

Comment Response Document
Regarding the Total Maximum Daily Load of Trash for the Anacostia River Watershed,
Montgomery and Prince George's Counties, Maryland and The District of Columbia

The Maryland Department of the Environment (MDE) and The District Department of the Environment (DDOE) have conducted a public review of the proposed Total Maximum Daily Loads (TMDLs) of Trash for the Anacostia River Watershed, Montgomery and Prince George's Counties, Maryland and The District of Columbia (DC). The public comment period was open from April 19, 2010 through May 18, 2010. DDOE and MDE received seven sets of written comments. Certain comments were directed specifically to a particular jurisdiction, while others are applicable to both jurisdictions. Of the latter, either a single response is given jointly for both, or, where the responses of the jurisdictions differ, separate responses are provided for each.

Below is a list of commentors, their affiliation and the date comments were submitted. In the pages that follow, comments are categorized, summarized with responses from MDE and DDOE.

List of Commentors

Author	Affiliation	Date	Comment Number
Mike Smith	Anacostia Watershed Citizens Advisory Committee (AWCAC)	May 13, 2010	31 through 38
George S. Hawkins	District of Columbia Water and Sewer Authority (WASA)	May 14, 2010	1 through 3, 13
William Bullard	Navy/DoD REC Support	May 18, 2010	7 and 28
Paul Calamita and Lisa M. Ochsenhirt	Maryland Association of Municipal Wastewater Agencies, Inc. (MAMWA) and Storm Water Association of Maryland (SWAM)	May 18, 2010	8 through 10, 29, 30, 39, 43
Jon P. Devine, Jr., Chris Weiss and Rebecca Hammer	Natural Resources Defense Council (NRDC)/D.C. Environmental Network (DCEN)	May 18, 2010	11, 12, 18 through 22
Jennifer C. Chavez	Earthjustice	May 18, 2010	4, 5, 6, 16, 17, 40, 41
James R. Foster, Brent C. Bolin and Masaya Maeda	Anacostia Watershed Society	May 18, 2010	14, 15, 23, 24, 42
Laura Chamberlin	Alice Ferguson Foundation, Inc.	May 18, 2010	25 through 27

COMMENTS ON TMDL ENDPOINT

Comment #1

Submitted by: District of Columbia Water and Sewer Authority (WASA)

“Representatives of WASA and the District Department of Environment (DDOE) have met on several occasions in recent months to discuss WASA’s concerns regarding DDOE’s proposal to use 100 percent removal of the baseline trash load as the TMDL target. Specifically, WASA expressed its concern that the TMDL might be construed to require removal and/or control of 100 percent of the trash discharged from the combined sewer system (CSS), thereby effectively imposing a no-trash discharge standard for the CSS.

WASA’s concern is based on both practical and legal considerations. The technology and resources simply do not exist to eliminate the discharge of all trash from the CSS as reflected in the alternatives analysis underlying WASA’s Long Term CSO Control Plan (LTCP). The LTCP (which together with the underlying alternatives analysis are incorporated by reference in these comments) calls for the capture and control of 98 percent of the volume of combined sewer flows in the Anacostia watershed in the average year at a cost of approximately \$1.7 billion.¹ The LTCP also provides for the control of solids and floatables in the CSO discharges remaining after implementation of the LTCP. While these controls, together with implementation of the Nine Minimum Controls in WASA’s NPDES permit, are designed to capture and or control as much as 98 percent of the trash that otherwise would be discharged to the Anacostia River from the CSS, they will not eliminate such discharges. These controls were adopted and approved following detailed evaluation of a variety of alternatives (including complete separation of the CSS), and therefore, reflect the extent to which WASA can reasonably be expected to remove and/or control the discharge of trash from the CSS.”

¹ The total estimated cost to implement the entire LTCP, including CSO discharges to the Anacostia, the Potomac, and Rock Creek, is approximately \$2.4 billion.

Response #1

Section 303(d) of the Clean Water Act requires TMDLs to be established for impaired or threatened waters at a level necessary to implement the applicable water quality standards, with consideration of seasonal variations and a margin of safety. Similarly, federal regulations at 40 C.F.R. §130.7(c) require TMDLs to be developed at levels necessary to attain and maintain the applicable narrative and numerical water quality standards, with consideration of seasonal variations, critical conditions, and a margin of safety. TMDLs are to include wasteload allocations for point sources and load allocations for nonpoint sources.

