



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

Mr. Jeffrey Seltzer, Associate Director
Stormwater Management Division
Department of Energy and the Environment
Government of the District of Columbia
1200 First Street N.E., 5th Floor
Washington, D.C. 20002

MAR 3 1 2016

Dear Mr. Seltzer:

Pursuant to the terms of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System (MS4) Permit Number DC0000221 issued by the United States Environmental Protection Agency (EPA) to the Government of the District of Columbia (DC), EPA received the Consolidated Total Maximum Daily Load (TMDL) Implementation Plan Report (TMDL IP) from DC's Department of Energy and Environment (DOEE) May 8, 2015.

In accordance with the MS4 permit terms, the TMDL IP must be reviewed and approved by EPA. This condition is critical, since EPA intends to incorporate elements of the TMDL IP (including interim milestones and dates for attainment of wasteload allocations) into the upcoming renewal of the permit, which expires in October 2016.

EPA has reviewed the TMDL IP and offers its comments in an attachment to this letter. At this time, the Plan is not approvable as written. DOEE must develop and submit a revised TMDL IP to EPA within 60 days of this letter. In addition, EPA will be contacting DOEE to schedule a time to meet to discuss overall improvements that must be made to the TMDL IP. Following that meeting, EPA will consider what next steps may be appropriate.

Should you have any questions or comments, please do not hesitate to contact me, or Liz Ottinger of my staff, at ottinger.elizabeth@epa.gov or 215-814-5783.

Sincerely,

A handwritten signature in blue ink that reads "Brian P. Trulear".

Brian Trulear, Chief
NPDES Permits Branch
Water Protection Division

Attachment

EPA Comments on DC MS4 Consolidated TMDL Implementation Plan
March 2016

The DC MS4 Permit requires that, “For all TMDL wasteload allocations (WLA) assigned to District MS4 discharges, the permittee shall develop, public notice and submit to EPA for review and approval a consolidated TMDL Implementation Plan within 30 months of the effective date of this permit provision.” [Section 4.10.3] EPA has reviewed the Consolidated TMDL Implementation Plan Report dated May 8, 2015 (“TMDL IP” or “Plan”), and has determined that it is not approvable as written. While EPA notes that the foundation for much of the Plan is sufficient, actual management activities and implementation are lacking as described in more detail below.

1. Schedule for WLA Attainment is Not Sufficiently Aggressive.

The Permit requires the Plan to include a “specified schedule for attainment of WLAs that includes final attainment dates and, where applicable, interim milestones and numeric benchmarks.” [Section 4.10.3]. The Plan is deficient in that it fails to identify specific control strategies that will result in the attainment of WLAs to the maximum extent practicable (MEP); instead it relies solely upon ongoing implementation of controls consistent with DC’s existing stormwater regulations and retention requirements. At the current rate of implementation, DOEE projects that all WLAs will be attained by 2154. EPA finds this end-date to be potentially artificially long. Ongoing development and redevelopment should be supplemented with retrofits targeted to specific pollutants and sources to enable a more timely WLA attainment date for most, if not all, WLAs.

2. Control Actions are Inadequate to Achieve Numeric Benchmarks and Annual Pollutant Load Reductions

The Permit further requires that, for numeric benchmarks that are part of the Plan, the District shall “specify annual pollutant load reductions and the extent of control actions to achieve these numeric benchmarks.” *Id.* However, The TMDL IP does not describe the extent of control actions to achieve numeric benchmarks and WLAs. The main purpose of the TMDL IP is to outline control strategies for the attainment of benchmarks and WLAs. Other than implementation of the District’s current on-site retention standard for new and redevelopment, the Plan fails to identify *any* additional specific control measures for TMDL implementation. Simply identifying numeric objectives without any associated explanation for how they will be achieved, is a significant short-coming of the Plan, and fails to meet the requirement of the Permit. The Plan provides little clarity for EPA and for other stakeholders, who have a reasonable expectation of knowing how the District intends to achieve these TMDL WLAs.

The Plan could also be strengthened through exploration of supplemental opportunities to achieve WLAs. Some examples include: (1) source tracking of toxics that are discharged through the MS4 and implementation of specific control measures other than on-site retention; (2) requiring transportation rights-of-way to meet the 1.2" retention standard through off-site mitigation; (3) enhanced retrofitting focused on specific watersheds and pollutants; (4) revisiting previously-established TMDLs; and (5) incentive programs for private lands.

3. The Plan does not Sufficiently Address Interim Milestones

The Permit next provides that “[i]nterim milestones will be included where final attainment of applicable WLAs requires more than five years. Milestone intervals will be as frequent as possible but will in no case be greater than five (5) years.” *Id.* Instead of identifying the interim milestones, the TMDL IP focuses solely on the unique challenges faced by the District rather than contemplating solutions. In fact, the TMDL IP states that all WLAs could not be attained even if the District were 100% retrofitted, and that the 1.2-inch retention standard does not provide enough retention capacity to attain all WLAs. At the same time, the Plan fails to consider potential pollutant reductions in various areas, including an increase to the retention standard, implementation of additional source controls, retrofitting existing BMPs, or other similar options. The TMDL IP should include an analyses and description of alternatives considered by the District.

EPA also notes that the next Permit to be issued to the District will explore additional control strategies and require discrete actions over the next five-to-ten years; this time-frame is consistent with the Bay Partnership Goal of 2025. In particular, an appropriate schedule would include interim milestones or benchmarks along with control strategies to allow for continual reevaluation to ensure that standards attainment is on track as expected.