



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029  
6/7/2005

Dr. Richard Eskin, Director  
Technical and Regulatory Services Administration  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 540  
Baltimore, Maryland 21230-1718

Dear Dr. Eskin:

The Environmental Protection Agency (EPA) Region III is pleased to approve the Total Maximum Daily Loads (TMDLs) for the St. Clements Bay Watershed submitted by the Maryland Department of the Environment (MDE) on September 29, 2004 to EPA for review and approval. MDE submitted its Comment Response Document to EPA on or about October 14, 2004. MDE submitted a response to EPA's additional comments on December 22, 2004. The TMDL was established and submitted in accordance with Section 303(d)(1)(c) and (2) of the Clean Water Act to address impairments of water quality as identified in Maryland's Section 303(d) list. St. Clements Bay was identified on the State of Maryland's 1996 Section 303(d) list for water quality-limited segments as being impaired by nutrients, sediments and bacteria. An additional listing of biological impacts was added for non-tidal portions in the 2002 303(d) list. The TMDLs described in this document were developed to address localized water quality impairments identified within the watershed, specifically excessive bacteria concentrations in the three restricted shellfish areas of St. Clements Bay. The other impairments in this watershed will be addressed by MDE in separate TMDL document(s).

EPA's approval of the St. Clements Bay TMDLs is based on EPA's understanding that MDE will complete a Bacterial Source Tracking (BST) study in this watershed and MDE will evaluate the BST data when it becomes available, in order to verify the nonpoint source loading estimates contained in the TMDL report.

The TMDL analysis identifies the current loading, relates the current loading to the applicable water quality standard, and identifies the necessary reductions for a TMDL that will achieve the applicable water quality standard. It also identifies individual wasteload allocations (WLA) and load locations (LA) to the maximum extent supported by the available data.

In accordance with Federal regulations at 40 CFR §130.7, a TMDL must comply with the following requirements: (1) designed to attain and maintain the applicable water quality standards, (2) include a total allowable loading and as appropriate, WLA for point sources and LA for nonpoint sources, (3) consider the impacts of background pollutant contributions, (4) take critical stream conditions into account (the conditions when water quality is most likely to be violated), (5) consider seasonal variations, (6) include a margin of safety (which accounts for uncertainties in the relationship between pollutant loads and in-stream water quality),



(7) consider reasonable assurance that the TMDL can be met, and (8) be subject to public participation. The enclosure to this letter describes how the fecal coliform TMDLs for the St. Clements Bay satisfy each of these requirements.

Following the approval of this TMDL, Maryland shall incorporate the TMDL into the Water Quality Management Plan pursuant to 40 CFR §130.7(d)(2). As you know, all new or revised National Pollutant Discharge Elimination System permits must be consistent with the TMDL Waste Load Allocation pursuant to 40 CFR §122.44 (d)(1)(vii)(B). Please submit all such permits to EPA for review as per EPA's letter dated October 1, 1998.

If you have any questions or comments concerning this letter, please do not hesitate to contact Mr. Thomas Henry at (215) 814-5752.

Sincerely,

*Signed*

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Melissa Chatham, MDE-TARSA



**Decision Rationale**  
**Total Maximum Daily Loads of Fecal Coliform**  
**for Restricted Shellfish Harvesting Areas**  
**in St. Clements Bay in St. Mary's County, Maryland**

**I. Introduction**

The Clean Water Act (CWA) requires a Total Maximum Daily Load (TMDL) to be developed for those water bodies identified as impaired by the state where technology-based and other controls will not provide for attainment of water quality standards. A TMDL is a determination of the amount of a pollutant from point, nonpoint, and natural background sources, including a margin of safety (MOS), that may be discharged to a water quality-limited water body.

This document sets forth the United States Environmental Protection Agency's (EPA's) rationale for approving the TMDLs for fecal coliform in the St. Clements Bay Watershed. The TMDLs were established to address impairments of water quality, caused by bacteria (i.e., evidenced by fecal coliform), as initially identified in Maryland's 1996 Section 303(d) list for water quality-limited segments. The Maryland Department of the Environment (MDE) submitted the report, "Total Maximum Daily Loads of Fecal Coliform for Restricted Shellfish Harvesting Areas in St. Clements Bay in St. Mary's County, MD," dated September 2004, to EPA for final review on September 29, 2004. MDE subsequently completed the Comment Response Document on October 14, 2004, for submittal to EPA. These TMDLs address one segment, St. Clements Bay, on Maryland's Section 303(d) list (basin ID 02-14-01-05).