As indicated, the endpoint for this TMDL is equal to 100 percent removal of the calculated baseline trash load in the Anacostia watershed. It is the best professional judgment of the Maryland Department of Environment (MDE) and the District Department of Environment (DDOE) that this TMDL endpoint will result in compliance with the narrative water quality criteria for trash in Maryland and the District, which describe unacceptable trash levels in subjective terms such as *objectionable*, *nuisance*, and *unsightly*.

Federal regulations require NPDES permit conditions be consistent with the assumptions and requirements of available WLAs. The WLAs will be considered by the permitting authority in a

manner that is consistent with the TMDL, permitting regulations, and the stormwater conveyance system of each permittee to provide objective and measurable basis for compliance.

Comment #2

Submitted by: WASA

“There is no basis for concluding that discharges of trash from the CSS must be eliminated in order to comply with the District’s narrative water quality standard. To the contrary, the District Department of Health (DDOE’s predecessor agency) has specifically found that the LTCP will, when implemented, comply with the District’s numeric and narrative water quality standards.² Thus, the District has already determined that discharges of trash from the CSOs remaining after LTCP implementation will comply with its narrative water quality standard, and there is no legal basis for establishing a TMDL with a target or waste load allocation requiring greater removal and/or control of trash than will be achieved by the LTCP.”

² See November 4, 2004 Memorandum from Caroline Burnett to Bruce Brennan titled “DOH Legal Sufficiency Review of the District of Columbia Certification of the Long Term Control Plan Submitted by WASA Pursuant to the 1994 CSO Policy”, which is incorporated by reference in these comments.

Response #2

As stated in Response #1, the CWA and its implementing regulations require TMDLs to be developed to meet applicable water quality standards, which may be expressed as numeric water quality criteria or narrative criteria for the support of designated uses. The TMDL must be developed to meet the requirements of the applicable water quality standards – not the requirements of the LTCP. The TMDL target provided in this TMDL is designed to achieve the narrative water quality standards for trash in Maryland and the District. These standards, described in Section 1.4 of the TMDL Report, describe unacceptable levels of trash in subjective terms such as *objectionable*, *nuisance*, and *unsightly*. The District Department of Environment and the Maryland Department of Environment used their best professional judgment to determine that the narrative standards would be satisfied by 100% removal of the calculated baseline load.

MDE and DDOE agree the applicable water quality standards do not require zero (0) trash discharge as an endpoint. Neither the District nor Maryland have any water quality criteria that require the complete elimination of a given pollutant. Even extremely toxic substances have acceptable discharge limits. The TMDL endpoint was therefore set at 100 percent removal of the calculated baseline load, which, as explained in the TMDL Report, is not the same as zero trash in the water.

Comment #3

Submitted by: WASA

“In response to WASA’s concerns, DDOE has verbally assured WASA that it is not DDOE’s intent to require removal and/or control of 100 percent of the trash discharged from the CSS. Rather, DDOE has stated to us that it intends to establish waste load allocations for the CSS that reflect the predicted performance of the selected controls in the LTCP and implementation of the Nine Minimum Controls required by WASA’s NPDES permit. Unfortunately, DDOE’s intent, as expressed to WASA, is not memorialized in the TMDL document. Therefore, we request that DDOE modify the TMDL document to clearly state that the waste load allocations for the CSS

reflect the predicted performance of the selected controls in the LTCP and the Nine Minimum Controls and that WASA will be deemed to be in compliance with these allocations so long as it complies with the LTCP-derived performance standards and Nine Minimum Controls requirements in its NPDES permit.

I want to add that it would also be in the District's interest to also make clear in the TMDL document that it is not DDOE's intent to require removal and/or control of 100 percent of the trash discharged from the District's municipal separate storm sewer system (MS4). As is the case with the CSS, trash discharged to the Anacostia from the MS4 originates in runoff from streets and other impervious areas within the District that as a practical matter can not be controlled to eliminate the discharge of all trash. While measures such as catch basin cleaning, street sweeping, and other best management practices can be employed to reduce the amount of trash entering the MS4, as with the CSS, the technology and resources simply do not exist to eliminate the discharge of all trash from the MS4 given the size of the areas contributing storm water to the MS4 as weather pattern variables affecting the discharge of trash, including rainfall intensities, duration, frequencies, and spatial and time distribution."

