



Virginia Environmental Law

Virginia WIP Grade Is “D” for Deficient

By: Ann Neil Cosby. *This was posted Friday, September 24th, 2010*

Today, the feds’ draft “Pollution Diet” was issued, and they found “Serious Deficiencies” in Virginia’s Watershed Implementation Plan.

[Environmental Protection Agency \(EPA\)](#) released its draft Chesapeake Bay Total Maximum Daily Load (“TMDL”), aka, the “Pollution Diet” by which the Chesapeake Bay and its watersheds are hoped to be restored today. We talked about the Virginia plan [here](#) and the TDML [here](#) and [here](#).

The [draft TMDL](#) includes the pollution limits set for nitrogen and phosphorus on July 1, 2010, and the range of allowable sediment pollution levels established on August 13, 2010. After these pollution limits were set, they were divided by jurisdiction and major river basin and were required to be incorporated in each Bay states watershed implementation plan (“WIP”).

Virginia’s WIP was completed and submitted to EPA on September 3, 2010 [as written about [on this blog](#) on September 13, 2010]. However, in the draft TMDL, EPA found “serious deficiencies” in Virginia’s WIP and incorporated federal backstop measures to tighten federal controls on point sources of pollution, such as wastewater treatment plants (“WWTP”), large animal agricultural operations and municipal stormwater systems (“MS4s”). These backstop measures include additional retrofitting/redevelopment for MS4s, for construction, erosion and sediment control on all lands subject to Construction General Permit greater restrictions on WWTPs, additional requirements for certain animal feeding operations (including waste management, barnyard runoff control, mortality composting, precision feed management for all animals), and additional adjustment to agriculture nonpoint sources.

EPA found a number of overall deficiencies in Virginia’s WIP, including those related to the state’s proposal to achieve nutrient reduction through an expanded Nutrient Credit Exchange. EPA faulted this approach finding that while septic systems and urban stormwater were relied upon to purchase credits, there was no regulatory driver to create a timeline for credit demand. In addition, EPA stated the WIP was “not transparent” and questioned the extent to which the credits would be purchased. In addition, EPA faulted Virginia’s WIP for failing to include legislative and regulatory changes that would support high implementation rates, and for failing to meet the nitrogen and phosphorus allocation in the James River necessary to meet current chlorophyll-a standard and for failing to meet the interim 2017 target.

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Serious Deficiencies were also specifically noted in the areas of Agriculture, Stormwater, and Wastewater. The draft TMDL including its evaluation of Virginia's WIP can be found at <http://www.epa.gov/chesapeakebaytmdl>.

It is now up to the Commonwealth to revise and strengthen its WIP if it wants to replace EPA's backstop allocations with state commitments. It appears this very difficult process has just become even more difficult. Do you think the state, and the stakeholders, will be able to dig even deeper and agree on greater cuts? Where should such cuts come from?

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