

Appendix C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III- OFFICE OF PUBLIC AFFAIRS
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EPA Environmental News

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EPA Announces Public Meetings on Chesapeake Bay 'Pollution Diet' - Meetings in Six States; D.C.

(PHILADELPHIA – September 8, 2010) The U.S. Environmental Protection Agency is scheduled to hold 18 public meetings this fall to discuss the draft Chesapeake Bay Total Maximum Daily Load (TMDL) – a strict “pollution diet” to restore local waters and the Chesapeake Bay.

“We encourage the public to continue to provide input as EPA moves forward in finalizing and implementing this blueprint for restoration,” said EPA Regional Administrator Shawn M. Garvin. “Restoring the Chesapeake Bay and the waterways that connect to it will not be easy, and every citizen in the Bay watershed has a stake and a role in this process.”

The Bay TMDL will set binding limits on nitrogen, phosphorus and sediment pollution throughout the 64,000-square-mile watershed to meet clean water standards for the Bay and its tidal tributaries and help restore local rivers and streams.

At the public meetings, EPA officials will outline the draft Bay TMDL and highlight key provisions designed to ensure that by 2025 all practices that are necessary to fully restore the bay are in place, with 60 percent of the actions taken by 2017.

EPA will also receive comments and answer questions from the public at the meetings, which are part of an official 45-day public comment period on the draft TMDL ending November 8. In addition, officials from the respective states and D.C. are expected to participate in the meetings to discuss their draft implementation plans to achieve and maintain the necessary pollution reductions. The implementation plans were submitted to EPA last week and are being used to help the agency shape details of the TMDL.

The draft Bay TMDL will be issued on Sept. 24. Instructions for submitting formal written comments to EPA will be included on the Bay TMDL web site - <http://www.epa.gov/chesapeakebaytmdl> - and contained in an upcoming Federal Register Notice. A final Bay TMDL will be established by Dec. 31, 2010.

(more)

To View All Press Releases: <http://www.epa.gov/region03/news.htm>

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The public meetings will be held across the six watershed states, Virginia, Maryland, Pennsylvania, Delaware, West Virginia and New York, and the District of Columbia from late September to early November. One meeting in each state will be accessible online via webinar.

The public meetings are scheduled for:

- Washington, D.C., September 29, 1 p.m. – 3 p.m.*
- Harrisonburg, Virginia, October 4, 6 p.m. – 8 p.m.
- Annandale, Virginia, October 5, 6 p.m. – 8 p.m.
- Richmond, Virginia, October 6, 6 p.m. – 8 p.m.
- Webinar, October 7, 1 p.m. – 3 p.m.
- Hampton, Virginia, October 7, 6 p.m. – 8 p.m.
- Georgetown, Delaware, October 11, 5 p.m. – 7 p.m.*
- Easton, Maryland, October 12, 2 p.m. – 4 p.m.
- Annapolis, Maryland, October 13, 2 p.m. – 4 p.m.
- Hagerstown, Maryland, October 14, 2 p.m. – 4 p.m.*
- Lancaster, Pennsylvania, October 18, 2 p.m. – 4 p.m.
- State College, Pennsylvania, October 19, 2 p.m. – 4 p.m.
- Williamsport, Pennsylvania, October 20, 2 p.m. – 4 p.m.*
- Ashley, Pennsylvania, October 21, 2 p.m. – 4 p.m.
- Elmira, New York, October 26, 6 p.m. – 8 p.m.
- Binghamton, New York, October 27, 2 p.m. – 4 p.m.*
- Martinsburg, West Virginia, November 3, 6 p.m. – 8 p.m.
- Romney, West Virginia, November 4, 6 p.m. – 8 p.m.*

* Meeting also broadcast online via webinar.

Complete information on the meetings, including venues, directions and webinar registration links, can be found on the Bay TMDL web site. For more information visit <http://www.epa.gov/chesapeakebaytmdl>.

Virginia's Chesapeake Bay River Basins

2009 Progress, L2, L3 and Draft Allocation Loads

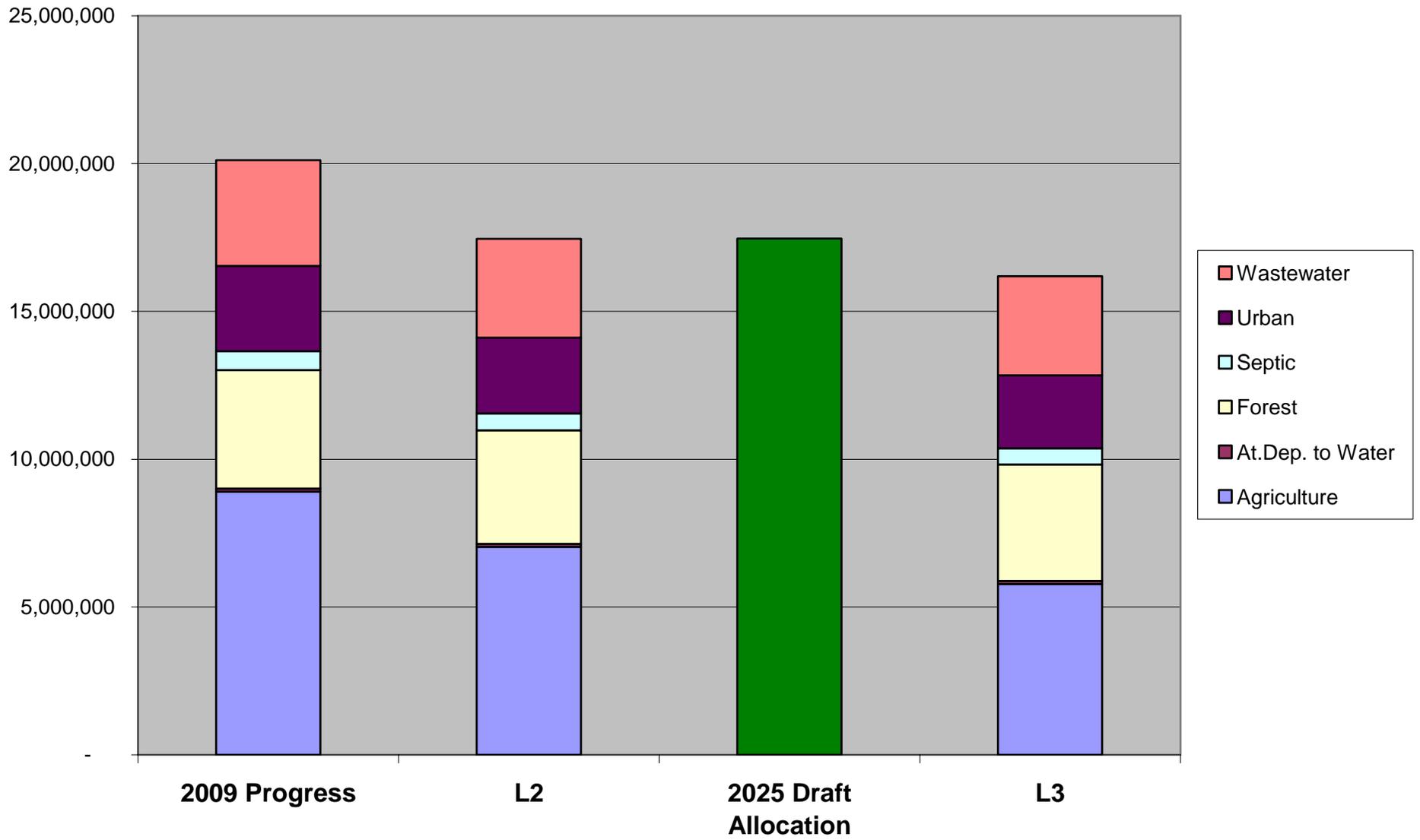
L2 and L3 Model 5.3 runs by EPA on July 14, 2010

2009 Model 5.3 run by EPA on May 19, 2010

Draft Allocation per EPA letter dated July 1, 2010

Provisional Data – EPA is rerunning L2 and L3 scenarios to
resolve some known issues – hopefully minor

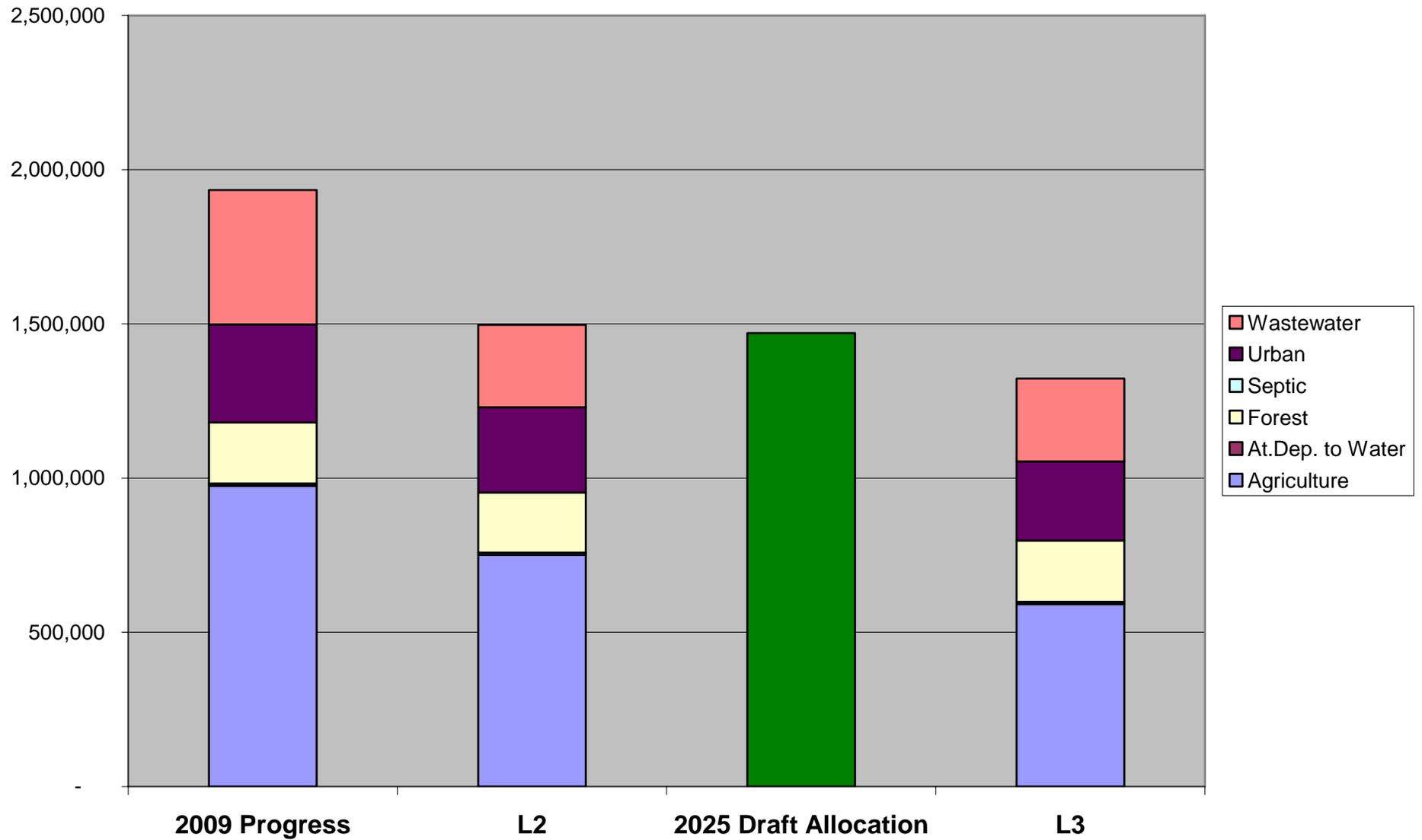
Potomac River Basin - Nitrogen



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
2009 Model 5.3 run by EPA on May 19, 2010
Draft Allocation per EPA letter dated July 1, 2010

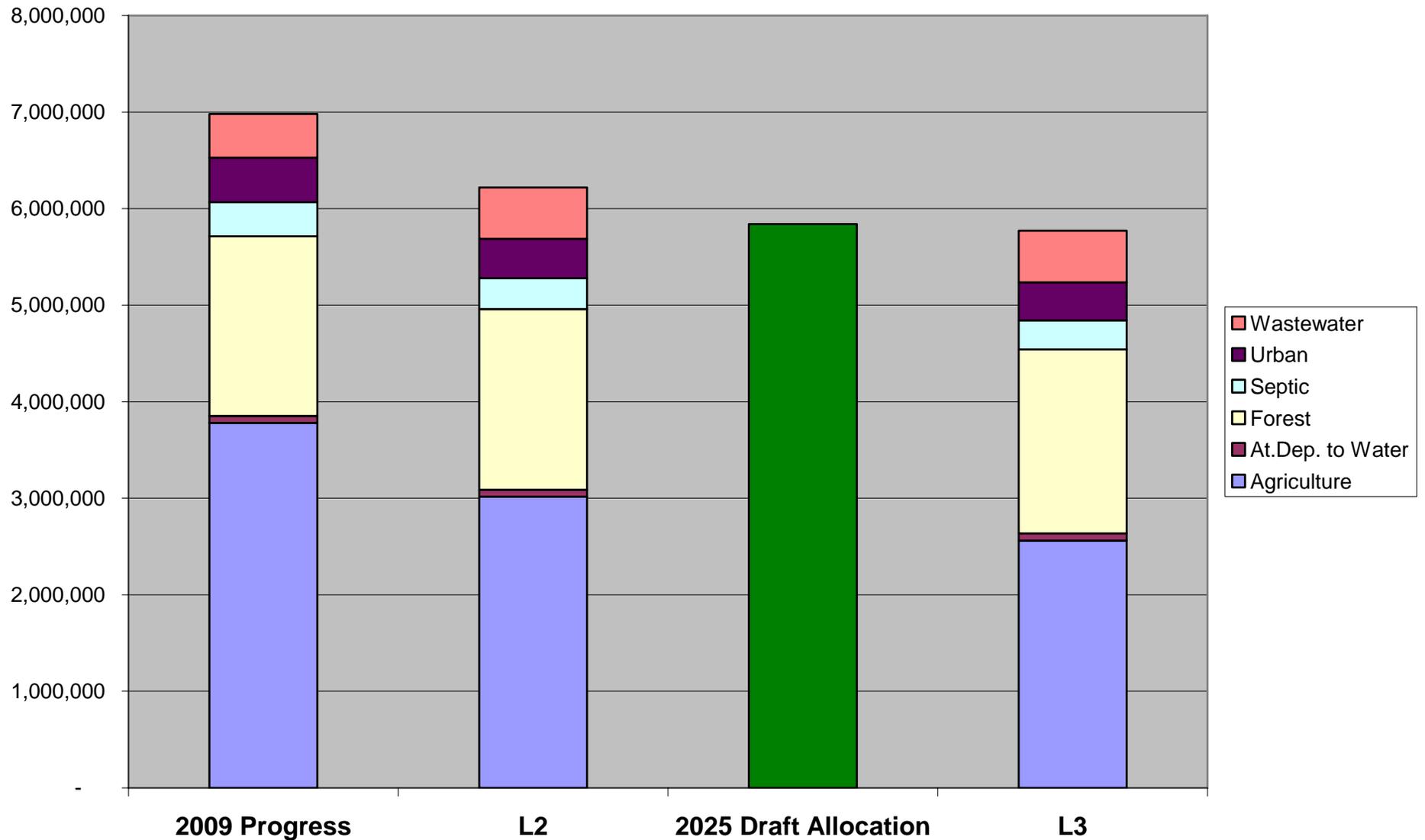
Potomac River Basin - Phosphorus



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
2009 Model 5.3 run by EPA on May 19, 2010
Draft Allocation per EPA letter dated July 1, 2010