EPA's rationale is based on the TMDL Report, information contained in the Appendix to the report, the Comment Response Document, and MDE's December 22, 2004 response to EPA's comments. EPA's review determined that the TMDL meets the following eight regulatory requirements pursuant to 40 CFR Part 130.

- 1) The TMDLs are designed to implement applicable water quality standards.
- 2) The TMDLs include a total allowable load as well as individual waste load (WLA) and load allocations (LAs).
- 3) The TMDLs consider the impacts of background pollutant contributions.
- 4) The TMDLs consider the critical environmental conditions.
- 5) The TMDLs consider seasonal environmental variations.
- 6) The TMDLs include a MOS.
- 7) There is reasonable assurance that the TMDLs can be met.
- 8) The TMDLs have been subject to public participation.

**II. Summary**

The TMDLs specifically allocate fecal coliform loadings to sources in three separate LAs to each of the three restricted shellfish harvesting areas in the St. Clements Bay basin: St. Clements Bay, Canoe Neck Creek, and St. Patrick's Creek. There are no permitted point sources in the watershed and, consequently, no allocations were made to point sources. The fact that this TMDL does not assign WLAs to any sources in the watershed should not be construed as a determination by either EPA or MDE that there are no sources in the watershed that are subject to the National Pollutant Discharge Elimination System (NPDES) program. In addition, the fact that EPA is approving this TMDL does not mean that EPA has determined whether some of the sources discussed in the TMDL, under appropriate conditions, might be subject to the NPDES program.

The TMDLs for each area were expressed as a median TMDL and a 90<sup>th</sup> Percentile TMDL, which is consistent with the format of Maryland’s bacteriological criteria, which assign numeric threshold criteria for fecal coliforms based on the median and 10 percent of sample data.

**Table 1 - Fecal Coliform Median TMDLs Summary**

Area	Rate	TMDL	Wasteload Allocation (WLA)	Load Allocation (LA)	Margin Of Safety (MOS)
St. Clements Bay	counts/day	$7.78 \times 10^{11}$	0	$7.78 \times 10^{11}$	Implicit
Canoe Neck Creek	counts/day	$1.58 \times 10^{11}$	0	$1.58 \times 10^{11}$	Implicit
St. Patrick’s Creek	counts/day	$6.15 \times 10^{10}$	0	$6.15 \times 10^{10}$	Implicit

**Table 2 - Fecal Coliform 90<sup>th</sup> Percentile TMDLs Summary**

Area	Rate	TMDL	Wasteload Allocation (WLA)	Load Allocation (LA)	Margin of Safety (MOS)
St. Clements Bay	Counts/day	$2.72 \times 10^{12}$	0	$2.72 \times 10^{12}$	Implicit
Canoe Neck Creek	Counts/day	$5.54 \times 10^{11}$	0	$5.54 \times 10^{11}$	Implicit
St. Patrick’s Creek	Counts/day	$2.15 \times 10^{11}$	0	$2.15 \times 10^{11}$	Implicit

The TMDLs are written plans and analyses established to ensure that a waterbody will attain and maintain water quality standards. The TMDLs are scientifically-based strategies which consider current and foreseeable conditions, the best available data, and account for uncertainty with the inclusion of a MOS value. Conditions, available data, and the understanding of the natural processes can change more than what was anticipated by the MOS. The option is always available to refine the TMDLs for re-submittal to EPA for approval.

### III. Background

St. Clements Bay is located approximately 45 km upriver from the mouth of the Potomac River along its northeast shoreline. St. Clements Bay extends about 11 km from its headwaters to its mouth at the Potomac River. St. Clements Bay, Canoe Neck Creek, and St. Patrick Creek, which are the restricted shellfish areas in the St. Clements Bay Basin, drain south to the Lower Potomac River. The drainage area for St. Clements Bay is approximately 386,718 acres. Additional information about St. Clements Bay and the watershed is included in Section 2.1 of the TMDL Report. Figures 2.1.1 through 2.1.4 of the TMDL report show the location of St. Clements Bay basin, sub-basins, and landuses in the watershed.

