Comment Response Document Regarding the Triennial Review of Water Quality Standards - 2013

The Maryland Department of the Environment (MDE) has completed its review of comments received during the Triennial Review (TR) process. The TR includes:

- Advance Notice of Proposed Rulemaking (ANPRM) published in the May 31, 2013 edition of the Maryland Register. Public comment period begins.
- Notice of Proposed Action published in the December 13, 2013 Maryland Register.
- Public meeting – held January 7, 2014 @ 3pm at MDE headquarters.
- Public comment period (formal) **December 13, 2013 – January 13, 2014**

Note: The ANPRM is a non-regulatory tool that MDE uses to receive comments on amendments being considered as well as an opportunity to receive suggestions and feedback from stakeholders on topics they want MDE to pursue *before* a formal notice of proposed rulemaking has been submitted.

Below is a list of commentors, their affiliation, the date comments were submitted, and the numbered references to the comments submitted. In the pages that follow, comments are summarized and listed with MDE's response.

List of Commentors

Author	Affiliation	Date	Comment Number
George Harman	Citizen	January 8, 2014	1, 2
Doug Meyers	Chesapeake Bay Foundation	January 9, 2014	3, 4
Julie Pippel	Maryland Association of Municipal Wastewater Agencies, Inc.	January 13, 2014	5 - 7
Evelyn S. MacKnight,	Environmental Protection Agency, Region III	January 13, 2014	9, 11-16
David Sligh	Waterkeepers Chesapeake	January 14, 2014	8- 10
Theaux Le Gardeur	Gunpowder Riverkeeper	January 14, 2014	17-19

Comments and Responses

1. The commentor states that temperature criteria in Use (class) III and IV waters should not apply in the "*upstream reaches of the watershed, "which include intermittent reaches and those reaches dominated by overland flow from roads, farm ponds, other impoundments, and stormwater conveyances should not be subject to the temperature standards for these waters. Class I temperature standards should apply in these reaches of the watershed. Only where natural and perennial groundwater flows begin to dominate the receiving stream should the Class III and IV temperature standards become applicable."* The commentor

suggests amending regulations with a narrative statement to avoid unnecessary temperature impairments.

Response: At this time, MDE does not have a standard methodology to apply this recommendation. MDE appreciates your comment and will consider your comment in future regulatory action.

2. The commentor suggests alternatives to defining the location and boundaries of waterbodies and where designated uses apply.

Response: MDE agrees that the narrative format for defining the location of specific waterbodies and their designated uses found in regulation .08 may be difficult to understand. That is why MDE has made available online mapping tools to assist in that effort. Although the maps are unofficial (not in regulation), they help to clarify the information found in regulation. MDE will consider your suggestion in future action and will continue to strive to make the water quality standards regulations as clear and easy to understand as possible.

3. The commentor shares MDE's concern and approves of MDE's efforts to protect high quality waters. The commentor expresses concern that Tier II waters in the Mattawoman Creek watershed may be threatened by development and states that "*pending development proposals within the Mattawoman watershed could violate the antidegradation policy for both those immediately adjacent segments and downstream segments."*

Response: MDE appreciates your support and concern. MDE continues to pursue tools that can be applied to to protect high quality waters, including exploring potential regulation changes to strengthen the antidegradation policy as well as working with local planners to educate them on threats to water quality resulting from development within Tier II watersheds, and offering ways to minimize or eliminate potential impacts to water quality.

4. The commentor suggests that "*certain Charles County Tier II segments such as all of those contiguous segments that form a complex to include Zekiah Swamp and Zekiah Swamp Run and Namjemoy Creek should be considered for Tier III Outstanding Natural Resource Waters Designation".*

Response: MDE would like to work with the commentor in exploring potential designation of waters for Outstanding National Resource Waters (ONRW) protection.

5. The commentor feels that the existing antidegradation policy is satisfactory and that no changes are needed.

Response: MDE appreciates the commentor's support. Identifying ways to protect high quality waters, as required by the Clean Water Act, is an MDE

priority. See response to comment #3. Regulations such as addressing stormwater from new construction through erosion and sediment control practices and management of stormwater from new development through the application of environmental site design to the maximum extent practicable are base programs that afford a certain amount of water quality protection. The Department's antidegredation policy applied to the Tier II, high quality waters, is to minimize the water quality impact risk by the use of multiple lines of protection.

6. The commentor states concerns related to potential future adoption of EPA's new recommended criteria for ammonia as well chloride criteria being explored by MDE. The commentor would like the opportunity to review draft criteria and have time to explore potential impacts on NPDES permits.

Response: EPA's updated ammonia criteria were published late in MDE's TR period which did not allow adequate time for review and inclusion in this round of regulatory amendments. MDE will consider ammonia and chloride criteria, either in the next TR or in the interim. Additionally, MDE has developed draft chloride criteria. However, it is still in the early stages of review and not ready for adoption. MDE will allow adequate time for stakeholder review.

7. The commentor suggests MDE add a temporary variance procedure for "*individual dischargers that have challenges meeting standards during heavy rainfall."*

Response: While MDE is not prepared to include a new variance procedure in the current round of regulation amendments, MDE appreciates the comments and suggests that the commentor work with the Science Services Administration as well as the Municipal Permits Division in the Water Management Administration to explore options to address your concerns.

8. The commentor requests that MDE adopt numeric nutrient and sediment criteria, and includes by reference, an MDE-funded report completed by the Interstate Commission on the Potomac River Basin (ICPRB).