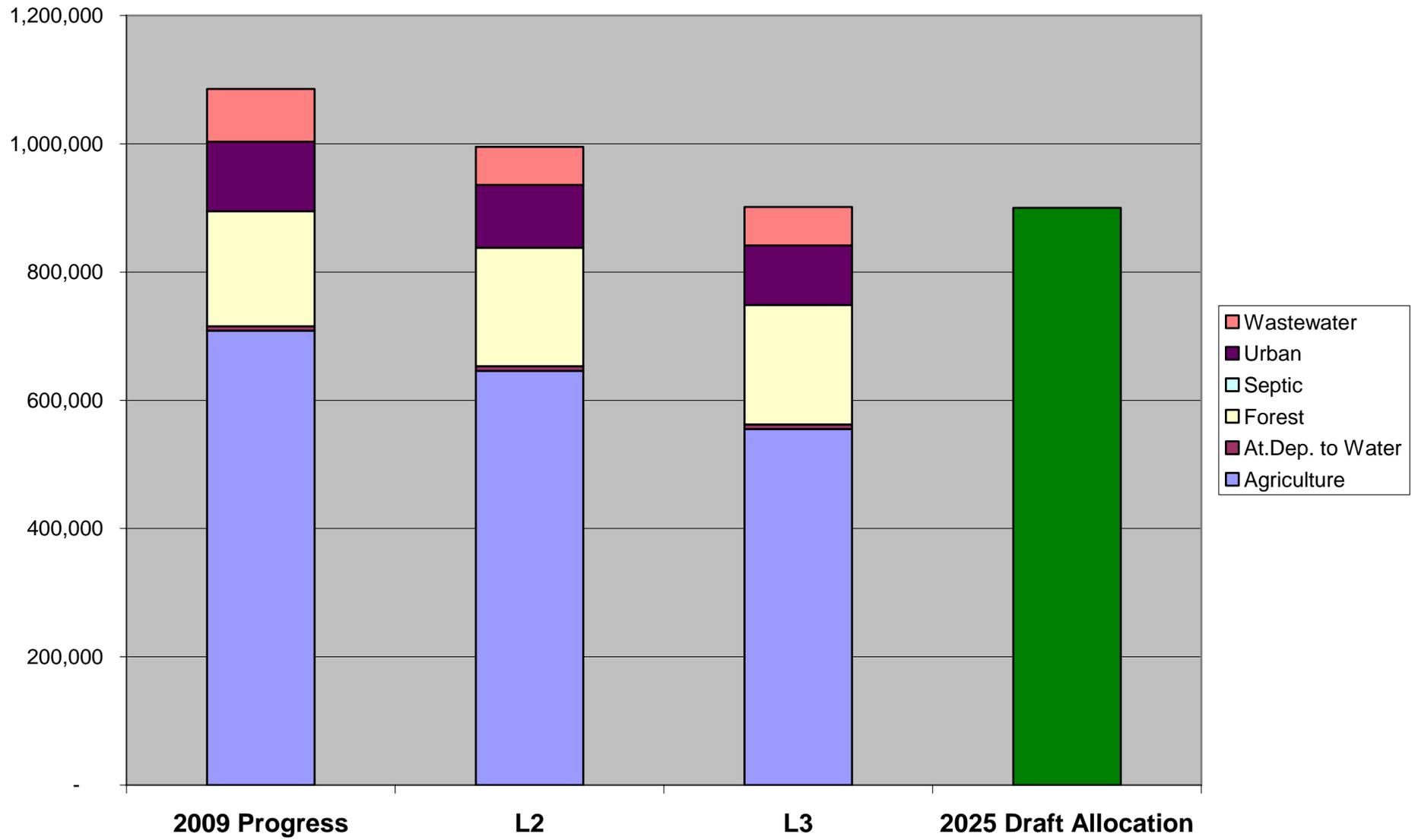
Rappahannock River Basin - Nitrogen



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
 2009 Model 5.3 run by EPA on May 19, 2010
 Draft Allocation per EPA letter dated July 1, 2010

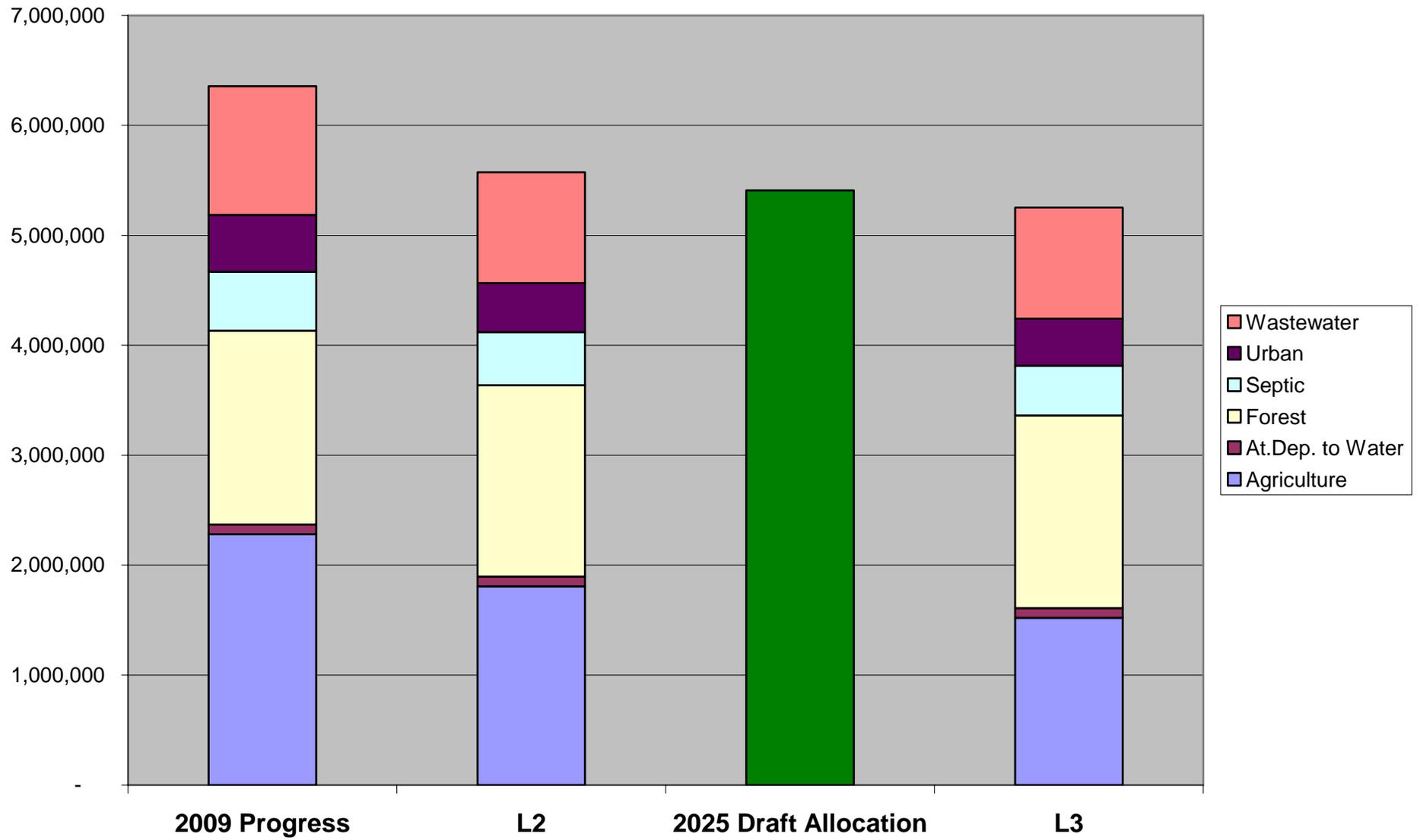
Rappahannock River Basin - Phosphorus



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
 2009 Model 5.3 run by EPA on May 19, 2010
 Draft Allocation per EPA letter dated July 1, 2010

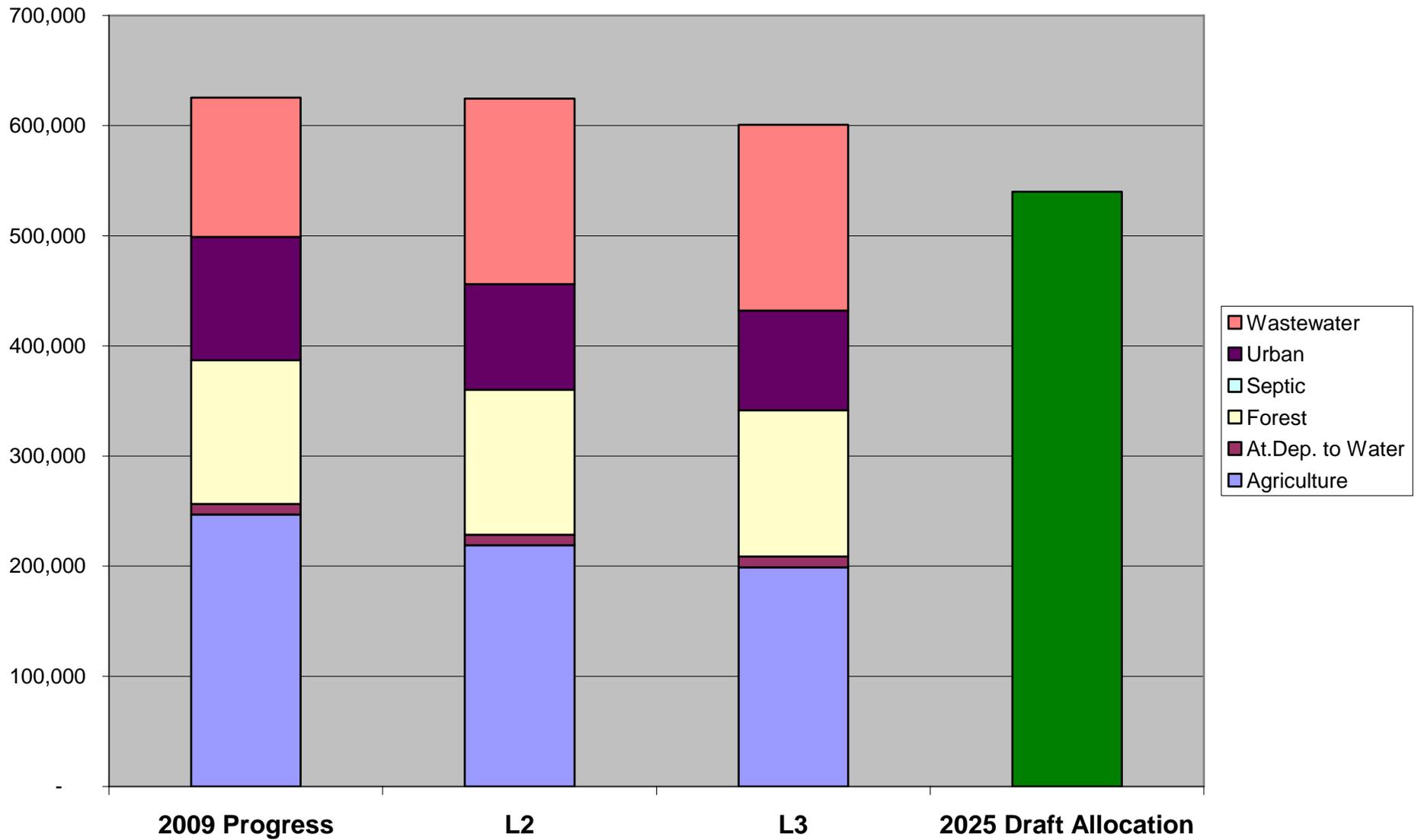
York River Basin - Nitrogen



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
 2009 Model 5.3 run by EPA on May 19, 2010
 Draft Allocation per EPA letter dated July 1, 2010

