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September 6, 2017

Ms. Sandra Mueller  
VA DEQ – Office of Water Monitoring and Assessment  
P.O. Box 1105  
Richmond, Virginia 23218  
via email: [sandra.mueller@deq.virginia.gov](mailto:sandra.mueller@deq.virginia.gov)

**Re: Comments on Virginia's Draft 2016 Integrated Report of Surface Water Quality**

Dear Ms. Mueller,

Thank you for the opportunity to comment on Virginia's Draft 2016 Integrated Report of Surface Water Quality ("IR"). Waterkeepers Chesapeake is a coalition of 19 independent Waterkeeper & Riverkeeper programs (including the Potomac Riverkeeper Network, James River Association, and Shenandoah Riverkeeper) that work locally, using grassroots action, advocacy, and legal action to protect their communities and waterways.

We point out the following specific areas of concern regarding Virginia's Draft 2016 IR:

**1. Even after several years, impaired segments of waterways listed as Category 5 have not yet received required TMDLs.**

Federal regulations set forth at 40 C.F.R. § 130.7(c)(1) require TMDLs to meet the following basic minimum requirements:

TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical [water quality standards] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

By comparing the 2016 IR and the 2014 IR, it becomes clear that many waterways listed as "Category 5" in 2014 have not yet received a TMDL. According to the Clean Water Act §303 (d)(1), every state must identify impaired waters, rank those waters in terms of severity of pollution, and assign TMDLs to those waters in accordance with the priority ranking. As Virginia's Department of Environmental Quality (DEQ) is well aware, when a waterway is listed as a Category 5 it means that the body of water is impaired, or does not attain water quality standards and needs a TMDL; this is the classic list of Section 303 (d) waters. It's unclear why these waterways have not received a TMDL over the years.

Anacostia Riverkeeper  
Assateague Coastkeeper  
Baltimore Harbor Waterkeeper  
Chester Riverkeeper  
Choptank Riverkeeper  
Gunpowder Riverkeeper

Lower James Riverkeeper  
Lower Susquehanna Riverkeeper  
Miles-Wye Riverkeeper  
Potomac Riverkeeper  
Sassafras Riverkeeper  
Severn Riverkeeper

Shenandoah Riverkeeper  
South Riverkeeper  
Upper James Riverkeeper  
Upper Potomac Riverkeeper  
Virginia Eastern Shorekeeper  
West Rhode Riverkeeper



A long list of waterways in Virginia's Potomac and Shenandoah River basins have not received a TMDL for *over nine years now*, despite being listed as a Category 5. These waterways include parts of the James River, Potomac River, Shenandoah River, Occoquan River, North River, South River, Dry River, Little Wicomico River, Chickahominy River, Jackson River, Bullpasture River, Calfpasture River, Saint Marys River, Maury River, Appomattox River, Hughes River, Robinson River, Rose River, Rappahannock River, Roanoke River, Blackwater River, Little Otter River, Dan River, Meherrin River, Nottoway River, Northwest River, North Fork Catoclin Creek, Clarks Run, Wancopin Creek, North Fork Beaverdam Creek, Broad Run, Captain Hickory Run, Difficult Run, Pimmit Run, Indian Run, Holmes Run, Tripps Run, Accotink Creek, Long Branch, Pohick Creek, Lucky Run, Bull Run, Flatlick Branch, Sandy Run Neabsco Creek, Powells Creek, Quantico Creek, Aquia Creek, Thompson Branch, Strait Creek, Lewis Creek, Long Meadow Run, Wolf Run, Briery Branch, Rocky Run, Union Springs Run, Switzer Lake, Dry River, Loves Run, Back Creek, Mills Creek, Coles Run, Johns Run, Kennedy Creek, Orebank Creek, Paine Run, Meadow Run, Deep Run, and the list goes on.

A significant of the waterways that were listed in the 2014 IR as Category 5 – such as Homes Run, Tripps Run, Accotink Creek, Bull Run, Occoquan River, Lewis Creek, Wolf Run, etc. – with TMDL development dates set for 2016 still do not have a TMDL in the 2016 Draft IR.

There is little to no justification for why these impaired waterways have not yet received a TMDL over the years, some of which have been listed for over a decade. Further, some of the justifications in the notes section of the 2016 IR are exactly the same as the 2014 IR. Solely by looking at parts of the James River and Potomac Rivers, which have not received a TMDL, it becomes clear that there were absolutely no changes from the 2014 IR to the 2016 IR in terms of associated notes for PCBs in fish and public water supplies, E. Coli in recreational waters, pH issues impairing aquatic life, among other issues that cause environmental harm and public health concerns. This is the same for many other waterways. It is important that DEQ assign TMDLs to these waterways to ensure that water quality standards are being attained and that Virginia's anti-degradation policy is being followed.

## **2. Impaired segments covered by the Chesapeake Bay TMDL still require local TMDLs.**

DEQ should reverse its decision to remove hundreds of impaired segments of waterways from Virginia's Category 5 list of impaired waters due to the Chesapeake Bay TMDL in the 2012 IR, 2014 IR, and 2016 draft IR. Many of the water segments removed from the Category 5 list of impaired waters needing a TMDL and placed on the Category 4a list only had conclusive statements about their reasons for removal. For instance, in the 2016 IR, for a segment of the James River that was partially delisted, there is a lack of clear explanation for why the segment was delisted along with, "The Chesapeake Bay TMDL was approved by the EPA on 12/29/2010; therefore, it will be considered Category 2C." Under the Chesapeake Bay TMDL, the EPA stated that "in some cases, the reductions required to meet local conditions shown in existing TMDLs

may be more stringent than those needed to meet Bay Requirements.”<sup>1</sup> A local TMDL is needed for many of the water segments listed in Category 4a because the Chesapeake Bay TMDL is not localized to address specific needs of certain waterways and, in many cases, is less stringent than those DEQ previously determined.