St. Clements Bay was originally listed in Maryland's 1996 Section 303(d) list for water quality-limited segments as being impaired by bacteria, nutrients, and sediments. In 2002, portions of St. Clements Bay were placed on the Section 303(d) list for biological impairments. These other impairments will be addressed at a future date.

The monitoring and analysis for these bacteria TMDLs were performed using fecal coliform data. Fecal coliform is a bacterium which can be found within the intestinal tract of all warm blooded animals. Fecal coliform in itself is generally not a pathogenic organism. However, fecal coliform indicates the presence of fecal wastes and the potential for the existence of other pathogenic bacteria. The higher concentrations of fecal coliform indicate the elevated likelihood of the presence of pathogenic organisms in shellfish that are harvested from polluted waters and subsequently consumed. Maryland's current water quality standards provide bacteriological criteria for Shellfish Harvesting (i.e., Use II) waters based on numeric criteria for fecal coliform.

The Surface Water Use Designation for St. Clements Bay is Use II: *Shellfish Harvesting Waters* (Code of Maryland Regulations, COMAR, 26.08.02.08M). Maryland's water quality standards provide bacteriological criteria for Use II waters, stating that a public health hazard will be presumed if the most probable number (MPN) of fecal coliform organisms exceeds a median concentration of 14 MPN per 100 milliliters or if more than 10 percent of samples taken exceed 49 MPN per 100 milliliters (for a 3-tube decimal dilution test).

Maryland's current standards provide a classification system for Use II shellfish waters. Use II waters may be classified as approved, conditionally approved, restricted, or prohibited. Maryland's listing methodology for shellfish waters provides that approved and conditionally approved shellfish waters are not placed on the Section 303(d) list of water quality limited segments. Shellfish waters may be classified as "approved" if the median fecal coliform MPN of at least 30 water samples taken over a three-year period to incorporate inter-annual variability does not exceed 14 MPN per 100 milliliters, and, in areas not affected by point source discharges, the 90<sup>th</sup> percentile of water samples does not exceed an MPN of 49 per 100 milliliters (for a three-tube decimal dilution test). The restricted shellfish areas of St. Clements Bay were classified as such because they do not meet shellfish water quality standards for an approved classification but do meet the following criteria: the median MPN does not exceed 88 per 100 milliliters and the 90<sup>th</sup> percentile does not exceed an MPN of 300 per 100 milliliters. St. Clements Bay was placed on Maryland's Section 303(d) list because the shellfish areas within this system, which are currently classified as restricted, violate Maryland's protective bacteriological criteria for Use II Waters.

CWA Section 303(d) and its implementing regulations require that TMDLs be developed for waterbodies identified as impaired by the state where technology-based and other required controls do not provide for attainment of the water quality standards. The TMDLs submitted by MDE are designed to attain acceptable loadings of fecal coliform and to attain the bacteriological water quality criteria and support the Use II designation. Refer to Tables 1 and 2 above for a summary of allowable loads.

For this TMDL analysis, Maryland used fecal coliform data from six shellfish monitoring

stations in St. Clements Bay. Observations and data from the period of 1999-2003 were used. Maryland selected a five-year period for TMDL development because it covers a longer time

span than the 30-sample requirement and is consistent with MDE's shellfish program sanitary survey schedule. The TMDL analysis utilizes a tidal prism model in order to account for the tidal influences in St. Clements Bay. The transport of fecal coliform is most influenced by the tide and the amount of freshwater discharge into the shellfish harvesting areas. The steady state tidal prism method assumes that freshwater input, tidal range, and the first-order decay rate of fecal coliform are all constant. Further, the model assumes that a single volume can represent a waterbody, and that the fecal coliform is well mixed in the system. The steady state mass inputs include: upstream loading of fecal coliform, loading from the local area within the tidal cycle, and fecal coliform associated with ocean water that does not exit the embayment on the previous ebb tide. Mass outputs include: fecal coliform associated with embayment water that does not enter the system on the previous flood tide, and fecal coliform lost through decay or removal. The given or known parameters are: tidal period, fecal coliform decay rate, tidal range, freshwater discharge flow rate, ocean tidal exchange ratio (estimated from salinity data), volume of embayment, fecal coliform concentration and water quality criterion. These values are used to derive the TMDL (i.e., using the water quality criterion) and the current load (i.e., using the current median concentration). The differences between these loads is used to compute the percentage load reductions that are required to meet the TMDL. Section 4.2 and Appendix A of the TMDL Report provide a thorough description of the tidal prism model and calculations.