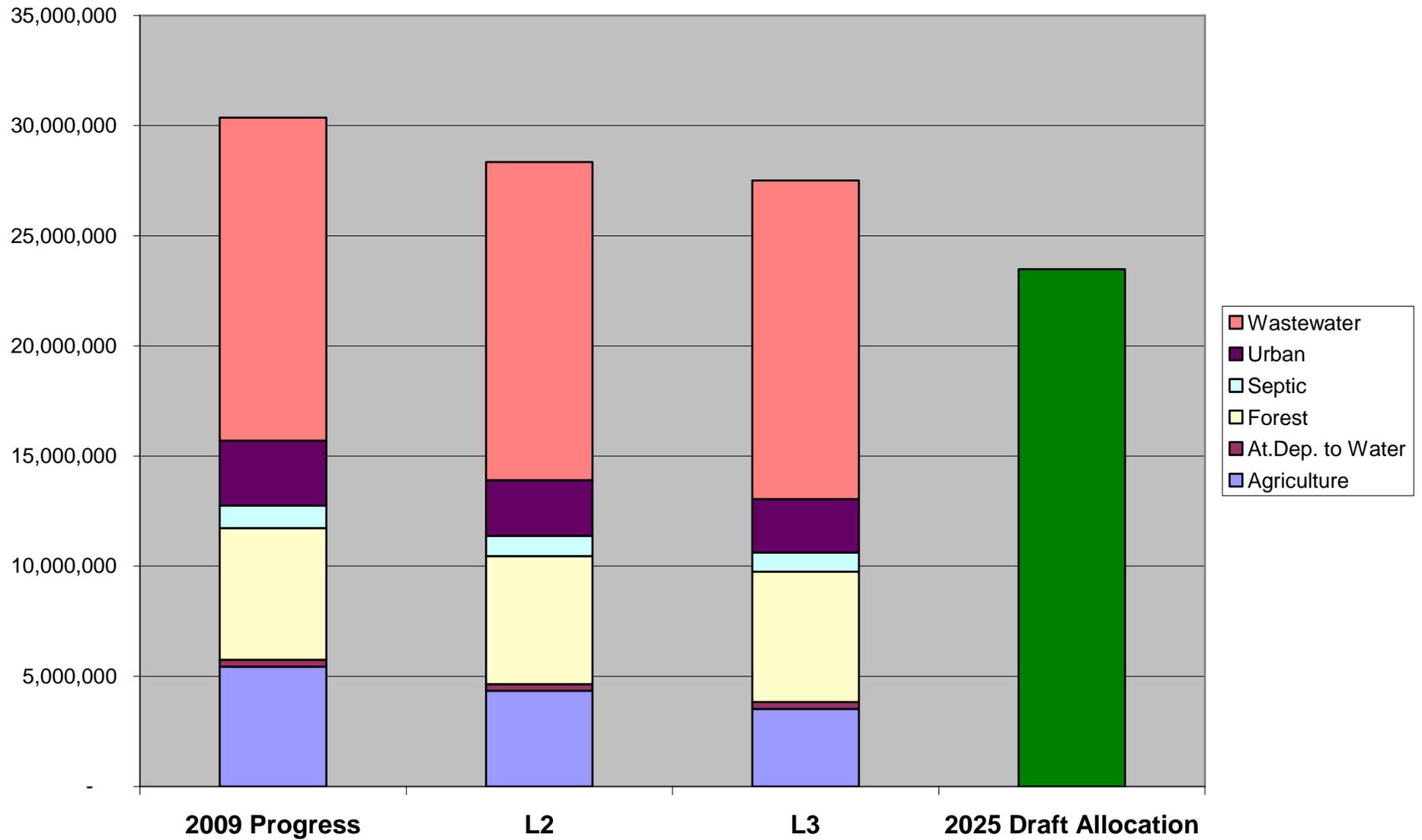
York River Basin - Phosphorus



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
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 Draft Allocation per EPA letter dated July 1, 2010

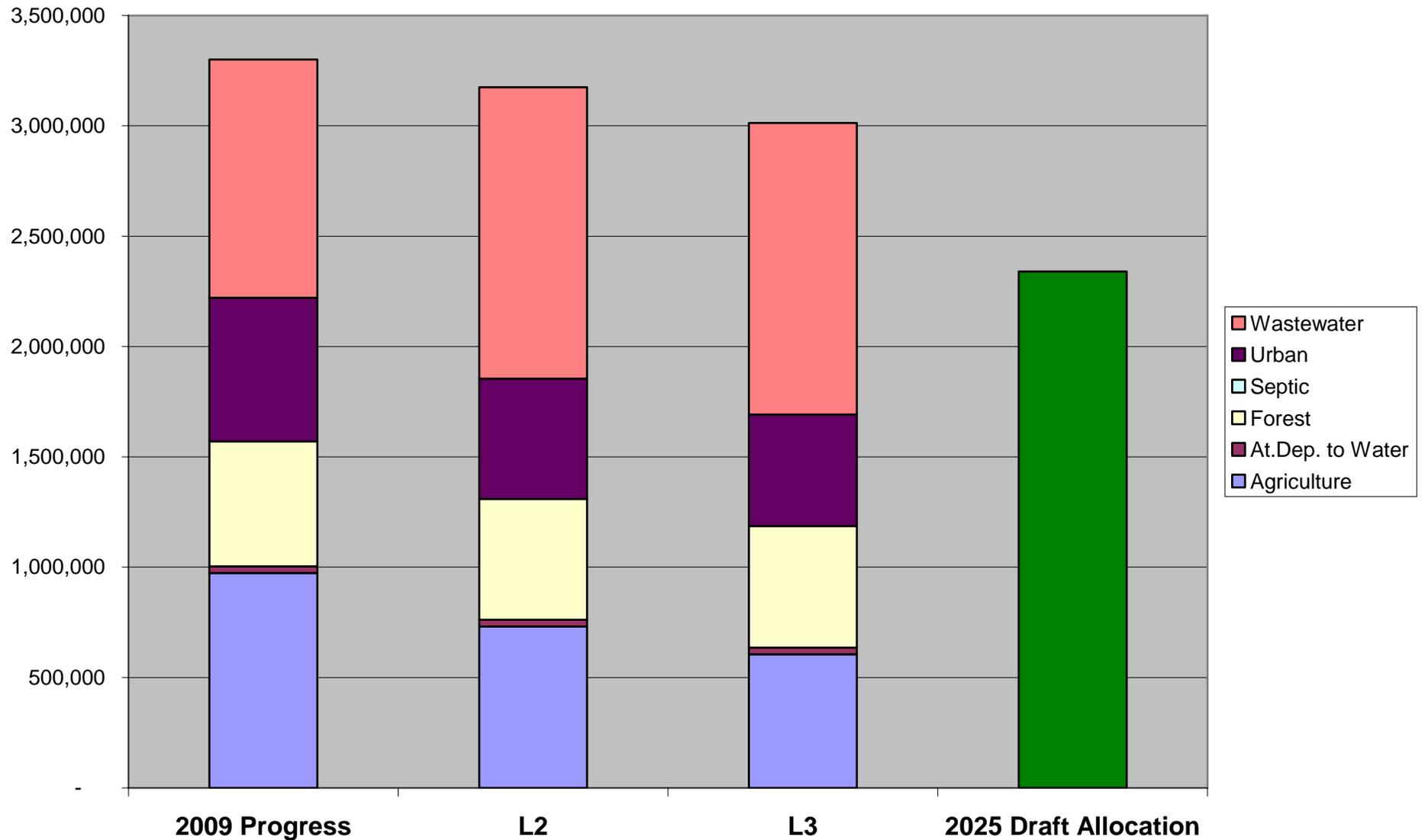
James River Basin - Nitrogen



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 Draft Allocation per EPA letter dated July 1, 2010

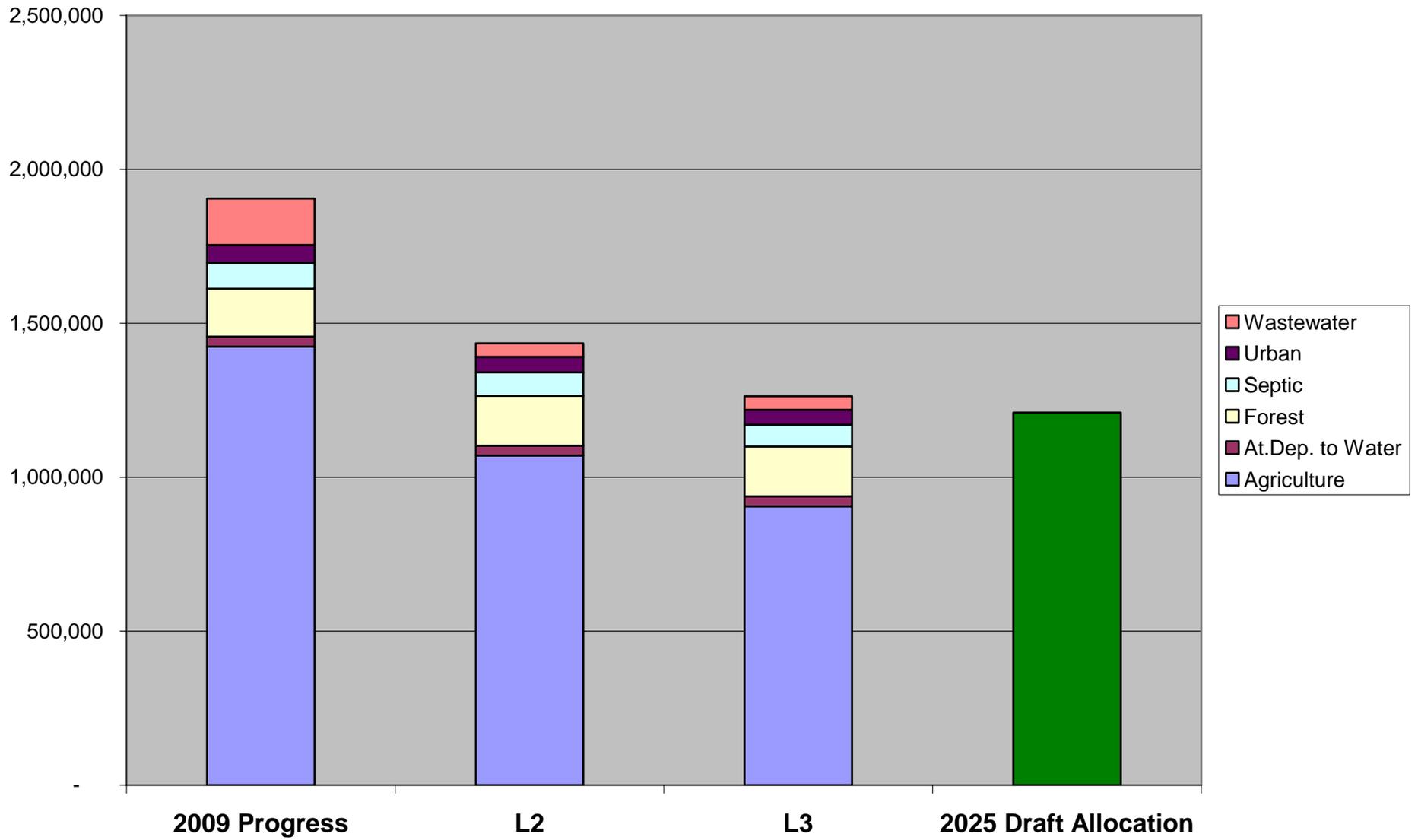
James River Basin - Phosphorus



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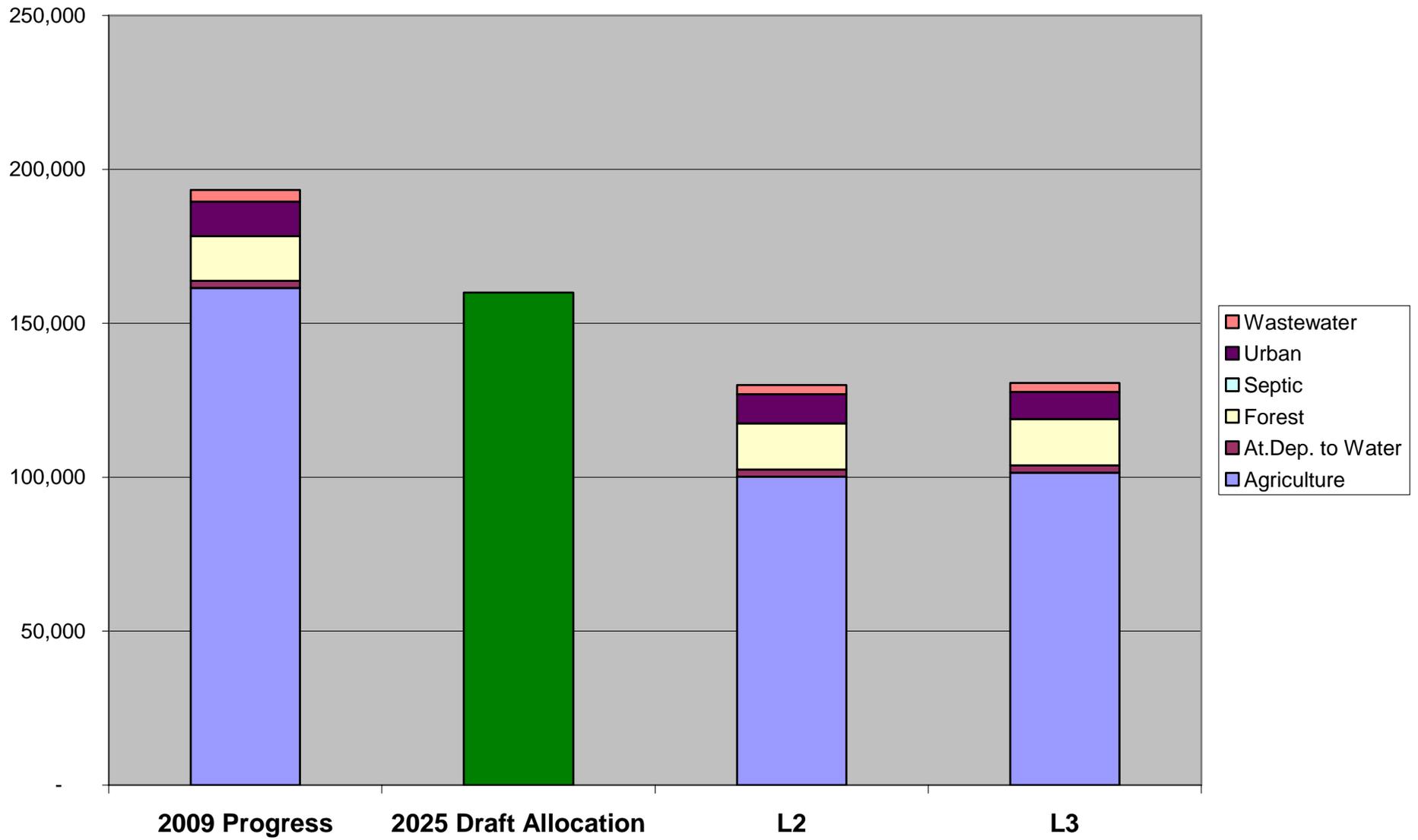
Eastern Shore - Nitrogen