Rather than providing substantive responses to the concerns expressed in public comments, DEQ referred commenters to the Chesapeake Bay TMDL documentation. DEQ did not assess or explain how the Bay TMDL incorporated sufficient local-level water quality data, records on every permitted sources discharging to the segment, information on local hydrology, weather, and any other data or information needed to ensure that the model produces TMDLs sufficiently stringent to restore the local segments to water quality standards. Consequently, DEQ also failed to address the fact that many sources encompassed in the Bay TMDLs received only aggregate allocations, or no individual wasteload allocations at all. Whatever EPA’s reasons for these decisions in the context of the Chesapeake Bay TMDLs, DEQ has an independent duty to ensure that adequate TMDLs exist both to protect local water quality and to inform source-specific effluent limitations in permits. DEQ should disclose its analysis of pre-existing TMDLs through Integrated Reporting, not in a separate document or process.

The clear need to conduct detailed local analyses is also discussed in the 2008 *Scientific and Technical Advisory Committee Chesapeake Bay Watershed Model Phase V Review* (February 20, 2008) (the “STAC” report). EPA recruited the STAC as an “independent panel of experts to review the Chesapeake Bay Watershed Model (CBWM) Phase 5 effort.” Among other topics, the expert STAC reviewers were asked to assess “the model’s suitability for making management decisions at the Bay Watershed and local scales.” In the Review, the STAC explained its view that the “scale of information” built into the model was **not** appropriate for local TMDLs, and recommended that local TMDLs should employ the CBWM Phase 5 using additional local information not included in the Chesapeake Bay TMDL modeling effort:

- a. This question was discussed at length with the CBWM team. We agree with the team that the current CBWM implementation *is not appropriate for development and implementation of TMDLs at the local watershed scale*. A major barrier appears to be the scale of information built into the CBWM, which is based on the county level data and river reach segmentation at the 100 cfs threshold and designed for full watershed or major tributary scale analysis.
- b. A potential approach is to make use of community modeling framework in which local watershed managers could make use of additional modeling tools and data to *resegment, recalibrate and implement the model at appropriate local scales using more site specific local information*. Local- scale data can be obtained from specific sampling and measurement, or from higher-resolution spatial data sources and modeling tools.”<sup>2</sup>

In response, the EPA acknowledged that “the refinement of spatial scale from Phase 4 to Phase 5 [of the CBWM] allows Bay Program States to consider its use in localized TMDLs.”<sup>3</sup>

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<sup>1</sup> Chesapeake Bay TMDL at 2-6.

<sup>2</sup> Emphasis added.

<sup>3</sup> EPA, *Response of the Modeling Subcommittee to the Second STAC Review of the Phase 5 Community Watershed Model* at 5 (Jan. 28, 2009).

DEQ's failure to perform such an analysis clearly is not attributable to technical limitations, as evidenced by the relatively detailed local analyses undertaken by DEQ in pre-2010 "nearfield" TMDLs. Indeed, EPA's own decision not to employ a finer scale of local information was based solely upon the lack (as of 2009) of "consistent" local data at a finer scale for all of the segments covered by the multi-state Bay TMDLs. For its own purposes in completing the Chesapeake Bay TMDLs, EPA concluded that it was sufficient to use "all available data at the finest *consistent* scale possible within the Bay watershed."<sup>4</sup> DEQ is not affected by such a limitation. In determining to reclassify the relevant local impairment listings into Category 4a, DEQ does not face the burden of trying to gather local information for the entire Chesapeake Bay watershed.

### **3. DEQ has failed to gain any new information on many waterways listed as Category 3 over the years.**

Many waterways listed as Category 3 have been listed as such for many years now, with no progress made on obtaining any new information to decide whether water quality standards are being met. Even Category 3b waterways have not been reassessed. According to the 2016 IR, Category 3b listings mean that "some data exists but it is insufficient to determine support of any designated uses. Such waters will be prioritized for follow up monitoring." A tributary to the Choptank Creek has remained on the Category 3b list since the 2014 IR.

Throughout the 2016 IR, many bodies of water are listed as Category 3c with no action taken for at least two years. Under the 2016 IR, water segments that are listed as Category 3c shows that "data collected by a citizen monitoring or other organization indicate water quality problems may exist but the methodology and/or data quality has not been approved for a determination of support of designated use(s). These waters are considered as having insufficient data with observed effects. Such waters will be prioritized by DEQ for follow up monitoring." While DEQ stated that these waterways would be a priority for follow up monitoring, no action has been taken for over 40 water segments. Only a handful of these waterways were removed from the 3b list altogether. Some of the waterways have been listed for significantly more than two years. It is important that DEQ gather more information on these waterways and work with local water quality organizations to ensure that water quality standards are being attained and that Virginia's anti-degradation policy is being followed.

### **4. DEQ should make clearer any designation changes from previous IRs for increased public participation and awareness.**

In order to assess any changes to designations from previous reports, DEQ should simply add a column to the Appendix 1 Integrated List of All Waters in Virginia that includes the waterway's designation from the prior report. This would make it easier for the public to see whether there have been any changes, improvements, degradations, or assigned TMDLs over the prior two years. This information is essential not only for transparency, but will allow citizens and water quality organizations to more easily assess whether water quality standards are being attained in their watersheds.

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<sup>4</sup> *Id.* Emphasis added.

Thank you for your time and consideration of these comments. We look forward to working with you to ensure that Virginia waterways are attaining water quality standards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Betsy Nicholas', written in a cursive style.

Betsy Nicholas

*Waterkeepers Chesapeake*