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July 24, 2015

Via Email and US Mail

Jon Capacasa, Water Division Director  
Ms. Lenka Berlin  
US EPA Region III, 3WP30  
1650 Arch Street  
Philadelphia, PA 19103

Re: Comments on Proposed USEPA Wissahickon TMDL for Nutrients

Dear Mr. Capacasa and Ms. Berlin:

We are providing the following comments and objections to the proposed draft Wissahickon Total Maximum Daily Load (TMDL) and hereby request that the document be withdrawn given the fundamental regulatory and scientific flaws associated with this proposal. Moreover, EPA's refusal to make the backup documents and data that supposedly supported this TMDL action, available to our expert consultants, prior to the close of the public comment period, is simply inexcusable and violates the due process rights of our communities. Unfortunately, that action is indicative of how this process has proceeded and how little EPA is actually interested in ensuring decision making based on sound science.

EPA's refusal to make the backup information available in a timely manner is no small oversight. As EPA is well aware (or should be) the proposed MS4 nutrient reductions contained within this TMDL are physically unattainable and therefore will, if adopted, leave our communities in perpetual non-compliance and subject to ongoing growth moratoria. The only conceivable way to achieve a 94 percent reduction in MS4 nutrient loadings would be to recreate pre-European conditions by filling in the storm sewers and depopulating the watershed. That, of course, is simply not going to occur and the need for such draconian measures would have to be comprehensively documented. How any federal proposal under the Clean Water Act could be issued that created such a plainly inappropriate and abusive mandate, and then not allow for timely review of the backup documentation to ensure it is correct, is beyond comprehension. This TMDL action simply must be withdrawn.



Beyond these obvious problems with the ability to implement the mandates contained within this federal proposal, it is clear that the extreme reductions are based on a grossly flawed and highly biased technical analysis. The “technical experts” who prepared this analysis should be fired and the money paid for preparing the plainly erroneous assessment should be returned to the federal treasury. The following errors are apparent even to a non-technical person simply from a “common sense” standpoint:

- EPA claimed that the TMDL was needed to prevent “excessive plant growth” but nowhere presented any data showing that the condition exists or, if so, was due to man-induced nutrient conditions in the system; (*i.e., the entire analysis is based on presumed not demonstrated impacts*).
- EPA’s technical “experts” created the stringent TP limits using methods EPA’s own Science Advisory Board confirmed were fundamentally flawed and failed to demonstrate “cause and effect”. EPA did not present a shred of scientific analysis showing that any of the alleged “ongoing impairments” were actually caused by plant growth or excessive nutrients (*i.e., there is no documentation presented showing that the massive expenditure of resources would actually produce any documented benefits*).
- EPA ignored its own published (2006) conclusions (and that of Tetra Tech its consultant) that any elevated plant growth occurring in parts of Wissahickon Creek cannot be controlled by nutrient reduction. In fact, even the latest “expert reports” confirmed that high plant growth could occur where nutrient levels are at natural background levels. (*i.e., regardless of man-made contributions, elevated plant growth will exist anyway*).
- EPA ignored data confirming that similar nutrient reductions occurring in other streams in this Region produced no change in plant growth or insect populations (*i.e., there will be no actual ecological benefit from this massive expenditure of local resources*).
- EPA claimed that controlling MS4 discharges from large storms is necessary (the most costly condition), even though data and published literature confirmed that plant growth is *reduced, not increased* by such events (*i.e., high flows scour plant growth, they do not increase plant growth*).
- EPA claimed that TP must be controlled even in the winter when plants are not growing with no analysis to support that bizarre position (*i.e., why this TMDL, contrary to all other stream TMDLs, would mandate winter nutrient reduction underscores that the analyst was not competent as even children know plants stop growing in the winter months*).
- EPA claimed that the prior 2003 nutrient and sediment TMDL was not protective of stream aquatic life based on data collected *before the 2003 TMDL was even implemented*. (*i.e., EPA failed to use data reflecting current nutrient levels before concluding more nutrient reduction was needed*).

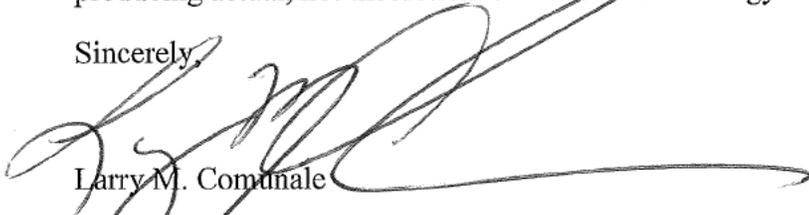
Jon Capacasa, Water Division Director

Ms. Lenka Berlin

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These are not minor oversights and reflect that gross errors were made in developing this TMDL and its draconian MS4 reduction mandates. We therefore request that EPA immediately withdraw this proposed regulatory action and create a new, scientifically defensible TMDL based on current information and realistic load reduction requirements that are capable of producing actual, not theoretical benefits to the ecology of this system.

Sincerely,



Larry M. Commale  
Township Manager

cc. Senator Pat Toomey  
Senator Bill Casey  
Congressman Brendan Boyle  
Congressman Patrick Meehan  
Governor Tom Wolf