Maryland conducted a nonpoint source assessment by reviewing several sources of population and land use data to estimate the contributions of fecal coliforms by the following categories: wildlife, human, pets, and livestock. Any contributions from boat discharges, resuspension from sediments, and regrowth of fecal coliform were neglected due to insufficient data. The contributions from each of these four sources were derived by multiplying the population densities by fecal coliform production rates. For the wildlife contribution, the population density estimates for each major wildlife animal type was multiplied by the associated acreage or stream mile for that animal, and multiplied again by the estimated fecal coliform production rate for each animal type. For human contributions, Maryland used census coverage and estimated daily discharges of wastewater per person, fecal coliform concentration of the wastewater, and septic system failure rate to calculate the human loading for areas having no or partial public sewer system. Pet contributions were calculated using survey-based estimates of dogs walked per household, percentage cleaned up, and estimated fecal coliform production rate per dog. Livestock contributions were derived from livestock census data and estimated fecal coliform production rates and manure washoff rates. Detailed explanations of the nonpoint source assessment and estimated parameters for each category are described in Appendix B of the TMDL Report.

The results of the nonpoint assessment allowed Maryland to calculate the percentage contribution of each of the four major types of nonpoint sources, and to further calculate and assign required reductions in each category in order to achieve the TMDL LA. This method is described further below in Section IV. Also, Maryland is conducting a one-year bacteria source tracking (BST) study for each shellfish harvesting area in order to verify the categorized nonpoint source estimates and LAs in the TMDL when the laboratory data become available.

#### IV. Discussion of Regulatory Conditions

EPA finds that MDE has provided sufficient information to meet all of the eight basic requirements for establishing fecal coliform TMDLs for St. Clements Bay. EPA therefore approves the TMDLs for fecal coliform in St. Clements Bay. This approval is outlined below according to the eight regulatory requirements.

1) *The TMDLs are designed to implement applicable water quality standards.*

Water Quality Standards consist of three components: designated and existing uses; narrative and/or numerical water quality criteria necessary to support those uses; and an anti-degradation statement.

The Surface Water Use Designation for St. Clements Bay is Use II: *Shellfish Harvesting Waters* (Code of Maryland Regulations, COMAR, 26.08.02.08M). Use II waters may be classified as approved, conditionally approved, restricted, or prohibited. Maryland's listing methodology for shellfish waters provides that approved and conditionally approved shellfish waters are not placed on the Section 303(d) list of water quality limited segments. For Use II waters, Maryland's water quality standards provide bacteriological criteria of (1) fecal coliform organisms not to exceed a median concentration of 14 MPN per 100 milliliters; and (2) no more than 10 percent of samples taken may exceed 49 MPN per 100 milliliters (for a three-tube decimal dilution test). Shellfish waters may be classified as "approved" if the median fecal coliform MPN of at least 30 water samples taken over a three-year period to incorporate inter-annual variability does not exceed 14 MPN per 100 milliliters, and, in areas not affected by point source discharges, the 90<sup>th</sup> percentile of water samples does not exceed an MPN of 49 per 100 milliliters (for a three-tube decimal dilution test).

Maryland developed the bacteria TMDLs for St. Clements Bay in terms of fecal coliform because Maryland's current water quality standards contain specific numerical criteria for bacteria in Use II waters that are based on the concentration of fecal coliform, as described above. The TMDLs therefore use these applicable numerical criteria as an endpoint. The TMDLs were calculated and expressed as median TMDLs and 90<sup>th</sup> percentile TMDLs in order to meet the associated numerical criteria. EPA believes that this is a reasonable and appropriate water quality goal.

2) *The TMDLs include a total allowable load as well as individual waste load allocations and load allocations.*

#### **Total Allowable Load**

As described above, MDE used as endpoints a median concentration of 14 MPN per 100 milliliters and a 90<sup>th</sup> percentile concentration of 49 MPN per 100 milliliters. Separate TMDLs were developed for each restricted shellfish area of St. Clements Bay based on these two

endpoints. The TMDLs and allocations are presented as mass loading rates of counts per day. Expressing TMDLs as daily mass loading rates is consistent with Federal regulations at 40 CFR §130.2(i), which state that TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

EPA regulations at 40 CFR §130.2(i) state that the total allowable load shall be the sum of individual WLAs for point sources, and LAs for nonpoint sources, and natural background concentrations. The TMDLs for fecal coliform for St. Clements Bay are consistent with 40 CFR §130.2(i) because the total loads provided by MDE equal the sum of the individual WLAs for point sources (which are zero, in this case, since no permitted point sources exist) and the land-based LAs for nonpoint sources. Pursuant to 40 CFR §130.6 and §130.7(d)(2), these TMDLs and the supporting documentation should be incorporated into Maryland's current water quality management plan. See Tables 1 and 2 for a summary of allowable loads.

