Clean Water Accountability Program outlining strategies to achieve TMDLs which will include: description and schedule of practices to be implemented, pollution reduction targets identified by sector and geographical location, needed point source reductions and needed non-point reductions. As part of the Accountability Program, these efforts will be monitored through two-year milestones set forth by the Chesapeake Bay Program. EPA will impose consequences if a jurisdiction delivers "insufficient commitments" or fails to meet two-year milestones. These consequences have not been finalized, but are proposed to include:

1. More stringent pollution reductions to point sources
2. EPA Objection to state-issued NPDES Permits
3. Limit or prohibit new/expanded discharges of nutrients and sediment
 - a. Development delivering increasing loads
4. Withholding, conditioning, re-allocating federal grants (authority inside clean water act)

Background

The "Clean Water Accountability Program" is also called a "Comprehensive Plan" as set forth in Section 117 of the Clean Water Act, "Reauthorization of the Chesapeake Bay Program." As such, the TMDL strategies will be subject to those requirements set forth in Reauthorization language still under consideration in Congress. While TMDLs are still being drafted by EPA, current proposals for state implementation include:

- Must describe and quantify in detail the source controls needed to achieve TMDL loadings by basin, by source with 2-year commitments
- Must describe detailed planned enhancements to existing state, federal and local programs

- Identify any legal, programmatic, funding or other gaps preventing implementation
- Outline contingency plans
- No changes to existing state water quality standards

This plan will be used by EPA to make a “reasonable assurance” determination that non-point sources can achieve load allocations. As defined in Executive Order Section 202A Report, “reasonable assurance” means “enforceable or otherwise binding.”

Timeline

- Oct 2009 - Expected release of Major Basic Loading Targets by Jurisdiction
- November - December 2009 - Bay wide TMDL hearings
- Dec 2009 - March 2010 - Divide Target Loadings by source, watershed, locality
- Dec 2009 - March 2010 - Jurisdictions Develop State Implementation Plans
- Bay wide TMDLs (from EPA) and State implementation plans (from jurisdiction) to be completed by June 2010.
- Public comment will be open during summer of 2010 on all TMDLs.
- Final TMDLs and State Implementation Plans to be completed by December 2010.
- Court ordered consent requires TMDLs for the Bay to be completed no later than May 1, 2011.

Policy Positions

- Comprehensive reporting system must be developed to track voluntary, paid and expired incentive-based acres for agriculture Best Management Practices (BMPs). Complete data will ensure the Bay restoration goals are accurate and sector loads are appropriately assigned.
- TMDLs MUST:
 - Be based on peer-reviewed, science-based information
 - Account for population growth projections in Bay watershed
 - Assess wildlife population impact on water quality
 - Consider offset trading availability (Percentage of available BMPs performed beyond baseline)
- Adequate cost-share funding and resources at both the State and Federal levels for implementation of TMDLs must be provided to agribusiness industry

For more information: <http://epa.gov/chesapeakebaytmdl>

This document was developed by the Virginia Agribusiness Council and its industry partner organizations.