Response: MDE appreciates the commentor's desire for the state to adopt numeric criteria. In addition to the ICPRB report referenced, MDE has investigated other approaches, including a regional periphyton/nutrient study with federal and regional state partners to develop numeric nutrient criteria for all of Maryland's wadeable streams, the results of which were inconclusive. Developing nutrient/sediment criteria has proven to be extremely challenging, not only for Maryland, but to the other states as well. The ICPRB report suggests a potential methodology for developing numeric nutrient thresholds on a site-specific basis, but also illustrates confounding factors as well as extensive data gaps that prevent MDE from adopting scientifically defensible criteria at this time. MDE would like to note that the current water quality standards regulations contain statewide dissolved oxygen criteria as well as chlorophyll *a* criteria for

most lakes and reservoirs in Maryland. Both criteria are surrogates for nutrients and are indicative of nutrient conditions.

9. The commentor maintains that MDE should adopt EPA's recently updated ammonia criteria.

Response: See response to comment 6.

10. The commentor expresses dissatisfaction with the current antidegradation policy.

Response: See response to comment 3. Additionally, EPA must approve a state's or tribe's water quality standards, which must include designated uses, criteria, and antidegradation policy for all waters in the state. EPA has approved Maryland's water quality standards as they meet the requirements under the Clean Water Act.

11. The commentor supports the overall change from "use" to "class" but identified inconsistencies in the proposal.

Response: MDE appreciates the support and thanks the commentor for finding errors in sections R. and S. in the proposal. MDE will correct those errors prior to final adoption.

12. The commentor supports:

- The addition of antidegradation policy into what constitutes a water quality standard;
- Additional proposed high quality segments;
- Use re-designations; and
- Toxic substance criteria updates.

Response: MDE thanks the commentor for their support.

13. The commentor notes that the addition of color criteria to Use I-P waters corrects a prior mistake, but requests the justification of the original color criteria.

Response: The current criterion (a well-established threshold value) was intended to align the color criteria/requirements of a WTP water intake which would occur only in P designated waters. This is consistent with Maryland's approach of adopting MCL's in WQS for P-designated surface waters.

14. The commentor is requesting results of the Restoration Variances review performed by MDE.

Response: MDE would like to reiterate that a combination of the Chesapeake Bay observed Water Quality data and the Chesapeake Bay Modeling framework is used to support the development of Maryland's Chesapeake Bay water quality standards (i.e. those standards associated with Use II waters), criteria, TMDL, and Watershed Implementation Plan. Since the development of the Bay TMDL (2010) and subsequent Phase I (2010) and Phase II (2012) Watershed Implementation Plans, the existing data and modeling tools continue to confirm the same water quality variances that are adopted into Maryland's water quality standards. Based on this data, and at the request of the Chesapeake Bay Program, Maryland updated its WQS by adopting amendments on March 7, 2012. This action established a 2% restoration variance for the Eastern Bay Mesohaline (EASMH) segment and increased the restoration variance for the Lower Chester River Mesohaline (CHSMH) from 14% to 16% non-attainment by volume and duration. The same analysis supported the other restoration variances already in Maryland's WQS. In the past year, MDE has not received any data contradicting this action. Therefore, amendments to the restoration variances are not warranted at this time.

15. The commentor requests that MDE adopt EPA's 2012 Recreational Water Quality Criteria. (2012RWQC)

Response: MDE has consistently stated that adoption of the criteria will not be considered until EPA has fulfilled its commitment to produce all of the guidance documentation outlined in EPA's "Implementation Materials" table on EPA's webiste. Once that's completed, MDE will need adequate opportunity to review all of the associated documentation (and guidance). MDE will be soliciting assistance from Region III WQS staff in the coming months to resolve implementation challenges identified by MDE.

16. The commentor requests that MDE adopt numeric nutrient criteria.

Response: See response to comment #8.

17. The commentor does not agree with MDE's methodology for designating waters based on their existing use using temperature solely during the critical period.

Response: To clarify, waters can be re-designated from warmwater to coldwater using the presence of a sustained trout population, the presence of other coldwater taxa, or by meeting the temperature criteria during the critical period (consistent with EPA's policy on independent applicability). Waters designated as warmwater, and inhabited by trout during cooler periods reflects the coarse nature of Maryland's use classification system. It could be argued, based on temperature alone, most of Maryland's streams could support trout during the winter months. MDE would willingly work with the commentor to explore approaches to addressing his concerns, including the potential development of other use classifications that reflect, for example, seasonal use.

18. The commentor does not approve of MDE's summer trout sampling protocol.

Response: See response to comment #17.

19. Referring to the document posted on MDE's website supporting the proposed amendments - *Use Class Re-Designation Procedures for Streams that have a Cold Water existing use* - the commentor does not agree with the characterization of the number of Maryland's designated use classifications nor that the potable water supply use (-P) is not expressly mentioned as a designated use classification in that document.

Response: Use classifications are a combination of waterbody type (cold, warm, tidal, non-tidal, etc.) and the specific designated uses assigned to a waterbody. The document correctly categorizes the four main use classifications: I, II, III, & IV. This should not be confused with the fact that Maryland's waters have many specific designated uses, many of which were listed by the commentor. Again, Waterbodies are coarsely classified based on tidal, non-tidal, coldwater, warmwater, etc. Additionally, there are specific designated uses that apply to certain waterbodies. For example, all of Maryland's tidal waterbodies (segments) have been assigned specific designated use subcategories such as shellfish harvesting use, migratory spawning and nursery use, etc. Another example is certain waters have also been assigned the designated use of public water supply, such as III-P. This would mean that it is non-tidal, coldwater, but also designated as suitable for public water supply. The other designated uses still apply. Therefore, all of Maryland's waterbodies have complete (and EPA-approved) water quality standards, which means they have been assigned designated uses (goals for the waterbody), criteria to support all of the designated uses, and antidegradation policy.