

## Virginia's Approach to "Sector Growth" Issues

September 5, 2013

### Submitted by the Virginia Department of Environmental Quality

Since EPA's first request in 2012 for jurisdictions to specify how they will address "sector growth", Virginia's position has been consistent. We believe that EPA's expectations regarding "growth in loads" are premature and should be addressed following the 2017 reevaluation and any related changes to the Chesapeake Bay model or the TMDL. As stated in 2012 and earlier this year in both written and verbal communications with EPA, we have stated that we expect these changes to obscure or alter the results of any tracking methods developed at this time.

We have also previously noted that any new requirements for offsetting loads from any particular sector would require action by the General Assembly and the Governor, which given the upcoming change in administration is an uncertain proposition.

Based on our review of the TMDL allocations and the status of our regulatory programs, the only sectors with likelihood for unregulated growth between 2010 and 2025 are unregulated urban and onsite/septic. The allocations for these two sectors in their entirety amount to 7% of Virginia's nitrogen allocation and 5% of Virginia's phosphorus allocation. In the case of urban lands, the subsets of the sector that are the potential sources of load growth are comprised of new individual small parcels whose development disturb less than 1 acre and any projects grandfathered by the new stormwater regulations. In the onsite sector, growth will result from the addition of new onsite systems. It is expected that these systems will increasingly be alternative systems that reduce the nitrogen load growth by 50% over traditional systems. As a result, if the number of onsite systems increase by 25% by 2025, the onsite loads might increase by only 20%. If we assume a 20% increase in both the urban and onsite sectors, the growth would amount to only about 1% of the total allocations for nitrogen or phosphorus. In the scheme of things that may change between now and 2025, sector load growth is a very small concern.

Our approach to WIP implementation focuses on total loads and using the significant progress made in the wastewater sector will assure compliance with the 60% of required load reductions by 2017. Our point source progress has given us time to ramp up our reduction efforts in the nonpoint source sectors. We continue to believe that even if measurable growth occurs in all source sectors except wastewater between now and 2017 we will still achieve the expected 60% reduction in loads.

In the most recent communication, EPA asked for the following information:

***A date by which the jurisdiction had or will have in place an offset program that meets the common elements of Appendix S ;***

Response: As EPA is aware, Virginia is in the midst of a rulemaking authorized by legislation passed by the 2012 General Assembly that will establish regulations for the management and oversight of the generation, certification and use of nutrient credits. Each of the common

elements in Appendix S of the TMDL is addressed either in the authorizing statute or in the draft regulations. Timelines for rulemakings in Virginia are inherently uncertain given the construct of the Administrative Process Act. It is the hope of DEQ staff that proposed regulations will be presented to the State Water Control Board in December, 2013. At that time, the board may authorize the release of the proposed regulations for public comment. Beyond this somewhat speculative timeframe, we cannot commit to a specific date when the regulations will be finally approved by the Board and the Governor and become effective. In the meantime, Virginia's longstanding nutrient trading programs will continue under prior law and guidance.

***A description of how the jurisdiction accounts for and manages all new or increased loads;***

Wastewater:

All facilities registered under the Chesapeake Bay Watershed General permit are required to report annual nutrient discharges. § [62.1-44.19:15](#) of the Code of Virginia requires that new sewage treatment plants discharging more than 1000 gallons per day after January 1, 2011 must “demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.” As a result, nutrient loads from wastewater treatment plants will remain at or below the sector allocations contained in the Chesapeake Bay TMDL.

Industrial Stormwater:

Virginia is now in the process of reissuing the General Permit for Stormwater Discharges from Industrial Activities. The draft General Permit is proposing that newly constructed facilities or expanding facilities install measures and controls to achieve no net increase of nutrients and sediment over pre-development conditions. The permit is currently out for public comment.

Urban Stormwater:

It is projected that the vast majority of future growth in Virginia will result from the development of agricultural and forest lands into residential and commercial urban uses. To account for this growth in urban land, Virginia developed a load balancing approach that uses the allocation loads for forest, cropland, pasture and hay land uses in the Chesapeake Bay Program's Phase 5.3 Watershed Model to calculate the average pollutant loads from a generic pre-development acre based on the mix of projected land to be developed for Virginia's Chesapeake Bay watershed. Each new development project will be required to meet these pre-development loads upon completion of the project through a combination of site planning, BMP implementation and, if necessary, off-site reductions. Because the calculation of the generic pre-development acre is based on the allocation loads, the post-development load will produce a no net increase from the average forest, cropland, pasture and hay loads after treatment with the suite of agricultural and forest BMPs as previously identified in this WIP. Areas that are redeveloped will be required to achieve a 20% reduction in phosphorus loads from the previous condition.

Agriculture:

There are no current requirements to offset new loads from agriculture. However, with the aggressive approach to BMP implementation, the loss of farmland and other factors, we continue to anticipate net reductions in this sector.

Onsite/Septic:

VDH tracks the number and type of onsite wastewater systems installed. All new construction permits for onsite wastewater treatment systems have been entered into a statewide database (VENIS) since 2004. Historical data is being migrated into this database as well. This will provide a more refined number of the total number of onsite systems in Virginia when it is completed. Additionally, larger commercial and community systems will be accounted for and delineated in the database. The current Bay model does not differentiate between residential and commercial/community systems, and therefore it likely overestimates the loads from commercial/community systems. Virginia would like to see EPA recognize the larger onsite systems.

Virginia has representatives participating in the Chesapeake Bay Program (CBP) Onsite Wastewater Treatment Systems Nitrogen Reduction Technology Expert Review Panel who are working to develop additional Best Management Practice (BMP) strategies for the onsite sector that will allow credit for nutrient reduction from various system configurations. When those BMPs are finalized and applied, the Virginia database will be modified to track those new BMPs as well.

***A description of the system in place for tracking changes in loads to ensure accountability and verification;***

We have in place regulatory requirements for reporting in various sectors. We will review the verification protocols that will be adopted by the Chesapeake Bay Program and determine if changes are needed to our existing programs.

***A description of how the jurisdiction accounts for movement among sectors to be sure that an increase in anticipated loading does not get overlooked because of the predicted movement to another sector;***

We have no plans at this time for such a program. We will review the utility of this approach in conjunction with the 2017 reallocations.