



CHESAPEAKE BAY COMMISSION

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MEMORANDUM

TO: Virginia Delegation of the Chesapeake Bay Commission
DATE: April 8, 2019
FROM: Adrienne Kotula, Virginia Director
RE: **Virginia's Draft Phase III Chesapeake Bay Watershed Implementation Plan**

On Friday April 5th the Administration released Virginia's Draft Phase III Chesapeake Bay Watershed Implementation Plan (Draft Plan). The Draft Plan, which is open for public comment until June 7th, proposes 50 state-level initiatives that will allow Virginia to meet the 2025 targets established by the Environmental Protection Agency. The plan acknowledges that significant effort will be necessary from all sectors in order to meet the goals. The Draft Plan also addresses the additional anticipated reductions needed due to climate change.

Included below is a brief summary of the proposed state-level initiatives which will likely require legislative attention. An in-depth discussion of all proposed initiatives is planned for the May 3rd Virginia Delegation meeting. At that time, the Delegation can decide whether a follow-up meeting is necessary.

Multi-Sector Initiatives

- *Expansion of the Chesapeake Bay Preservation Act West of Interstate 95*
 - The Draft Plan proposes a workgroup to develop recommendations for expanding the Act throughout the entire Bay watershed of Virginia. This process will include impacted stakeholders, consider all existing elements of the Act, and determine the needs of local governments west of Interstate 95. Amendments to the existing Chesapeake Bay Preservation Act (§62.1-44.15:67 et seq.) would be required to implement this proposed initiative.
- *Finalize Carbon Trading Regulations**
 - The Draft Plan assumes 8,000 pounds in nitrogen reduction by 2025 from the implementation of the carbon trading regulations linking Virginia to the Regional Greenhouse Gas Initiative.
- *Nutrient & Basin Exchanges**
 - In order to minimize the cost and effort required within a majority of basins, the Draft Plan proposes nutrient and basin exchanges to achieve target loads. All of the basins will achieve phosphorus targets prior to meeting nitrogen targets, thus exchanges of phosphorus to nitrogen are proposed within each basin. The James River basin is expected to exceed its assigned target loads before any other basin, thus exchanges from the James River basin to the remaining basins are also proposed.

Agricultural Initiatives

- *Adequate and Consistent Cost Share Funding*
 - The Draft Plan relies upon full funding of the Agricultural Needs Assessment (§10.1-2128.1(C)) in order to achieve Bay goals. The most recent Assessment identified a need of over \$100 million per year for the Virginia Agricultural Cost Share Program in order to meet our goals. The FY20 budget contains \$83 million for the program statewide.
- *Targeted Cost Share Funding*
 - The plan not only proposes directing 70 percent of the total cost share funding to the Bay watershed, but also proposes targeting that funding to the ten Soil and Water Conservation Districts (SWCDs) with the highest pollutant loads. Funds would be targeted to the most effective Best Management Practices (BMPs) in those areas. The ten SWCDs are as follows:
 - Culpeper
 - Eastern Shore
 - Hanover-Caroline
 - Headwaters
 - Lord Fairfax
 - Northern Neck
 - Robert E. Lee
 - Shenandoah Valley
 - Thomas Jefferson
 - Three Rivers
- *Increased Tax Credits for Agricultural BMPs & Equipment*
 - Given that a significant number of farmers in Virginia will not accept cost share funding, increased tax credits beyond those already authorized (§58.1-339.3) are proposed as a method to increase the implementation of BMPs. Increased tax credits for the equipment associated with desired practices is also proposed, such as the existing tax credit for the purchase of conservation tillage equipment (§58.1-334) and the purchase of advanced technology fertilizer application equipment (§58.1-337). The plan also proposes providing technical assistance funding to SWCDs for the implementation of these tax credits.
- *Increased Nutrient Management Implementation*
 - The Administration will pursue legislation specifying that agriculture operations larger than 50 acres that apply fertilizer will develop and implement Nutrient Management Plans (NMPs) in accordance with the regulations adopted pursuant to §10.1-104.2. The legislation will incorporate an enactment trigger linked to adequate progress. If Virginia is not on the trajectory necessary to achieve 85 percent implementation no later than December 31, 2025, the regulatory requirement for an NMP will be initiated within six months. Additionally, Virginia will seek legislation requiring all contractor-applicators working on farm operations larger than 50 acres – i.e., persons required to hold a permit to apply any regulated product pursuant to §3.2-3608, – to apply commercial fertilizer pursuant to an NMP, in accordance with the regulations adopted under §10.1-104.2.

- *Livestock Stream Exclusion*
 - The Administration will pursue legislation establishing a date by which all farms with livestock accessing perennial streams must provide exclusion measures. The enactment date for new requirements will provide sufficient time for livestock operations to install practices necessary to exclude access to streams and provide alternative water sources. It will also take into account availability of state and federal cost-share funds for exclusion practices. Operations having excluded livestock by the enactment date will be considered exempt from the legislation.

Developed Lands & Forestry Initiatives

- *Urban Tree Canopy Program**
 - Extensive use of urban tree canopy is proposed within the Draft Plan. Use of a cost share program for public and private tree planting is discussed as well as development of a tracking and mapping platform.
- *Fertilizer Applicator Reporting Requirements*
 - The Draft Plan proposes to strengthen the existing fertilizer application requirements contained in §10.1-104.2 and the resulting regulations to ensure that contract-applicators are appropriately reporting the use of fertilizer on urban lands. The Virginia Department of Agriculture and Consumer Services will additionally add staff to ensure this information is appropriately collected and tracked. Providing local governments with enforcement authority is also discussed.
- *Establish State Cost Share for Homeowners, Small Businesses and Churches**
 - With additional reductions necessary from the urban sector, a new cost share program based on the successful Virginia Conservation Assistance Program is proposed with a consistent source of funding being established.
- *Stormwater Local Assistance Needs Assessment*
 - In accordance with 2019 House Bill 1822, the DEQ will estimate annually the amount of stormwater local assistance funds expected to be requested by local governments for eligible projects related to planning, designing and implementing stormwater BMPs.
- *Add Nutrient Management to Erosion & Sediment Control Requirements**
 - A regulatory action will be undertaken to require that newly proposed land-disturbing activities, once completed, will establish permanent vegetative cover in accordance with an approved nutrient management plan.
- *Re-Evaluate Post-Construction Stormwater Requirements**
 - While no changes are proposed at this time, the Commonwealth will begin a review of the existing post-development water quality design criteria to ensure that they continue to offset the impacts of future growth within the watershed based on the latest data.

Wastewater Initiatives

- *Requiring Additional Nutrient Reductions**

The Commonwealth will initiate actions to achieve additional nutrient reductions from certain significant municipal treatment facilities that have not yet upgraded to achieve 4 mg/l of TN and 0.3 mg/l of TP. This action could consist of a technology-based regulation or possibly a more cost-effective approach that achieves an equivalent reduction in nutrient loads. Of the 87 significant publicly owned treatment works included in the Watershed General Permit, 34 facilities have already received WQIF grants, achieving 4 mg/l TN and 0.3 mg/l TP. The Commonwealth intends to pursue reductions from this sector utilizing the most cost-effective approach.

Additional Information

Virginia's complete Draft Phase III Chesapeake Bay Watershed Implementation Plan, as well as details on how to submit comments, can be found online at:

<https://www.deq.virginia.gov/Programs/Water/ChesapeakeBay/ChesapeakeBayTMDL/PhaseIIIWatershedImplementationPlanning.aspx>.

* While no legislation is suggested at this time, this proposed change may trigger a legislative response and/or budget request.