

# When Rules Change: Chesapeake Bay

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# Basic TMDL Process

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- ❑ Set water quality standards (WQS)
- ❑ Assess waterbodies to see if they meet WQS – if not, list them
- ❑ Develop TMDL, including wasteload allocations (WLAs) for point sources
- ❑ Implement WLAs in permits
- ❑ At any point, can do Use Attainability Analysis (UAA) to justify changing designated uses – and therefore WQS

# Chesapeake Bay Process

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- ☐ Agreement in 2000 on basic approach
- ☐ Complete UAA by 2003, resulting in new uses and criteria for watershed
- ☐ Develop allocations for sources in 2003, and reach agreement in 2005 on approach for putting loading caps in permits
- ☐ Work on assessing WQS attainment for 2006 and 2008 lists
- ☐ Develop TMDLs by 2011

# Issues to Address as to Permits

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- ☐ MS4s – have not received water quality conditions previously; once TMDL issued, will they receive numeric limits, or non-numeric BMPs based on water quality, or MEP?
- ☐ If new limits are more stringent than old limits, or you get a new limit for pollutant not previously limited, can you get a compliance schedule?
  - Depends on state rules
  - Can be more than 5 years
  - Must show why need time to comply

# More Permit Issues

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- ❑ If you cannot meet new permit limit, can you get a variance?
  - Depends on state rules
  - Note restrictions on timing and eligibility
  - Must make showing – generally, same tests as for UAAs in 40 CFR 131.10(g)
- ❑ If (by some chance) your WLA would allow for increased permit limit, can you “backslide” to get less stringent limit?
  - And does that implicate antidegradation?

# Strategy Considerations

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- ❑ One option: Do quick initial TMDL, and then do second TMDL after collecting more info, using adaptive management concepts
- ❑ Another option: Work out allocations pre-TMDL, implement those in permits, then do TMDL based on fuller dataset, which may modify allocations and permit limits
- ❑ Consider pros and cons of each approach – factors to be considered would include timing, planning, control costs, and politics

# Questions?

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