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
 2009 Model 5.3 run by EPA on May 19, 2010
 Draft Allocation per EPA letter dated July 1, 2010

Eastern Shore - Phosphorus



July 16, 2010

L2 and L3 Model 5.3 runs by EPA on July 14, 2010
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Draft Allocation per EPA letter dated July 1, 2010

Example Inputs by Sector

For Scoping Scenarios L2 and L3

Wastewater

For Scoping Scenarios L2 and L3

- Significant Dischargers - Wastewater loads were based on maximum loads allowed by WQMP regulation adopted in 2005 with subsequent amendments and contained in the watershed General Permit
- Nonsignificant Dischargers – Based on procedures in VA Code adopted in 2005 using estimated data

Agriculture

For Scoping Scenarios L2 and L3

BMPs (partial list)	2008 % Treatment	Level 2 % Treatment	Level 3 % Treatment
Conservation Plans - Cropland	40.14%	65%	95%
Continuous No-till	7.84%	35%	45%
Livestock Stream Exclusion Fencing	11.34%	45%	95%
Nutrient Management - Cropland	51.16	90%	95%
Grass or Forest Buffers - Cropland	8.98%	33%	95%

Plus Many Others

Urban/Suburban Stormwater

For Scoping Scenarios L2 and L3

Land Use Category	High Efficiency BMP Retrofits by 2025 % of Available Existing Urban Land	
	Level 2	Level 3
High Intensity Impervious	25%	50%
Low Intensity Impervious	20%	40%
High Intensity Pervious	10%	20%
Low Intensity Pervious	10%	20%

For Both Levels 2 and 3:

- New Urban Development – no increase in load due to growth
- Urban Nutrient Management 522,000 acres

Onsite/Septic Systems

For Scoping Scenarios L2 and L3

Level 2: All new and replacement systems are shallow placed pressure (25% N reduction) or denitrification systems (50% reduction)

Level 3: All new and replacement systems are denitrification systems – 50% N reduction

Assume 2% replacement rate per year

For Both Levels:

Septic Pump-outs = 76,643 per year

Septic Connections = 975 per year

Forest

For Scoping Scenarios L2 and L3

- Increase forest harvesting BMPs from current 83% to 90% of acreage

Rough Draft Major Sector Allocations Based on 8/4 Model Run #4

NITROGEN

	Potomac	Rappahannock	York	James	Eastern Shore	Total
Agriculture	7,030,119	2,837,065	1,591,066	4,198,706	920,653	16,577,610
Atm. Dep.	101,894	73,129	88,820	316,097	32,027	611,967
Forest	4,125,533	1,899,312	1,765,619	5,999,126	161,749	13,951,338
Septic	668,926	356,725	537,403	1,027,075	83,864	2,673,994
Urban	2,648,469	409,796	447,754	2,551,823	50,083	6,107,925
Wastewater	3,396,050	535,905	1,011,618	14,483,610	44,665	19,471,849
Total	17,970,992	6,111,933	5,442,280	28,576,437	1,293,041	59,394,682
EPA Allocation	17,460,000	5,840,000	5,410,000	23,480,000	1,210,000	53,400,000
Net	(510,992)	(271,933)	(32,280)	(5,096,437)	(83,041)	(5,994,682)

1.7M - 00 standard only

PHOSPHORUS

	Potomac	Rappahannock	York	James	Eastern Shore	Total
Agriculture	642,111	564,221	175,822	685,235	95,829	2,163,217
Atm. Dep.	7,706	7,042	9,652	30,664	2,357	57,421
Forest	203,952	185,048	131,436	555,585	14,965	1,090,986
Septic	0	0	0	0	0	0
Urban	286,675	98,100	95,722	548,538	9,500	1,038,535
Wastewater	271,994	59,647	168,269	1,325,276	2,988	1,828,174
Total	1,412,436	914,058	580,902	3,145,299	125,638	6,178,333
EPA Allocation	1,470,000	900,000	540,000	2,340,000	160,000	5,410,000
Net	57,564	(14,058)	(40,902)	(805,299)	34,362	(768,333)

Includes Wastewater at WGP Levels, Agriculture at Level 3 less adjustments, Urban Stormwater at Level 2, Septic at EPIL
2010VAWIP4 Loadings from CBPO modified with post processed reduction estimates for nursery reuse and CNT

460,000 - 00 standard only



SAG Steering Committee Meeting #1

August 2, 2010 @ 1:00 p.m.

Department of Environmental Quality – Piedmont Regional Office

1. Welcome and Introductions

The SAG Steering Committee met at 1:00 PM at the Department of Environmental Quality. This was the first of two meetings to bring together the issues and recommendations from the eight preceding workgroup meetings. Two chairs representing each of the four source sectors and four at-large invitees were present. The purpose of the meeting was to understand, think about and discuss the previous month's work with the four focus groups and to begin to devise a reasonable allocation approach that reflects the issues and recommendations from those workgroups. Participants were provided with copies of:

- Presentation slides from "Concerns with July 1 Draft Nutrient Allocations for James River Basin" slides"
- Issues and recommendations from the four sector workgroup sessions
- Tables of "Provisional Data – 7/16/00" (Nitrogen & Phosphorus)
- Inputs for the 4th scoping scenario containing modifications to agriculture, urban/suburban stormwater, and onsite implementation levels.

2. Updates and Presentation of James River Allocation Issues

Alan Pollock's (DEQ) presentation summarized current concerns with the nutrient allocations for the James River Basin. Throughout the presentation, open discussion addressed the workgroup's concerns and questions.

Additional presentation points:

- Virginia will be seeing sediment allocations no later than August 15th
- (*Comparing Basin-wide Allocation slide*): After water quality modeling was done, there is almost the same response as seen in the Tributary Strategies (2003-2005) for N. However, there is still a good drop in the basinwide allocation for P in the July 1 draft allocation compared to the Tributary Strategies. Achieving this reduction will be a challenge at this point.
- (*Chesapeake Bay Health: 2009 slides*): The James River has an existing chlorophyll numeric criterion that is unique and treated differently, which explains the additional 3 million pounds of needed reduction. These existing standards have to be reviewed every three years to consider new scientific information.
- DEQ/DCR is working with EPA to revisit the James River nutrient allocations based on meeting the chlorophyll criteria.

Primary discussion concerns and questions:

- Workgroup: What BMPs does EPA expect to see to meet water quality criteria (*Basis for TMDL Allocation slide*)?
DEQ/DCR: Conservation plans and those that keep soil in place.
- Workgroup: What does “4% non-attainment” mean (*Tidal fresh Potomac and Anacostia Rivers in DC slide*)?
DEQ/DCR: A statistical data analysis is included in the standards that the states use in doing water quality assessments. This process shows attainment or some percentage of non-attainment. It is a sophisticated statistical analysis that considers both time and space. The 10% allowance is included in the standard. Therefore, “4% non-attainment” is above this standard.
- Workgroup: Can you explain the model not being able to calibrate well (*Tidal James River slide*)?
DEQ/DCR: There is always uncertainty when simulating biological processes through space and time. On some segments, the model did not reflect the reality shown by monitoring while in other segments the model does a better job.
- Workgroup: Is the lack of calibration a lack of data?
DEQ/DCR: EPA’s model is calibrated to the data collect from the late 1980’s to 2005. The James has 13 fixed stations that are sampled along the 120 miles of the tidal river. DEQ has a lot more data from the enhancement of monitoring since 2005 and is about to send EPA the 2010 Water Quality Assessment report that includes analysis of this new data.
- Workgroup: If EPA didn’t use the model in certain segments, what did they use?
DEQ/DCR: The process is still model driven and based on the data they had. EPA used the model results in two non-attainment segments as a proxy for all 10 segments in order to set the allocations for the entire James basin.
- Workgroup: Regarding the chlorophyll criterion, it would appear that the James River has a different level of impact. The allocation for the James is in part driving some of these allocations, is that because of existing TMDLs?
DEQ/DCR: According to the modeling, in order for the James to meet the chlorophyll criteria the nutrient loads need to be reduced further below what is needed to meet the dissolved oxygen criteria.
- Workgroup: How do the Chesapeake Bay Health: 2009 GIS maps inform what this Steering Committee needs to do (*Chesapeake Bay Health: 2009 slides*)?
DEQ/DCR: This information was provided to the Steering Committee to understand key issues that have been mentioned in the media. The James River does have high chlorophyll levels, although other areas in the Bay watershed have levels also considered high.
- Workgroup comment: Be aware that the level of effort to reach the new allocations for the James River is still less than $\frac{3}{4}$ of the upper tributaries due to their dissolved oxygen problems.
- Workgroup: In terms of a time frame of discussion with EPA, what are we going to do until the September deadline?
DEQ/DCR: We are waiting for EPA to respond.

3. Sector Reports: Wastewater; Agriculture; Urban Stormwater; Onsite/Septic

The next agenda item focused on each sector's primary issues and recommendations. The goal was to mold the source sector's separate concerns into one effective whole. DEQ/DCR introduced each sector's issues and recommendations, the two chairs were given opportunity to comment, and open discussion followed.

- **Wastewater** (Chairs: Chris Pomeroy & Tom Botkins)
 - Chair remarks: There has been a lot of time, money, and effort invested in a new regulatory process (standards adopted in 2005, large facilities with nutrient removal facilities are coming online) and we hope this will be recognized. This sector is already connected to Virginia nutrient trading programs. For these reasons, the wastewater sector does not want the regulatory system to change. Two participants would like to see more reductions; the Chairs and most of the others disagree.
 - Workgroup: What about the lack of a trading program?
Chairs: There is a program in place for new and expanding facilities to trade with non-point sources. The challenge is to develop a more robust trading system to include other sectors.
 - Workgroup: Does the committee recommend that certain legislation or regulation be put in place to effect further trading?
Response: Yes. In order for Virginia to meet allocations more cost-effectively there is a need for enabling legislation.
 - Workgroup: Is there possibility for inter-basin trading?
DEQ/DCR: There is no inter-basin trading right now [except the Eastern Shore facilities are allowed to purchase credits from facilities in the Potomac or Rappahannock basins], but the EPA is currently talking about inter-basin and inner-state trading. DEQ will explore what is best for VA.
 - Workgroup: The SAG needs rules of a trading program in order to give credit to the whole process.
Response: Let's complete the WIP first and determine trading rules to follow. We need to keep in mind that VA already has a trading program in place and have learned a lot from past experience.
 - Workgroup: With another large investment (similar to the past) could you reduce as much as you have?
Chairs: In general, yes but not always, especially with industrial facilities, whose wastewater may not be amenable to further nutrient removal treatment.
 - Workgroup: What is the most cost effective for society?
Chairs: There is a range of costs in treating municipal wastewater. The sector is multidimensional – not just about cost, but also providing for future growth.
 - The request made in an earlier workgroup meeting that point source might take a lower standard was further discussed.
- **Agriculture** (Chairs: Katie Frazier & Wilmer Stoneman)
 - Chair remarks: The group was not willing to determine mandates or requirements. Past workgroup discussion looked toward having a *conservation plan*. The emphasis has got to be on what is right for that individual farm. A conservation plan would have BMPs that each farmer could do based their land

- and needs. There's a need to get credit for all practices required by law, not just voluntary (*bullet on handout needs to be changed*). There is also a need for cost share assistance and to keep a Virginia dataset that separates VA requirements from the Bay TMDL.
- Workgroup: What does "expectation" mean to you?
Chairs: There's an "expectation" in the previous plan that each farmer implement a buffer.
 - Workgroup: There is a concern that a conservation plan does not provide reasonable assurance. Keep in mind that this is an EPA document. If they aren't happy with what we submit with reasonable assurances, they will enter their own. What is our means of assurance that we can achieve the allocations? Do we require a conservation plan?
Chairs: VA needs to adopt the Natural Resources Conservation Service (NRCS) way of planning to give assurance.
 - Workgroup: There will be a need for a tremendous investment to get these practices off the ground, including a huge employee infrastructure (1 employee can make 25 visits/year, VA will need over 800 new employees = \$50 million).
 - Workgroup: From a nutrient trading perspective, a conservation plan needs minimal "performance standards" to make the process more market-based and efficient. Some farms will be able to go far beyond the minimum.
 - Workgroup: Do you see yourselves as cheerleaders promoting the "expected" BMPs?
Chairs: Yes, we strongly *recommend* a conservation plan. This concept is not foreign. However, for some reasons, 10 years ago, VA stopped funding technical assistance conservation practices.
 - Workgroup: The goal for next meeting should be to layout what tools we have to enforce new regulations for reasonable assurance.
- **Urban/Suburban** (Chairs: Larry Land & Mike Rolband)
 - Chair remarks: The problems are on lands that have already been developed. There is uncertainty regarding the legal issues involved with urban retrofits and the authority of a locality to require them. There is a need for a comprehensive economic analysis to determine feasibility.
 - Chairs remarks: A study in Michigan shows 50% reduction in phosphorus load by requiring the use of slow release fertilizers. However, this will lead to issues in the agribusiness industry. What about a statewide Chesapeake Bay Act that will apply to Ag and urban development equally?
 - Workgroup: Any thoughts for a cost share system or tax share rebates?
Chairs: There won't be a need for one. Homeowners will pay for more expensive fertilizer so they do not have to pay more later on.
 - Workgroup: There are some existing programs in place that should be utilized (State statute currently under construction, DCR's water quality agreement that will put nutrient management plans in place).
 - Workgroup: Since you cannot implement all the retrofit practices everywhere, there are advantages of the performance standards approach. Has that been considered for individual localities to have a certain reduction?

