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MEMORANDUM

TO: Angie Garcia, EPA Region III
Helene Drago, EPA Region III

FROM: Melissa Chatham

RE: Review of the Approval Letter for the Double Pipe Creek Sediment TMDL for the 2008 Submittal Year

DATE: April 8, 2009

MDE has reviewed the approval letter and decision rationale dated February 20, 2009 for the following TMDL:

Total Maximum Daily Load of Sediment in the Double Pipe Creek Watershed, Frederick and Carroll Counties, Maryland

As a result of this review the following changes are requested:

Decision Rationale

Page 2, after the first paragraph, should be the MDL language excerpts from the Benjamin Grumbles memo of Nov. 15, 2006, Subject: Establishing TMDL "Daily" Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in Friends of the Earth, Inc. v. EPA, et al., No.05-5015, (April 25, 06) and Implications for NPDES Permits:

"There is no express or implied statutory requirement that effluent limitations in NPDES permits necessarily be expressed in daily terms. The CWA definition of "effluent limitation" is quite broad ("effluent limitation" is "any restriction ... on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources ..."). See CWA 502(11). Unlike the CWA's definition of TMDL, the CWA definition of "effluent limitation" does not contain a "daily" temporal restriction."

"NPDES permit regulations do not require that effluent limits in permits be expressed as maximum daily limits or even as numeric limitations in all circumstances, and such discretion exists regardless of the time increment chosen to express the TMDL. Therefore, expressing a TMDL as a daily load does not interfere with a permit writer's authority under the regulations to translate that daily load into the appropriate permit limitation, which in turn could be expressed as an hourly, weekly, monthly or other measure."



The memo also states that the provision in EPA regulations that permits be "consistent with the assumptions and requirements of any available wasteload allocation" does not mean permit effluent limits must be identical in form to WLAs as expressed in TMDLs. Rather, the memo suggests that one of the stated "assumptions" of a TMDL's daily WLA might be that "for purposes of NPDES implementation in an appropriate context (e.g., storm water), the permit writer has the flexibility to express the permit's effluent limitation using a time frame in keeping with, and appropriate to, the water body and pollutant in question and the applicable water quality standard. Indeed, the TMDL submission might even include such alternate temporal expressions of the total load or the wasteload allocation as implementation assumptions."

Page 2, Tables 1 and 2, MDE would prefer that the WLA be broken into stormwater and process water. The average annual WLA-SW is 3,377.9 and the WLA-process water is 360.0. The maximum daily loads should be WLA-SW 121.6 and WLA-process water is 2.58. Table 3, for the facility Lehigh Cement Co. outfall# 1 should be outfall 006 & 007 and outfall #2 should be outfall 008.

Page 3, first paragraph, second sentence, "account" should be "accounts".

Page 4, second paragraph, references to sediment yield should be sediment load. In the fourth sentence, the word "forest" should be deleted between "the" and "sediment load".

Page 4, in the paragraph under #1, fourth sentence, "general water quality criteria" should be "narrative water quality criteria".

Page 5, in the first paragraph, line 4, the phrase "is approximately eight times the all-forested condition" should state "exceeds the 3.3 forest normalized reference watershed sediment load".

Page 5, second paragraph, the first sentence should be "As described above, the allowable load for the impaired watershed is calculated as the product of the normalized reference load (determined from watersheds with a healthy benthic community) and the Double Pipe Creek Watershed sediment load expected from an all-forested condition." In the same paragraph the reference to "pounds" should be "tons".

Page 5, fourth paragraph first sentence should be "As indicated in the TMDL report, there are 30 permitted point sources in the watershed." The next sentence should be, "These point source facilities can be grouped into two categories, process water and stormwater. The process water sources include 1 industrial facility, 6 municipal facilities, and 4 mineral mines. The stormwater sources include 19 regulated stormwater discharges." At the end of the paragraph the following should be added "No reductions were applied to the permitted process water sources because at 1.0% of the total load, such controls would produce no discernable water quality benefit.

Page 6, first paragraph second to last sentence the word "only" should be added to the end of the sentence.

Page 7, last paragraph references to "yield" should be "load". Note that the paragraph runs onto page 8 with similar references.

Page 8, second paragraph, the dates for the public comment period were for 2007 not 2008.