### **Waste Load Allocations**

According to the TMDL Report and Maryland's response to comments, the watershed that drains to St. Clements Bay contains no permitted point sources, and Maryland therefore assigned a WLA of zero to each of the three restricted shellfish areas in St. Clements Bay.

### **Load Allocations**

The TMDL summary in Tables 1 and 2 contain the LAs for each restricted shellfish area. As described above in Section III, Maryland conducted a nonpoint source assessment in order to estimate the contributions of wildlife, humans, pets, and livestock to the overall nonpoint source loadings. Maryland considers humans, pets and livestock to be controllable sources, and therefore, assigned reductions to these categories to determine if the TMDL LA could be achieved. If the TMDL could not be achieved, then reductions were assigned to the wildlife category. Although wildlife is considered to be a natural source of fecal coliform loadings and the TMDL does not promote changing a natural condition by the reduction of wildlife, Maryland and EPA believe that implementation of certain measures to reduce controllable sources may also serve to reduce wildlife inputs. Therefore, it is appropriate to assign reductions to wildlife sources where necessary to meet the TMDL goals. Table 4.6.1 presents the results of Maryland's calculated reductions to each nonpoint source category.

As stated above, Maryland developed two TMDLs for each restricted shellfish area consistent with the two numeric criteria for Use II waters that are based on median and 90<sup>th</sup> percentile data. For each shellfish area, the TMDL (which, in this case, is equal to the LA) for the median case is more restrictive than the 90<sup>th</sup> percentile TMDL in terms of mass loading rate. However, larger percentage and overall mass reductions are required in the 90<sup>th</sup> percentile TMDL case based on the difference between the TMDL and the current load to each shellfish area. For example, in order to meet the median TMDL for St. Patrick's Creek, a reduction by 59% or approximately  $9 \times 10^{10}$  counts/day would be required. In order to meet the 90<sup>th</sup> percentile TMDL, a reduction by 80% or  $8.6 \times 10^{11}$  counts/day would be required. Note that the percentage reductions are not strictly comparable between the two TMDLs because the baseline, or current,



loads are different: the loads were calculated using the corresponding median concentration or 90<sup>th</sup> percentile concentration of the current condition. In assigning the LAs to the four major nonpoint source categories (wildlife, human, pets, livestock), Maryland compared the median and 90<sup>th</sup> percentile TMDL results and used the allowable loads requiring the greater reduction as the basis for these LAs.

According to Federal regulations at 40 CFR §130.2(g), LAs are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loadings should be distinguished. MDE has used several sources of census, population, and land use coverage data in order to estimate and account for the major types of nonpoint, natural and background sources. Table 4.6.1 provides a breakdown of the TMDL LA by nonpoint source category, for each restricted shellfish area.

### **Allocations Scenarios**

EPA realizes that the above breakouts of the total load and LA for fecal coliform among the major nonpoint sources for each shellfish area is one allocation scenario. As implementation of the established TMDLs proceeds, Maryland may find that other combinations of allocations are more feasible and/or cost effective. However, any subsequent changes in the TMDLs must conform to gross waste load and load allocations and must ensure that the biological, chemical, and physical integrity of the waterbody is preserved.