DEQ/DCR: The model-scoping run would allow you to do this. In reality, people could pick other practices to use that will reach the target.

- **Onsite/Septic** (Chairs: Barrett Hardiman & Stuart McKenzie)
 - Chair remarks: The L3 scenario requiring that all systems are denitrifying isn't going to happen. It costs \$28,000 to \$30,000 to put in a new system and maintain it. There will be unintended consequences of whatever we do. We are a growing sector. There is a need for a separate fund or program to help low and moderate income households. The Health Department does have a regulatory process underway that is dealing with alternative system management.
 - Workgroup: Isn't the "alternative switch" septic system cheaper per pound to the environment than an urban retrofit?
Chairs: There is a request to put together a list of BMPs and this should be included.
- Open discussion:
 - Workgroup: Will we see the final document before it is submitted to EPA? There is a concern that names of SAG members may be seen as endorsing the document.
DEQ/DCR: We are not sure at this point; the SAG meeting will be on Aug. 24, and the document must be submitted by Sept. 1. However, the plan will go to public comment after this, and we hope and anticipate that the SAG will continue to meet to discuss issues.
 - Workgroup: Have you addressed how you are going to present reasonable assurance?
DEQ/DCR: Not at this point.
 - Workgroup: DEQ/DCR should be very careful to document its figures and footnote where things came from. This will add creditability to the whole process.
 - Workgroup: There is major concern for reasonable assurance. We must have it. We don't want other people telling us what to do.
 - Workgroup: Be careful about *unintended consequences* of putting too much expectation on the agriculture sector.

4. Other Issues Raised by Workgroups

- Information Needed
 - List of BMPs for onsite/septic
 - Memo of correspondence of issues with the James River between DEQ and EPA
 - Mike Rolband's Maryland numbers to share with rest of workgroup
 - Request for number to be in pounds/acre rather than just percentages
- Preparation for Second Steering Committee Meeting (Committee Members): August 9th.
 - In terms of the Ag sector, the goal for next meeting should be to layout what tools VA has to enforce new regulations for reasonable assurance.
 - Workgroup: What is our charge for the next meeting?

DCR/DEQ: We are hoping to put together an allocation scenario by sector over time and looking for general direction for allocations. Consensus is our *goal*. Keep in mind that consensus among all sectors might not be met.

Meeting Participants

Chris Pomeroy	VAMWA (wastewater)
Leslie Middleton	Rivanna River Basin Commission (at large)
Stuart McKenzie	VA Association of PDCs (onsite/septic)
Mike Rolband	Wetland Studies & Solutions (urban/suburban)
Tom Botkins	VA Manufacturers Association (wastewater)
Larry Land	VA CO (urban/suburban)
Katie Frazier	VA Agribusiness Council (agriculture)
Ann Jennings	Chesapeake Bay Foundation (at large)
Bill Street	James River Association (at large)
Barrett Hardiman	Home Builder (onsite)
Ricky Rash	Assoc. of Soil & Water Cons. Districts (at large)
Wilmer Stoneman	VA Farm Bureau (agriculture)
David Johnson, Russ Perkinson, Jack Frye	DCR
Alan Pollock, Russ Baxter	DEQ

Facilitation:

Frank Dukes	Institute for Environmental Negotiation
Eleanore James	Institute for Environmental Negotiation

Agricultural Nutrient Management Planning: The Department is considering establishing a phased-in nutrient management planning requirement beginning with farms over 500 acres by March 2013 and decreasing to 50 acres by 2017 for a farm operator applying nutrients in any year in the Chesapeake Bay Watershed.

Lawn Fertilizer Formulation and Use: The Department is considering legislation that restricts statewide the use and application of phosphorus based lawn fertilizers for use on lawns and other turf areas and of deicing agents.

Virginia Stormwater Nonpoint Nutrient Offset Program: The Department is considering an amendment that would provide authority for the Department of Conservation and Recreation to establish and operate the Virginia Stormwater Nonpoint Nutrient Offset Program. The legislation clarifies how nonpoint offsets may be utilized to achieve nutrient reductions for permitted land disturbing activities.

Stormwater Management Local Programs: The Department is considering amendments to the Stormwater Management Law that would establish July 1, 2014 as the implementation date for local program operation of a stormwater management program. The language also makes local program adoption mandatory statewide as is already the case with erosion and sediment control.

Chesapeake Bay Act Expansion: The Department is considering an amendment to the Chesapeake Bay Preservation Act that would expand the coverage of the Act from “Tidewater” to the entire Chesapeake Bay Watershed to assist with Bay TMDL nutrient reduction requirements. The language contains a phase in schedule.

Livestock Stream Exclusion: The Department is considering legislation that would authorize localities under the auspices of the Chesapeake Bay Preservation Act to develop ordinances that require the installation of livestock stream exclusion practices on all agricultural lands upon which animal grazing occurs.

Supplemental Environmental Projects: The Department is considering legislation that would provide authority to the Department of Conservation and Recreation to utilize supplemental environmental projects as partial settlement of a civil enforcement action with the consent of the violator.

Consolidation of Water Quality Reports: The Department is considering an amendment that would consolidate Department of Conservation and Recreation Code required water quality reports into the Secretary of Natural Resources impaired waters clean-up plan progress reports.

Nutrient Management Plan Requirement for Local Lands: The Department is considering legislation that establishes a nutrient management requirement for lands owned or managed by a locality on which nutrients are applied. A similar requirement already exists for State-owned lands.

2
3
4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-1]**
8 **Draft Legislation**
9

10 *A BILL to amend the Code of Virginia by adding a section numbered 10.1-104.5, relating to the*
11 *establishment of nutrient management planning requirements in the Chesapeake Bay*
12 *Watershed.*

13
14 **Be it enacted by the General Assembly of Virginia:**

15 **1. That the Code of Virginia is amended by adding a section numbered 10.1-104.5 as**
16 **follows:**

17 § 10.1-104.5. Nutrient management plans required for specified farms.

18 A. As used in this section:

19 "Board" means the Virginia Soil and Water Conservation Board.

20 "Crop" means cultivated plants or agricultural produce such as grain, silage, forages,
21 oilseeds, vegetables, fruit, nursery stock, or turfgrass.

22 "Farm" means any land on which a crop, hay, pasture, or a specialty crop is produced by
23 an operator.

24 "Hay" means a grass, legume, or other plants, such as clover or alfalfa, which is cut and
25 dried for feed, bedding, or mulch.

26 "Nutrient" means an element or compound essential as raw materials for plant growth and
27 development such as carbon, nitrogen, and phosphorus.

28 "Nutrient management plan" or "plan" means a plan prepared in accordance with § 10.1-
29 104.2 by a Virginia certified nutrient management planner to manage the amount, placement,
30 timing, and application of manure, fertilizer, biosolids, or other materials containing plant
31 nutrients in order to reduce nutrient loss to the environment and to produce crops. The nutrient
32 management plan shall cover all acreage to which nutrients are applied.

33 "Operator" means any person operating or with an operational interest in a farm or farms
34 subject to the requirements of this section.

35 "Pasture" means land which supports the grazing of animals for forages.

36 "Specialty crop" means vegetables, tree crops, perennial vine crops, ornamentals,
37 horticultural crops, and other similar crops.

38 B. Any operator that cumulatively applies nutrients to 100 or more acres annually in the
39 Chesapeake Bay Watershed shall develop and implement a nutrient management plan in
40 accordance with the following schedule:

41 1. By March 1, 2013 for operators applying nutrients to 500 or more acres;

42 2. By March 1, 2015 for operators applying nutrients to 200 or more acres; and

43 3. By March 1, 2017 for operators applying nutrients to 50 or more acres.

44 4. Any operator who becomes subject to the requirements of this section after the dates
45 referenced above shall develop and implement a nutrient management plan within 6 months of
46 meeting or exceeding such thresholds.

47 C. A copy of any initial nutrient management plan developed pursuant to subsection B
48 shall be filed with the Board. By March 1 of each year following the submission of the initial
49 nutrient management plan, any operator subject to the requirements of this section shall file an
50 annual nutrient management report with the Board.

51 D. The annual nutrient management report shall include the following information:

52 1. A copy of the current nutrient management plan identification cover sheet consistent
53 with regulations promulgated pursuant to §10.1-104.2;

54 2. A summary of nutrient related information for the farm for the previous calendar year
55 on a form approved by the Board and containing at a minimum the following information by
56 crop type and acreage i) total commercial fertilizer nutrients applied; ii) total manure applied and
57 type of manure; and iii) total biosolids applied.

58 3. A certification statement signed by the operator verifying that the information in the
59 report is accurate and that total acreage of all farmland to which nutrients are applied will be
60 managed consistent with the nutrient management plan during the current cropping season and
61 upcoming cropping year.

62 E. Records shall be maintained by the operator for each farm indicating operator name;
63 identification numbers for fields and acreage; crop or plant type; date, rate, and type of nutrient
64 application (fertilizer, manure, etc.); and method of application (broadcast, starter, topdress,
65 sidedress, injected) on a form approved by the Board.

66 F. The Department may conduct inspections to ensure compliance with the nutrient
67 management plans. The Department will target inspection of at least 10% of the farms with
68 nutrient management plans annually. The nutrient management plan shall be made available to
69 Department personnel or their authorized agents upon request. Department personnel or their
70 authorized agents may review the nutrient management plan, records and other indicators of
71 compliance at the site of the farm or at a location agreed to by the Department and the operator
72 of the farm. In conducting an inspection and reviewing the nutrient management plan and
73 records, the Department shall:

74 1. Provide the operator at least 48 hours advance notice;

75 2. Enter the property at a reasonable time that allows the operator to be present; and

76 3. Conduct the evaluation in a manner that minimizes any inconvenience to the operator.

77 G. The Board may impose penalties for noncompliance with this section.

78 1. In assessing penalties for noncompliance, the Board shall follow the informal fact-
79 finding procedures of the Virginia Administrative Process Act (§ 2.2-4019). The owner may
80 seek judicial review of the final decision of the Board pursuant to the provisions of the
81 Administrative Process Act (§ 2.2-4000 et seq.).

82 2. Noncompliance shall include:

83 a. Failure to cooperate with the Department's or its authorized agent's request to conduct
84 an inspection and review of a nutrient management plan and records relating to the plan;

85 b. Failure to have a current nutrient management plan as required; or

86 c. Failure to properly implement a nutrient management plan.

87 3. Where it is determined that an operator is not in compliance with the requirements of
88 this section, the Department shall issue a written notice to the operator. If the written notice is
89 not addressed within 60 days of issuance, the operator and the Department shall develop a
90 corrective action plan to remedy the noncompliance. If the operator does not implement any
91 corrective action within the timeframe specified in the corrective action plan, the Board may
92 impose a penalty not to exceed \$250 per day for which the corrective action is not implemented.
93 The penalty shall not exceed a total of \$5,000 for a 365 day period. Additionally, the Board may
94 direct the Department to deny or restrict future cost-share payments until the Department
95 determines the operator is in compliance with the provisions of this section.

96 4. In determining the amount of the penalty, the Board shall consider:

97 a. The willfulness of the violation, the extent to which the existence of the violation was
98 known to but uncorrected by the operator, and the extent to which the operator exercised
99 reasonable care;

100 b. Any actual harm to water quality or threat to human health;

101 c. Any steps taken to cease, remove, or mitigate the violation; and

102 d. The extent to which the current violation is part of a recurrent pattern of the same or
103 similar type of violation committed by the operator.

104 5. Any civil penalty imposed under this subsection shall be paid to the Nutrient
105 Management Training and Certification Fund established in § 10.1-104.2 and may be utilized for
106 the implementation of this section and the nutrient management program.

107 6. In cases of inability to collect the civil penalty or failure of any operator to pay all or a
108 portion of the penalty, the Board may refer the matter to the Office of the Attorney General
109 which shall institute an action in the appropriate court to recover the penalty. Any civil penalty
110 assessed shall act as a lien on the property of the operator against whom the penalty has been
111 assessed.

112 H. The requirements of this section shall not apply to those farms that are subject to
113 nutrient management requirements pursuant to § 62.1-44.17:1 or § 62.1-44.17:1.1.

114 I. The Board may adopt regulations to further the administration of this section.

115 **2 That the Department shall consider alternatives to improve and streamline nutrient**
116 **management plan development.**

2
3
4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-2]**
8 **Draft Legislation**
9

10 *A BILL to amend the Code of Virginia by adding a section numbered 10.1-104.5, relating to*
11 *limitations on the composition and use of lawn fertilizers and deicing agents.*
12

13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That the Code of Virginia is amended by adding a section numbered 10.1-104.5 as**
15 **follows:**

16 § 10.1-104.5. Use and application of lawn fertilizers and deicing agents; exemptions;
17 penalty.

18 A. As used in this section:

19 "Fertilizer" means any substance containing one or more recognized plant nutrients,
20 which is used for its plant nutrient, and which is designed for use, or claimed to have value, in
21 promoting plant growth.

22 "Lawn fertilizer" or "turf fertilizer" means any fertilizer, whether distributed by a
23 property owner, renter, commercial entity, or locality, distributed for nonagricultural use such as
24 lawns, golf courses, parks, and cemeteries. Lawn fertilizer does not include fertilizer products
25 intended for gardening, tree, shrub, and indoor plant application.

26 B. Any locality operating a program under the regulatory oversight of the Chesapeake
27 Bay Preservation Act (§ 10.1-2100 et seq.), the Erosion and Sediment Control Law (§ 10.1-560
28 et seq.), the Stormwater Management Act (§ 10.1-603.1 et seq.), or other nonpoint source
29 regulations promulgated by the Department of Conservation and Recreation or the Soil and
30 Water Conservation Board shall regulate all provisions of this section under § 15.2-924.1.

31 C. Except as provided in subsection D, effective January 1, 2014 no person shall:

32 1. Apply on any lawn, fertilizer that is labeled as containing more than zero percent
33 phosphorus or other compound containing phosphorus, such as phosphate;

34 2. Apply lawn fertilizer or turf fertilizer after December 1 of any calendar year or prior to
35 March 1 of any calendar year or at any other time when the ground is frozen; or

36 3. Cause fertilizer to be applied to or run onto any impervious surface, including parking
37 lots, roadways, and sidewalks. If such application occurs, the fertilizer shall be immediately
38 contained and collected, and either legally applied to turf or placed in an appropriate container.

39 D. The prohibition against the use of fertilizer under subsection B shall not apply to the
40 following:

41 1. Newly established turf or lawn areas during their first growing season;

42 2. Turf or lawn area where soil tests performed within the past three years confirm that
43 the phosphorus levels indicate the need for phosphorus fertilizer applications based upon the
44 Department of Conservation and Recreation's nutrient management standards and criteria
45 established pursuant to § 10.1-104.2. The fertilizer application shall not contain an amount of
46 phosphorus exceeding the amount and rate of application based on the soil test;

47 3. Gardens, including vegetable and flower, trees, and shrubs, and indoor applications,
48 including greenhouses; or

49 4. Yard waste compost or other similar materials that are primarily organic in nature and
50 are applied to improve the physical condition of the soil.

51 However, the application of fertilizers under this subsection shall be consistent with the
52 nutrient management standards and criteria of the Department of Conservation and Recreation
53 pursuant to § 10.1-104.2.

54 E. No business shall:

55 1. Store fertilizer unless protected from exposure to precipitation and precipitation runoff;

56 or

57 2. Allow any damaged fertilizer containers or spilled fertilizer to be exposed to
58 precipitation or runoff from precipitation or to be discarded or washed into storm drains.

59 F. Effective January 1, 2014, no person shall display for sale any fertilizer that is labeled
60 as lawn fertilizer or turf fertilizer and containing more than zero percent phosphorus or other
61 compound containing phosphorus. However, should the conditions of subsection B be met,
62 fertilizer with greater than zero percent phosphorus may be sold but user access must be limited
63 to this product.

64 G. Effective January 1, 2014, no person shall sell any deicing agent containing urea or
65 other forms of nitrogen or phosphorus intended for application to parking lots, roadways, and
66 sidewalks or other paved surfaces for use in the Commonwealth.

67 H. Effective January 1, 2014, a sign referencing the requirements of this section and the
68 effects of excessive fertilizer application on state waters such as the Chesapeake Bay shall be
69 prominently displayed where fertilizers are sold. A business shall be deemed to have complied
70 with this requirement by displaying a sign consistent with a sample sign that the Department
71 shall design and make available.

72 I. Any person who violates any provision of this section may be assessed a civil penalty
73 by a locality not to exceed \$250 per violation per day or a locality may also accept a civil charge
74 of up to \$250 per violation per day. The penalty shall not exceed a total of \$2,000 for a 365 day
75 period. All civil penalties assessed under this section shall be deposited in an account dedicated
76 to implementation of this section.

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

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4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number *[NR-DCR-3]***
8 **Draft Legislation**
9

10 *A BILL to amend and reenact §§ 10.1-603.8:1 and 15.2-2243 of the Code of Virginia, relating to*
11 *the establishment of the Nonpoint Nutrient Offset Program.*

12
13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That §§ 10.1-603.8:1 and 15.2-2243 of the Code of Virginia are amended and reenacted**
15 **as follows:**

16 § 10.1-603.8:1. Stormwater nonpoint nutrient offsets.

17 A. As used in this section:

18 "Best management practice (BMP)" or "BMP" means both structural or nonstructural
19 practices and other management practices used to prevent or reduce the pollution of surface
20 waters and groundwater systems from the impacts of construction activities. Such practices are
21 designed in accordance with standards and specifications provided on the Virginia Stormwater
22 BMP Clearinghouse website or in the Virginia Stormwater Management Handbook.

23 "Directly discharge to" means the direct conveyance of stormwater from a land
24 disturbing activity into state waters. For purposes of both concentrated discharges through pipes,
25 ditches, MS4s, or other conveyances and sheet flow, the direct discharge is located where the
26 stormwater first enters a state water, either on or off-site.

27 "Impaired water" means a water contained in the current 303(d) Report on Impaired
28 Waters in Virginia published by the Department of Environmental Quality that does not meet
29 water quality standards and is impaired by one or more pollutants.

30 "Maximum extent practicable" or "MEP" means thoroughly considering the use of BMPs
31 in alternative site designs in order to demonstrate to the satisfaction of the permit issuing
32 authority that an offset should be allowed for the construction activity. To fully meet this
33 standard, there is an expectation for alternative site designs and calculations to be provided to the
34 permit issuing authority, as well as narrative discussing the options considered. MEP necessarily
35 involves the use of good engineering practices and professional judgment and interaction
36 between the buyer, his professional, and the permit issuing authority.

37 "Nonpoint nutrient offset" means nutrient reductions certified by the Department as
38 nonpoint nutrient offsets under the Chesapeake Bay Watershed Virginia Stormwater Nonpoint
39 Nutrient Exchange Offset Program (§ ~~62.1-44.19:12~~ et seq.) under § 10.1-603.8:1.B.

40 "Nutrient" means phosphorus.

41 "Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any
42 locality that has adopted a local stormwater management program.

43 "Practicable" means that a buyer and his professional have demonstrated to the
44 satisfaction of the permit issuing authority using good engineering practices and professional
45 judgment that full compliance is not reasonably achievable on-site in light of factors including

46 but not limited to site constraints, cost associated with potential on-site best management
47 practices, and local conditions. Practicable necessarily involves the professional judgment of the
48 buyer and his professional in determining what is appropriate for a given construction project's
49 requirements and site constraints.

50 "Tributary" has the same meaning as in § 62.1-44.19:13.

51 B. The Department shall operate a Virginia Stormwater Nonpoint Nutrient Offset
52 Program that shall certify nonpoint nutrient offsets that may be used to comply with water
53 quality requirements for land disturbing activities operating under a General Virginia
54 Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from
55 Construction Activities or a Construction Individual Permit. Best management practices that are
56 certified as offsets shall achieve reductions beyond those already required by or funded under
57 federal or state law or a Total Maximum Daily Load Watershed Implementation Plan associated
58 with such best management practice.

59 Any person may create an offset and submit such offset to the Department for
60 consideration for certification. July 1, 2011 shall serve as the reference point date for the
61 condition of the land prior to conversion from which you can claim nutrient reductions.

62 Localities may trade certified credits with another locality provided that such trading
63 does not lead to a local water quality impairment and that the other conditions of this section are
64 met. Certified nonpoint nutrient offset credits may also be utilized to meet facility point source
65 reductions required pursuant to § 62.1-44.19:12 et seq. with the approval of the Department of
66 Environmental Quality.

67 A permit issuing authority ~~may~~ shall allow compliance with stormwater nonpoint nutrient
68 runoff water quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the
69 use of the permittee's acquisition of certified nonpoint nutrient offsets in the same tributary in
70 accordance with this section. When approving the use of a certified nonpoint nutrient offset, any
71 entity recognized as a permit issuing authority shall utilize the water quality technical criteria of
72 the Stormwater Management Act and attendant regulations when conducting alternative site
73 design and final plan reviews or Board approved equivalent criteria.

74 C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address
75 water quantity control requirements. No permit issuing authority shall allow the use of nonpoint
76 nutrient offsets in contravention of ~~local~~ water quality-based limitations: (i) consistent with
77 determinations made pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal
78 separate storm sewer system (MS4) program plan approved by the Department, or (iii) as
79 otherwise may be established or approved by the Board. Where it is determined that a
80 construction activity will directly discharge to an impaired water, the permit issuing authority
81 shall determine whether the nutrient runoff from the construction activity may further contribute
82 to the impairment. In such situation, an offset shall not be allowed unless such offset is located
83 within the upstream portion of the watershed of the impaired segment and it fully offsets any
84 contributions from the land disturbing activity to the impairment.

85 D. ~~A-After a land disturbing activity's General Virginia Stormwater Management~~
86 ~~Program (VSMP) Permit for Discharges of Stormwater from Construction Activities on-site~~
87 ~~requirements or Construction Individual Permit on-site requirements have been met, as well as~~
88 ~~the required control of any limiting nutrients in a local TMDL, a permit issuing authority may~~
89 ~~only shall~~ allow the use of nonpoint nutrient offsets ~~when the permit applicant demonstrates to~~
90 ~~the satisfaction of the permit issuing authority that (i) alternative site designs have been~~
91 ~~considered that may accommodate on-site best management practices, (ii) on-site best~~
92 ~~management practices have been considered in alternative site designs to the maximum extent~~

93 ~~practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full~~
94 ~~compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot~~
95 ~~practicably be met on site. Offset alternatives under this section shall be utilized before options~~
96 ~~for the purposes of addressing stormwater water quality under § 15.2-2243 or any state buy-~~
97 ~~down program under the Virginia Stormwater Management Regulations or local fee-in-lieu-of~~
98 ~~program may be considered. In each of these programs, the best management practices~~
99 ~~necessary to fully mitigate for the land disturbing activities shall be in place at the time the land~~
100 ~~disturbing activity begins.~~

101 E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be
102 provided to the permit issuing authority in a certification from an offset broker documenting the
103 number of ~~phosphorus~~ nonpoint nutrient offsets acquired and the associated ratio of ~~nitrogen~~
104 other allowable nonpoint nutrient offsets at the offset generating facility. The offset broker shall
105 pay the permit issuing authority a water quality enhancement fee equal to six percent of the
106 amount paid by the permittee for the nonpoint nutrient offsets. If a locality is not the permit
107 issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund
108 established by § 10.1-603.4:1. If the permit issuing authority is a locality, such fees shall be used
109 solely in the locality where the associated stormwater permit applies for inspection and
110 maintenance of stormwater best management practices, stormwater educational programs, or
111 programs designed to protect or improve local water quality.

112 F. Except as limited in subsection C in impaired waters, Nonpoint nonpoint nutrient
113 offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit
114 hydrologic unit code as defined by the United States Geological Survey as the permitted site.
115 Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only
116 be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are
117 available within the same or adjacent eight digit hydrologic unit code when the permit issuing
118 authority accepts the final site design. In such cases, and subject to other limitations imposed in
119 this section, nonpoint nutrient offsets generated within the same tributary may be used. In no
120 case shall nonpoint nutrient offsets from another tributary be used unless such strategy is
121 approved in a TMDL Watershed Implementation Plan.

122 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water
123 quality criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall
124 (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment
125 nonpoint nutrient runoff compliance requirement and (ii) assure that the nonpoint nutrient offsets
126 are secured in perpetuity. All offsets must be placed under a conservation easement, open space
127 easement, restrictive covenant, or other instrument to ensure that the nutrient reducing offsets
128 will remain in place in perpetuity and that the offsets will be appropriately managed and
129 monitored. If structural, the BMPs shall have maintenance agreements developed and recorded
130 in accordance with the Virginia Stormwater Management Regulations.

131 The recorded restrictive covenants or other appropriate instrument shall provide the
132 broker, the holder of the covenant or recorded instrument, and the Department and their
133 authorized agents, with advance notice, the right to enter and go on the offset generating facility
134 to inspect and take actions necessary to verify compliance. The instrument shall be enforceable
135 by the broker, holder, and the Department.

136 H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment
137 nonpoint nutrient runoff compliance requirements unless off-site options, including offsets
138 authorized under this section, pro rata share provisions of § 15.2-2243 when allowed, or any

139 state buy-down programs authorized under the Virginia Stormwater Management Regulations
140 have been considered and found not available.

141 I. ~~In considering off-site options, the permit issuing authority shall give priority to the use~~
142 ~~of nonpoint nutrient offsets unless a local fee in lieu of, pro rata share, or similar program has~~
143 ~~been approved by the Board as being substantially equivalent in nutrient reduction benefits.~~
144 ~~However, prior to approval by the Board, there shall be a rebuttable presumption that any local~~
145 ~~government fee in lieu of, pro rata share, or similar program is substantially equivalent in~~
146 ~~nutrient reduction benefits. The Board shall establish criteria for determining whether any such~~
147 ~~local program is substantially equivalent, which shall be used during the local stormwater~~
148 ~~management program approval process in § 10.1-603.3.~~

149 ~~J. The Board may establish by regulation as necessary, additional elements of a~~
150 ~~stormwater nonpoint nutrient offset program for portions of the Commonwealth that do not drain~~
151 ~~into the Chesapeake Bay.~~

152 ~~K. J. Nutrient reductions obtained through nonpoint nutrient offsets shall be credited~~
153 ~~toward compliance with any nutrient allocation assigned to a municipal separate storm sewer~~
154 ~~system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load~~
155 ~~applicable to the location where the activity for which the nonpoint nutrient offsets are used~~
156 ~~takes place. If the activity for which the nonpoint nutrient offsets are used does not discharge to a~~
157 ~~municipal separate storm sewer system, the nutrient reductions shall be credited toward~~
158 ~~compliance with the applicable nutrient allocation.~~

159 ~~K. The nonpoint nutrient offset broker shall provide an annual report to the Department~~
160 ~~that includes the current ledger and photographs that fully document the status of the certified~~
161 ~~offset generating facility. Should an acquisition of a nonpoint nutrient offset credit occur from~~
162 ~~the offset generating facility, an updated ledger indicating at a minimum the amount of offsets as~~
163 ~~well as information identifying the buyer and the location of the buyer's project shall be~~
164 ~~provided to the Department within seven business days of the transaction.~~

165 ~~L. In order to properly credit and account for allowed nonpoint nutrient offsets, a~~
166 ~~qualifying local program shall report to the Department in accordance with Department~~
167 ~~procedures, information regarding all off-site reductions that have been authorized to meet state~~
168 ~~or local water quality requirements.~~

169 ~~M. On its website, the Department shall maintain a list of certified nonpoint nutrient~~
170 ~~offsets and the credits against such banks.~~

171 § 15.2-2243. Payment by subdivider of the pro rata share of the cost of certain facilities.