Federal regulations at 40 CFR §122.44(d)(1)(vii)(B) require that, for an NPDES permit for an individual point source, the effluent limitations must be consistent with the assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA. EPA has authority to object to the issuance of an NPDES permit that is inconsistent with WLAs established for that point source. To ensure consistency with these TMDLs, if an NPDES permit is issued for a point source that discharges one or more of the pollutants of concern in the St. Clements Bay Watershed, any deviation from the WLAs set forth in the TMDL Report and described herein for a point source must be documented in the permit Fact Sheet and made available for public review along with the proposed draft permit and the Notice of Tentative Decision. The documentation should: 1) demonstrate that the loading change is consistent with the goals of the TMDL and will implement the applicable water quality standards, 2) demonstrate that the changes embrace the assumptions and methodology of these TMDLs, and, 3) describe that portion of the total allowable loading determined in the state's approved TMDL Report that remains for any other point sources (and future growth where included in the original TMDL) not yet issued a permit under the TMDL. It is also expected that Maryland will provide this Fact Sheet for review and comment to each point source included in the TMDL analysis as well as any local and state agency with jurisdiction over landuses for which LA changes may be impacted. It is also expected that MDE will require periodic monitoring of the point source(s) for fecal coliform and total suspended solids, through the NPDES permit process, in order to monitor and determine compliance with the TMDL wasteload allocations.

In addition, EPA regulations and program guidance provides for effluent trading. Federal regulations at 40 CFR §130.2(i) state: "if Best Management Practices or other nonpoint source

pollution controls make more stringent load allocations practicable, then WLAs may be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.” The state may trade between point sources and nonpoint sources identified in this TMDL as long as three general conditions are met: 1) the total allowable load to the waterbody is not exceeded; 2) the trading of loads from one source to another continues to properly implement the applicable water quality standards and embraces the assumptions and methodology of these TMDLs; and, 3) the trading results in enforceable controls for each source. Final control plans and loads should be identified in a publicly available planning document, such as the state’s water quality management plan (see 40 CFR §130.6 and §130.7(d)(2)). These final plans must be consistent with the goals of the approved TMDLs.

Based on the foregoing, EPA has determined that the TMDLs are consistent with the regulations and requirements of 40 CFR Section 130. Pursuant to 40 CFR §130.6 and §130.7(d)(2), these TMDLs and the supporting documentation, including MDE’s responses to comments, should be incorporated into Maryland’s current water quality management plan.

3) *The TMDLs consider the impacts of background pollutant contributions.*

The TMDLs consider the impact of background pollutants by considering the bacterial load from natural sources such as wildlife.

4) *The TMDLs consider critical environmental conditions.*

EPA regulations at 40 CFR §130.7(c)(1) require TMDLs to account for critical conditions for stream flow, loading, and water quality parameters. The intent of the regulations is to ensure that: 1) the TMDLs are protective of human health, and 2) the water quality of the waterbodies is protected during the times when they are most vulnerable.

Critical conditions are important because they describe the factors that combine to cause a violation of water quality standards and will help in identifying the actions that may have to be undertaken to meet water quality standards<sup>1</sup>. Critical conditions are a combination of environmental factors (e.g., flow, temperature, etc.), which have an acceptably low frequency of occurrence. In specifying critical conditions in the waterbody, an attempt is made to use a reasonable “worst-case” scenario condition. MDE modeled the 90<sup>th</sup> percentile current load and allowable load. The 90<sup>th</sup> percentile concentration is that which one would expect to see exceeded no more than 10% of the time. For each shellfish area, the actual 90<sup>th</sup> percentile concentration from the most recent data set (i.e., five years) was used in these calculations, thereby incorporating the critical condition. Further, Maryland compared the 90<sup>th</sup> percentile and median TMDLs to determine which value represented the critical condition and to determine the basis for the critical condition. Greater reductions that are driven by the median TMDL suggest that,

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<sup>1</sup>EPA memorandum regarding EPA Actions to Support High Quality TMDLs from Robert H. Wayland III, Director, Office of Wetlands, Oceans, and Watersheds to the Regional Management Division Directors, August 9, 1999.

on average, water column concentrations are very high with limited variation. Greater reductions that are driven by the 90<sup>th</sup> percentile TMDL suggest a less frequent occurrence of high fecal coliform concentrations due to the variation of hydrological conditions.

Also, based on statewide shellfish monitoring data, fecal coliform concentrations are higher in the headwaters. Since two monitoring stations exist in each of the restricted shellfish areas, the station(s) closest to the headwaters for each area were used to represent the restricted shellfish harvesting area concentrations of fecal coliform; the downstream stations were used to represent boundary conditions.