172 A. A locality may provide in its subdivision ordinance for payment by a subdivider or
173 developer of land of the pro rata share of the cost of providing reasonable and necessary
174 sewerage, water, and drainage facilities, located outside the property limits of the land owned or
175 controlled by the subdivider or developer but necessitated or required, at least in part, by the
176 construction or improvement of the subdivision or development; however, no such payment shall
177 be required until such time as the governing body or a designated department or agency thereof
178 has established a general sewer, water, and drainage improvement program for an area having
179 related and common sewer, water, and drainage conditions and within which the land owned or
180 controlled by the subdivider or developer is located or the governing body has committed itself
181 by ordinance to the establishment of such a program. Such regulations or ordinance shall set
182 forth and establish reasonable standards to determine the proportionate share of total estimated
183 cost of ultimate sewerage, water, and drainage facilities required to adequately serve a related
184 and common area, when and if fully developed in accord with the adopted comprehensive plan,
185 that shall be borne by each subdivider or developer within the area. Such share shall be limited to

186 the amount necessary to protect water quality based upon the pollutant loading caused by the
187 subdivision or development or to the proportion of such total estimated cost which the increased
188 sewage flow, water flow, and/or increased volume and velocity of storm water runoff to be
189 actually caused by the subdivision or development bears to total estimated volume and velocity
190 of such sewage, water, and/or runoff from such area in its fully developed state. In calculating
191 the pollutant loading caused by the subdivision or development or the volume and velocity of
192 storm water runoff, the governing body shall take into account the effect of all on-site storm
193 water facilities or best management practices constructed or required to be constructed by the
194 subdivider or developer and give appropriate credit therefor.

195 Stormwater nutrient load reductions addressed under this section shall only be those
196 water quality requirements beyond those required to be achieved on-site pursuant to a General
197 Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from
198 Construction Activities or Construction Individual Permit issued in accordance with the Virginia
199 Stormwater Management law (§ 10.1-603.2 et seq.) and attendant regulations and where a
200 nonpoint nutrient offset certified and allowable in accordance with § 10.1-603.8:1 is not
201 available.

202 Where stormwater VSMP permit requirements are addressed in accordance with this
203 section, all credits and reductions shall be reported to the Department of Conservation and
204 Recreation in accordance with § 10.1-603.8:1.

205 B. Each such payment received shall be expended only for necessary engineering and
206 related studies and the construction of those facilities identified in the established sewer, water,
207 and drainage program; however, in lieu of such payment the governing body may provide for the
208 posting of a personal, corporate or property bond, cash escrow or other method of performance
209 guarantee satisfactory to it conditioned on payment at commencement of such studies or
210 construction. The payments received shall be kept in a separate account for each of the
211 individual improvement programs until such time as they are expended for the improvement
212 program. All bonds, payments, cash escrows or other performance guarantees hereunder shall be
213 released and used, with any interest earned, as a tax credit on the real estate taxes on the property
214 if construction of the facilities identified in the established water, sewer and drainage programs
215 is not commenced within twelve years from the date of the posting of the bond, payment, cash
216 escrow or other performance guarantee.

217 C. Any funds collected for pro rata programs under this section prior to July 1, 1990,
218 shall continue to be held in separate, interest bearing accounts for the project or projects for
219 which the funds were collected and any interest from such accounts shall continue to accrue to
220 the benefit of the subdivider or developer until such time as the project or projects are completed
221 or until such time as a general sewer and drainage improvement program is established to
222 replace a prior sewer and drainage improvement program. If such a general improvement
223 program is established, the governing body of any locality may abolish any remaining separate
224 accounts and require the transfer of the assets therein into a separate fund for the support of each
225 of the established sewer, water, and drainage programs. Upon the transfer of such assets,
226 subdividers and developers who had met the terms of any existing agreements made under a
227 previous pro rata program shall receive any outstanding interest which has accrued up to the date
228 of transfer, and such subdividers and developers shall be released from any further obligation
229 under those existing agreements. All bonds, payments, cash escrows or other performance
230 guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the
231 real estate taxes on the property if construction of the facilities identified in the established

232 water, sewer and drainage programs is not commenced within twelve years from the date of the
233 posting of the bond, payment, cash escrow or other performance guarantee.

234 **2. All nonpoint nutrient offset credits that have been certified by the Department of**
235 **Environmental Quality shall be transferred to the books of the Department of**
236 **Conservation and Recreation and shall remain as certified credits.**

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

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3
4 *Department of Conservation and Recreation*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-4]**
8 **Draft Legislation**
9

10 *A BILL to amend and reenact § 10.1-603.3 of the Code of Virginia, relating to the adoption*
11 *and establishment of stormwater programs by localities.*
12

13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That §§ 10.1-603.3 of the Code of Virginia is amended and reenacted as follows:**

15 § 10.1-603.3. Establishment of stormwater management programs by localities.

16 A. ~~All localities Any locality located within Tidewater Virginia as defined by the~~
17 ~~Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), or any locality that is partially or wholly~~
18 ~~designated as required to obtain coverage under an MS4 permit under the provisions of the~~
19 ~~federal Clean Water Act, shall be required to adopt a local stormwater management program for~~
20 ~~land disturbing activities consistent with the provisions of this article. Each locality shall submit~~
21 ~~an application package to the Board for review and approval according to a schedule set by the~~
22 ~~Board. Such schedule shall require adoption no sooner than 15 12 months and not more than 24~~
23 ~~24 months following the effective date of the regulation that establishes local program criteria~~
24 ~~and delegation procedures, unless the Board deems that the Department's review of the local~~
25 ~~program warrants an extension up to an additional 12 months, provided the locality has made~~
26 ~~substantive progress. A locality may submit an application to the Board for review and approval~~
27 ~~adopt a local stormwater management program at an earlier date with the consent of the Board.~~
28 ~~The Board shall delegate a local stormwater management program to a locality when it deems a~~
29 ~~program consistent with this article. Each Board approved program shall become effective on~~
30 ~~July 1, 2014 or as soon after that date as consistency is demonstrated.~~

31 B. ~~Any locality not specified in subsection A may elect to adopt and administer a local~~
32 ~~stormwater management program for land disturbing activities pursuant to this article. Such~~
33 ~~localities shall inform the Board and the Department of their initial intention to seek delegation~~
34 ~~for the stormwater management program for land disturbing permits within six months following~~
35 ~~the effective date of the regulation that establishes local program criteria and delegation~~
36 ~~procedures. Thereafter, the Department shall provide an annual schedule by which localities can~~
37 ~~submit applications for delegation.~~

38 C. ~~In the absence of the delegation of a stormwater management program to a locality,~~
39 ~~the Department will administer the responsibilities of this article within the given jurisdiction in~~
40 ~~accordance with an adoption and implementation schedule set by the Board.~~

41 D. ~~The Department shall develop a model ordinance for establishing a local stormwater~~
42 ~~management program consistent with this article.~~

43 E. ~~C. Each locality that is required to or that elects to adopt and administer an approved~~
44 ~~local stormwater management program shall, by ordinance, establish a local stormwater~~
45 ~~management program that may be administered in conjunction with a local MS4 program and a~~

46 local erosion and sediment control program, which shall include, but is not limited to, the
47 following:

48 1. Consistency with regulations adopted in accordance with provisions of this article;

49 2. Provisions for long-term responsibility for and maintenance of stormwater
50 management control devices and other techniques specified to manage the quality and quantity
51 of runoff; and

52 3. Provisions for the integration of locally adopted stormwater management programs
53 with local erosion and sediment control, flood insurance, flood plain management, and other
54 programs requiring compliance prior to authorizing construction in order to make the submission
55 and approval of plans, issuance of permits, payment of fees, and coordination of inspection and
56 enforcement activities more convenient and efficient both for the local governments and those
57 responsible for compliance with the programs.

58 ~~F. D. The Board shall delegate a local stormwater management program to a locality~~
59 ~~when it deems a program consistent with this article~~ Until program consistency is approved for a
60 locality, the Department shall continue to issue general permit coverage in that locality.

61 G. E. Delegated localities may enter into agreements with soil and water conservation
62 districts, adjacent localities, or other entities to carry out the responsibilities of this article.

63 H. F. Localities with a Board approved ~~that adopt a local~~ stormwater management
64 program shall have the authority to issue a consolidated stormwater management and erosion and
65 sediment control permit that is consistent with the provisions of the Erosion and Sediment
66 Control Law (§ 10.1-560 et seq.).

67 I. G. Any local stormwater management program adopted pursuant to and consistent with
68 this article and approved by the Board shall be considered to meet the stormwater management
69 requirements under the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) and attendant
70 regulations.

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

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4 ***[Department of Conservation and Recreation]***
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-5]**
8 **Draft Legislation**
9

10 *A BILL to amend and reenact §§ 10.1-2100 through 10.1-2102, 10.1-2109, and 10.1-2110 of the*
11 *Code of Virginia, relating to the expansion of Chesapeake Bay Preservation Act to cover*
12 *the entire Chesapeake Bay Watershed.*
13

14 **Be it enacted by the General Assembly of Virginia:**

15 **1. That §§ 10.1-2100 through 10.1-2102, 10.1-2109, and 10.1-2110 of the Code of Virginia**
16 **are amended and reenacted as follows:**

17 § 10.1-2100. Cooperative state-local program.

18 A. Healthy state and local economies and a healthy Chesapeake Bay are integrally
19 related; balanced economic development and water quality protection are not mutually exclusive.
20 The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters
21 and the promotion of the general welfare of the people of the Commonwealth require that: (i) the
22 counties, cities, and towns of ~~Tidewater Virginia~~ Virginia's Chesapeake Bay Watershed
23 incorporate general water quality protection measures, including measures that advance
24 strategies to address the Chesapeake Bay Total Maximum Daily Load established by the United
25 States Environmental Protection Agency, into their comprehensive plans, zoning ordinances, and
26 subdivision ordinances; (ii) the counties, cities, and towns of ~~Tidewater Virginia~~ Virginia's
27 Chesapeake Bay Watershed establish programs, in accordance with criteria established by the
28 Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay
29 Preservation Areas, which if improperly developed may result in substantial damage to the water
30 quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources
31 available to local governing bodies by providing financial and technical assistance, policy
32 guidance, and oversight when requested or otherwise required to carry out and enforce the
33 provisions of this chapter; and (iv) all agencies of the Commonwealth exercise their delegated
34 authority in a manner consistent with water quality protection provisions of local comprehensive
35 plans, zoning ordinances, and subdivision ordinances when it has been determined that they
36 comply with the provisions of this chapter.

37 B. Local governments have the initiative for planning and for implementing the
38 provisions of this chapter, and the Commonwealth shall act primarily in a supportive role by
39 providing oversight for local governmental programs, by establishing criteria as required by this
40 chapter, and by providing those resources necessary to carry out and enforce the provisions of
41 this chapter.

42 § 10.1-2101. Definitions.

43 For the purposes of this chapter, the following words shall have the meanings
44 respectively ascribed to them:

45 "Board" means Chesapeake Bay Local Assistance Board.

46 "Chesapeake Bay Preservation Area" means an area delineated by a local government in
47 accordance with criteria established pursuant to § 10.1-2107.

48 "Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter
49 for the purpose of determining the ecological and geographic extent of Chesapeake Bay
50 Preservation Areas and for use by local governments in permitting, denying, or modifying
51 requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

52 "Department" means the Department of Conservation and Recreation.

53 "Director" means the Director of the Department of Conservation and Recreation.

54 "Person" means any corporation, association, or partnership, one or more individuals, or
55 any unit of government or agency thereof.

56 "Secretary" means the Secretary of Natural Resources.

57 "State waters" means all waters, on the surface or under the ground, wholly or partially
58 within or bordering the Commonwealth or within its jurisdiction.

59 "Virginia's Chesapeake Bay Watershed" means the following jurisdictions: The Counties
60 of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath,
61 Bedford, Botetourt, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield,
62 Clarke, Craig, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick,
63 Giles, Gloucester, Goochland, Greene, Hanover, Henrico, Highland, Isle of Wight, James City,
64 King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg,
65 Madison, Mathews, Middlesex, Montgomery, Nelson, New Kent, Northampton,
66 Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince
67 William, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah,
68 Spotsylvania, Stafford, Surry, Warren, Westmoreland, and York; the Cities of Alexandria, Buena
69 Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Fairfax, Falls Church,
70 Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas
71 Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Staunton, Suffolk,
72 Virginia Beach, Waynesboro, Williamsburg, and Winchester.

73 ~~"Tidewater Virginia" means the following jurisdictions: The Counties of Accomack,~~
74 ~~Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico,~~
75 ~~Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews,~~
76 ~~Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William,~~
77 ~~Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria,~~
78 ~~Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell,~~
79 ~~Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia~~
80 ~~Beach, and Williamsburg.~~

81 § 10.1-2102. Chesapeake Bay Local Assistance Board established.

82 A. There is hereby established the Chesapeake Bay Local Assistance Board. The Board
83 shall consist of nine ~~Tidewater Virginia~~ residents of Virginia's Chesapeake Bay Watershed
84 appointed by the Governor, subject to confirmation by the General Assembly. The Board
85 membership shall be geographically representative of the Chesapeake Bay watershed and consist
86 of at least no more than one individual member from each any Planning District in which there is
87 located one or more Tidewater Virginia localities within the Chesapeake Bay watershed.
88 Members of the Board shall be representative of, but not limited to, citizens with an interest in
89 and experience with local government, business, the use and development of land, agriculture,
90 forestry and the protection of water quality. Upon initial appointment, three members shall be
91 appointed for four-year terms, three for three-year terms, and three for two-year terms.
92 Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring

93 other than by expiration of a term shall be filled by the Governor in the same manner as the
94 original appointment for the unexpired portion of the term.

95 B. The Board shall adopt rules and procedures for the conduct of its business.

96 C. The Board shall elect a chairman from among its members.

97 D. A quorum shall consist of ~~five~~ a majority of the members. The decision of a majority
98 of those members present and voting shall constitute a decision of the Board; however, a
99 favorable vote of the majority of the Board membership is required to adopt criteria pursuant to §
100 10.1-2107 of this chapter or for any action taken by the Board under subdivision 8 of § 10.1-
101 2103. If at a meeting of the Board action will be taken under subdivision 8 of § 10.1-2103 with
102 respect to the comprehensive plan, zoning or subdivision ordinance of a county, city or town,
103 written notice of such meeting shall be given to the governing body of the locality at least ten
104 days in advance of the meeting.

105 E. The Board shall meet at least four times a year, and other meetings may be held at any
106 time or place determined by the Board or upon call of the chairman or upon written request to
107 the chairman of any two members. All members shall be duly notified of the time and place of
108 any regular or other meeting at least ten days in advance of such meetings.

109 F. The Board shall keep a complete and accurate record of its proceedings. A copy of the
110 record shall be available for public inspection and copying.

111 § 10.1-2109. Local governments to designate Chesapeake Bay Preservation Areas;
112 incorporate into local plans and ordinances; impose civil penalties.

113 A. Counties, cities and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay
114 Watershed shall use the criteria developed by the Board to determine the extent of the
115 Chesapeake Bay Preservation Area within their jurisdictions. ~~Designation of Those counties,~~
116 ~~cities, and towns newly delineated as part of the area subject to this Chapter as of July 1, 2011~~
117 ~~shall have 18 months to designate Chesapeake Bay Preservation Areas shall be accomplished by~~
118 ~~every county, city and town in Tidewater Virginia not later than twelve months after adoption of~~
119 ~~criteria by the Board within their jurisdictions and to implement development and performance~~
120 ~~criteria established by the Board, and shall have 36 months to implement any remaining program~~
121 ~~elements established by the Board.~~

122 B. Counties, cities, and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay
123 Watershed shall incorporate protection of the quality of state waters into each locality's
124 comprehensive plan consistent with the provisions of this chapter.

125 C. All counties, cities and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay
126 Watershed shall have zoning ordinances which incorporate measures to protect the quality of
127 state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this
128 chapter. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in
129 or established pursuant to § 10.1-2107.

130 D. Counties, cities and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay
131 Watershed shall incorporate protection of the quality of state waters in Chesapeake Bay
132 Preservation Areas into their subdivision ordinances consistent with the provisions of this
133 chapter. Counties, cities and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay Watershed
134 shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with
135 all criteria developed by the Board.

136 E. In addition to any other remedies which may be obtained under any local ordinance
137 enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties,
138 cities and towns in ~~Tidewater Virginia~~ Virginia's Chesapeake Bay Watershed may incorporate
139 the following penalties into their zoning, subdivision or other ordinances:

140 1. Any person who: (i) violates any provision of any such ordinance or (ii) violates or
141 fails, neglects, or refuses to obey any local governmental body's or official's final notice, order,
142 rule, regulation, or variance or permit condition authorized under such ordinance shall, upon
143 such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for
144 each day of violation. Such civil penalties may, at the discretion of the court assessing them, be
145 directed to be paid into the treasury of the county, city or town in which the violation occurred
146 for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation
147 Areas therein, in such a manner as the court may direct by order, except that where the violator is
148 the county, city or town itself or its agent, the court shall direct the penalty to be paid into the
149 state treasury.

150 2. With the consent of any person who: (i) violates any provision of any local ordinance
151 related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or
152 fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule,
153 regulation, or variance or permit condition authorized under such ordinance, the local
154 government may provide for the issuance of an order against such person for the one-time
155 payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each
156 violation. Such civil charges shall be paid into the treasury of the county, city or town in which
157 the violation occurred for the purpose of abating environmental damage to or restoring
158 Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city or
159 town itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall
160 be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this
161 subsection. Civil charges may be in addition to the cost of any restoration required or ordered by
162 the local governmental body or official.

163 F. Localities that are subject to the provisions of this chapter may by ordinance adopt an
164 appeal period for any person aggrieved by a decision of a board that has been established by the
165 locality to hear cases regarding ordinances adopted pursuant to this chapter. The ordinance shall
166 allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the
167 decision to the circuit court.

168 § 10.1-2110. Local governments outside of ~~Tidewater Virginia~~ Virginia's Chesapeake
169 Bay Watershed may adopt provisions.

170 Any local government, although not a part of ~~Tidewater Virginia~~ Virginia's Chesapeake
171 Bay Watershed may employ the criteria developed pursuant to § 10.1-2107 and may incorporate
172 protection of the quality of state waters into their comprehensive plans, zoning ordinances and
173 subdivision ordinances consistent with the provisions of this chapter.

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

2
3
4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-6]**
8 **Draft Legislation**
9

10 *A BILL to amend and reenact §§ 10.1-2111 of the Code of Virginia, relating to establishing local*
11 *government authority to exclude livestock from streams by ordinance.*
12

13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That § 10.1-2111 of the Code of Virginia is amended and reenacted as follows:**

15 § 10.1-2111. Local government requirements for water quality protection.

16 A. Local governments shall employ the criteria promulgated by the Board to ensure that
17 the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in
18 a manner that protects the quality of state waters consistent with the provisions of this chapter.

19 B. Local governments shall adopt ordinance provisions which require the installation of
20 livestock stream exclusion practices on all agricultural lands upon which animal grazing occurs
21 in order to minimize livestock impacts to state surface waters. Such ordinance provisions shall
22 provide that practices shall be installed no later than December 31, 2017.

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

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3
4 *[Department of Conservation and Recreation]*
5 **2010 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-10]**
8 **Draft Legislation**
9

10 *A BILL to amend the Code of Virginia by adding a section numbered 10.1-104.5, relating to the*
11 *establishment of supplemental environmental projects.*

12
13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That the Code of Virginia is amended by adding a section numbered 10.1-104.5 as**
15 **follows:**

16 § 10.1-104.5. Supplemental environmental projects.

17 A. As used in this section:

18 "Supplemental environmental project" means an environmentally beneficial project
19 undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

20 B. The Virginia Soil and Water Conservation Board or the Director acting on behalf of
21 the Board or under his own authority in issuing any administrative order, or any court of
22 competent jurisdiction as provided for under this Code, may, in its or his discretion and with the
23 consent of the person subject to the order, provide for such person to undertake one or more
24 supplemental environmental projects. The project shall have a reasonable geographic nexus to
25 the violation or, if no such project is available, shall advance at least one of the declared
26 objectives of the environmental law or regulation that is the basis of the enforcement action.
27 Performance of such projects shall be enforceable in the same manner as any other provision of
28 the order.

29 C. The following categories of projects may qualify as supplemental environmental
30 projects, provided the project otherwise meets the requirements of this section: public health,
31 pollution prevention, pollution reduction, environmental restoration and protection,
32 environmental compliance promotion, and emergency planning and preparedness. In
33 determining the appropriateness and value of a supplemental environmental project, the
34 following factors shall be considered by the enforcement authority: net project costs, benefits to
35 the public or the environment, innovation, impact on minority or low income populations,
36 multimedia impact, and pollution prevention. The costs of those portions of a supplemental
37 environmental project that are funded by state or federal low-interest loans, contracts or grants
38 shall be deducted from the net project cost in evaluating the project. In each case in which a
39 supplemental environmental project is included as part of a settlement, an explanation of the
40 project with any appropriate supporting documentation shall be included as part of the case file.

41 D. Nothing in this section shall require the disclosure of documents exempt from
42 disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

43 E. Any decision whether or not to agree to a supplemental environmental project is
44 within the sole discretion of the Board, official or court and shall not be subject to appeal.

45 F. Nothing in this section shall be interpreted or applied in a manner inconsistent with
46 applicable federal law or any applicable requirement for the Commonwealth to obtain or
47 maintain federal delegation or approval of any regulatory program.

1 **REQUIRED FORMAT: THE PROPOSED DRAFT BILL**

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3
4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-11]**
8 **Draft Legislation**
9

10 *A BILL to amend and reenact §§ 10.1-2128.1 and 62.1-44.118 of the Code of Virginia, relating to*
11 *the consolidation of reporting requirements within the Secretary of Natural Resource's*
12 *impaired waters plan reports.*
13

14 **Be it enacted by the General Assembly of Virginia:**

15 **1. That §§ 10.1-2128.1 and 62.1-44.118 of the Code of Virginia are amended and reenacted**
16 **as follows:**

17 § 10.1-2128.1. Virginia Natural Resources Commitment Fund established.

18 A. There is hereby created in the state treasury a special nonreverting fund to be known
19 as the Virginia Natural Resources Commitment Fund hereafter referred to as "the Subfund,"
20 which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by
21 the Department of Conservation and Recreation. The Subfund shall be established on the books
22 of the Comptroller. All amounts appropriated and such other funds as may be made available to
23 the Subfund from any other source, public or private, shall be paid into the state treasury and
24 credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund
25 and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the
26 end of each fiscal year shall not revert to the general fund but shall remain in the Subfund.
27 Moneys in the Subfund shall be used as provided in subsection B solely for the Virginia
28 Agricultural Best Management Practices Cost-Share Program administered by the Department of
29 Conservation and Recreation.

30 B. Beginning on July 1, 2008, and continuing in each subsequent fiscal year until July 1,
31 2018, out of such amounts as may be appropriated and deposited to the Subfund, distributions
32 shall be made in each fiscal year for the following purposes:

33 1. Eight percent of the total amount distributed to the Virginia Agricultural Best
34 Management Practices Cost-Share Program shall be distributed to soil and water conservation
35 districts to provide technical assistance for the implementation of such agricultural best
36 management practices. Each soil and water conservation district in the Commonwealth shall
37 receive a share according to a method employed by the Director of the Department of
38 Conservation and Recreation in consultation with the Virginia Soil and Water Conservation
39 Board, that accounts for the percentage of the available agricultural best management practices
40 funding that will be received by the district from the Subfund;

41 2. Fifty-five percent of the total amount distributed to the Virginia Agricultural Best
42 Management Practices Cost-Share Program shall be used for matching grants for agricultural
43 best management practices on lands in the Commonwealth exclusively or partly within the
44 Chesapeake Bay watershed; and

45 3. Thirty-seven percent of the total amount distributed to the Virginia Agricultural Best
46 Management Practices Cost-Share Program shall be used for matching grants for agricultural

47 best management practices on lands in the Commonwealth exclusively outside of the
48 Chesapeake Bay watershed.

49 C. The Department of Conservation and Recreation, in consultation with stakeholders,
50 including representatives of the agricultural community, the conservation community, and the
51 Soil and Water Conservation Districts, shall determine an annual funding amount for effective
52 Soil and Water Conservation District technical assistance and implementation of agricultural best
53 management practices pursuant to § 10.1-546.1. Pursuant to § 2.2-1504, the Department shall
54 provide to the Governor the annual funding amount needed for each year of the ensuing biennial
55 period. The Department also shall report include the annual funding amount ~~to the Chairmen of~~
56 ~~the House Appropriations and Senate Finance Committees by October 15 of each year~~ as part of
57 the reporting requirements in § 62.1-44.118.

58 § 62.1-44.118. Status reports on progress; legislative oversight.

59 The Secretary of Natural Resources shall submit the impaired waters clean-up plan as
60 described in § 62.1-44.117 no later than January 1, 2007, to the House Committee on
61 Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the
62 Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate
63 Committee on Finance. Thereafter, a progress report on the implementation of the plan shall be
64 submitted semiannually to these committees of oversight. Reports shall be due on July 1 and
65 December 15 of each year. Water Quality reporting requirements in §§10.1-2127 D, 10.1-2128.1
66 C, and 10.1-2134 shall be annually consolidated into the December 15 report. If there are
67 questions as to the status of the clean-up effort the chairman of any of these committees may
68 convene his committee for the purpose of receiving testimony. The executive branch
69 departments and the Secretary of Natural Resources may request a meeting of any of the
70 committees to inform them as to the progress of the cleanup or to propose specific initiatives that
71 may require legislative action.

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3
4 *[Department of Conservation and Recreation]*
5 **2011 Session of the General Assembly**

6
7 **Proposal Identifier Number [NR-DCR-15]**
8 **Draft Legislation**
9

10 *A BILL to amend the Code of Virginia by adding a section numbered 10.1-104.5, relating to*
11 *the development and implementation of nutrient management plans by specified*
12 *localities.*

13
14 **Be it enacted by the General Assembly of Virginia:**

15 **1. That the Code of Virginia is amended by adding a section numbered 10.1-104.5 as**
16 **follows:**

17 § 10.1-104.5. Nutrient management plans required for locally managed or owned lands
18 within the Chesapeake Bay Watershed.

19 A. Localities lying partially or wholly within the Chesapeake Bay watershed that own or
20 manage land upon which fertilizer, manure, sewage sludge or other compounds containing
21 nitrogen or phosphorus are applied to support agricultural, turf, plant growth, or other uses shall
22 develop and implement a current site-specific nutrient management plan for any such land.
23 Nutrient management plans for all such lands shall be prepared by a certified nutrient
24 management planner pursuant to § 10.1-104.2 and attendant regulations and shall be considered
25 current if developed within the past three years. The Department may conduct periodic reviews
26 of the nutrient management plans and associated nutrient application sites as part of its
27 responsibilities authorized under this section.

28 B. Compliance with the provisions of this section shall be enforced through Municipal
29 Separate Storm Sewer System (MS4) permits issued pursuant to § 10.1-603.2 et seq. and through
30 local program reviews conducted under the Erosion and Sediment Control Law pursuant to §
31 10.1-560 et seq.

32 C. The provisions of this section shall be implemented by July 1, 2014 for all areas
33 covered by MS4 permits and by January 1, 2017 for all other areas.