5) *The TMDLs consider seasonal environmental variations.*

Seasonal variations involve changes in flow as a result of hydrologic and climatological patterns. Generally, water column data for fecal coliform may sometimes exhibit seasonal trends. For example, bacteria levels tend to be lower during the colder months in some areas, but this is not always the case. In order to account for seasonal variation and inter-annual variability, Maryland's shellfish monitoring program collects samples on a monthly basis and a minimum data set of 30 samples over three years (in this case, five years) is used. The monitoring design and the statistical analysis used to evaluate water quality attainment therefore implicitly includes the effect of seasonality. Further, Maryland's water quality standard itself reflects the need to account for seasonal variation in assigning both a median (i.e., average condition) criterion and 90<sup>th</sup> percentile criterion (i.e., to account for fluctuations around the median)

The BST study to be conducted by Maryland in conjunction with these TMDLs may generate additional information as to the seasonality of loadings by the types of nonpoint sources investigated in the study.

6) *The TMDL includes a margin of safety.*

The requirement for a MOS is intended to add a level of conservatism to the modeling process in order to account for uncertainty. Based on EPA guidance, the MOS can be achieved through two approaches. One approach is to reserve a portion of the loading capacity as a separate term, and the other approach is to incorporate the MOS as part of the design conditions. MDE has adopted an implicit MOS for these TMDLs. In the tidal prism model, an implicit MOS was incorporated to account for the uncertainty of certain model parameters. For example, the decay rate was determined to be the most sensitive parameter and was therefore set at the conservative end of its known range (i.e., 0.7 per day) for the TMDL calculation. Also, monitoring data from the stations closest to the headwaters, which typically exhibit higher concentrations, were used to represent the concentration within the corresponding shellfish area in the TMDL calculation.

7) *There is reasonable assurance that the TMDLs can be met.*

EPA requires that there be a reasonable assurance that the TMDLs can be implemented. WLAs will be implemented through the NPDES permit process. According to 40 CFR §122.44(d)(1)(vii)(B), the effluent limitations for an NPDES permit must be consistent with the assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA. Furthermore, EPA has the authority to object to issuance of an NPDES permit that is inconsistent with WLAs established for that point source.

Nonpoint source controls to achieve LAs will be implemented in an iterative process that places priority on those sources having the largest impact on water quality, with consideration given to ease of implementation and cost. Best management practices can be implemented through a number of existing programs and funding sources, including: Maryland's Agricultural Cost Share Program, Environmental Quality and Incentives Program, State Water Quality Revolving Loan Fund, and Stormwater Pollution Cost Share Program. Also, low interest loans are available through MDE to address failing septic systems. In addition, sources of fecal coliform stemming from boats and marinas can be addressed through the Clean Marina Program, no discharge zone program, and grant funds available through Maryland Department of Natural Resources to install a pumpout station. Under existing Maryland law, certain new and existing marinas are required to have a pumpout station.

Pursuant to the National Shellfish Sanitation Program, Maryland will continue to monitor shellfish waters and classify harvesting areas. In addition to water quality monitoring and shoreline surveys, MDE will be conducting a bacteria source tracking study that will be used to confirm the source estimates presented in the TMDL report.

As mentioned above, Maryland and EPA acknowledge that while the TMDL does not promote changing natural background conditions due to wildlife, it is possible that implementation measures taken to reduce nonpoint controllable sources will also reduce wildlife loadings. In areas where wildlife is the dominant source of fecal coliform inputs to the shellfish waters and where water quality standards cannot be attained following TMDL implementation for controllable sources, then MDE would consider conducting either a risk-based water quality assessment or a Use Attainability Analysis to recognize these natural conditions.

8) *The TMDL has been subject to public participation.*

MDE provided an opportunity for public review of and comment on the fecal coliform TMDLs for St. Clements Bay. The public review and comment period was open from August 11, 2004 to September 9, 2004. Five sets of comments were submitted by four commentors: St. Mary's Today newspaper, Circle-C Oyster Ranchers Association, Mid-Atlantic Environmental Law Center, and Maryland Department of Agriculture. EPA Region III provided comments to MDE after the close of the comment period and following receipt of the Draft Final TMDL Report.

On November 9, 2004, EPA initiated informal consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) pursuant to Section 7(c) of the Endangered Species Act, requesting the Services' concurrence with EPA's findings that approval of these TMDLs does not adversely affect any listed endangered and threatened species and their critical habitats. The NMFS provided concurrence with EPA's determination in its letter to EPA dated December 14, 2004. EPA is awaiting a response from FWS, and in anticipation of receiving concurrence from FWS, EPA has prepared a Section 7(d) memo to this effect and is proceeding with its approval pending FWS' concurrence.