Response #3

The TMDL endpoint does not impose a zero-discharge requirement for the District's CSS or any other permittee assigned a WLA in the TMDL. Rather than have WLAs equal to zero under all conditions, the draft WLAs are instead expressed as numeric (non-zero) estimates - based upon the best available data - of the actual trash loads that are generated and must therefore be captured, on average, by each permittee. For example, the baseline trash load (and therefore the WLA) for the District's CSS was calculated at 93,586 lbs/year.¹ To comply with this WLA, WASA must demonstrate that it has captured or removed an average of 93,586 pounds of trash consistent with the assumptions of the TMDL and the requirements of the NPDES program. This is very different from requiring zero trash discharge. Thus, the draft TMDL report explicitly states that, "a TMDL target equal to 100 percent removal of the baseline load is not the same as zero (0) trash in the waterway."² Please refer to Responses #1 and #2 for additional information.

¹ Draft TMDL Report, p.42, Table 23.

² Draft TMDL Report, p.39.

Comment #4

Submitted by: EarthJustice

"The applicable water quality standards, including designated uses and narrative, require trash to be eliminated from point and non-point sources. See Draft TMDL at 8-11. In particular, Washington, D.C. has adopted water quality standards requiring that "[t]he surface waters of the District shall be free from substances attributable to point or nonpoint sources discharged in amounts that . . . [s]ettle to form objectionable deposits [or] [f]loat as debris, scum, oil or other matter to form nuisances. . . ." 21 D.C.M.R. § 1104.3. In addition, Class A waters "shall be free of discharges of untreated sewage, litter and unmarked, submerged or partially submerged, man-made structures which would constitute a hazard to the users." *Id.* § 1104.1(a) and (b). Maryland water quality standards provide that Maryland waters "may not be polluted by... [a]ny material, including floating debris,... in amounts sufficient to... [b]e unsightly;... [c]reate a nuisance;

or... [i]nterfere directly or indirectly with designated uses....” COMAR § 26.08.02.03(B)(2). Because even small amounts of trash are detrimental to the applicable designated uses and cause impairments of the foregoing water quality standards, the trash TMDLs must be set at zero.

Response #4

The commentor would read terms such as “amounts that ... form objectionable deposits” and “amounts that ... form nuisances” out of 21 DCRM § 1104.3, “which would constitute a hazard to the users” out of 21 ECMR § 1104.1(a) and (b), and “in amounts sufficient to” out of COMAR § 26.08.02.03(B)(2). These terms in the regulations must be assigned meaning. While an endpoint of zero would meet these narrative criteria, this does not mean that any endpoint other than zero would not achieve the narrative criteria. Indeed, the more logical reading of these terms is that they do not require an endpoint of zero. As explained in Response #2, there are no water quality criteria in the District or Maryland that require the complete elimination of a given pollutant. Even extremely toxic substances have acceptable discharge limits. The TMDL endpoint is therefore defined as 100 percent removal of the calculated baseline trash load, not zero trash in the water. In the best professional judgment of MDE and DDOE – the agencies responsible for developing and interpreting the applicable narrative criteria – this is an appropriate TMDL endpoint that, when achieved, will result in compliance with water quality standards in both jurisdictions. As set forth in Response # 6, MDE and DDOE’s interpretation of their narrative water quality criteria for purposes of this TMDL is consistent with applicable EPA guidance.

Comment #5

Submitted by: EarthJustice

“In addition to the CWA and state water quality standards, these Trash TMDLs must comply with EPA regulations governing TMDLs. Under those regulations, TMDLs are supposed to consist of the “sum of the individual [wasteload allocations] for point sources and [load allocations] for nonpoint sources and natural background.” 40 C.F.R. § 130.2(i). Wasteload allocations and load allocations are defined as a “portion of a receiving water’s loading capacity...,” *id.* § 130.2(g) and (h), which is defined as “[t]he greatest amount of loading that a water can receive without violating water quality standards.” *Id.* § 130.2(f). This formulation requires the TMDL allocations to be set equal to the highest amount of trash that can be discharged and still ensure compliance with water quality standards—*i.e.* zero. The draft “wasteload allocations” and “load allocations” in the draft TMDL are expressed as negative figures (reductions) that, collectively, are supposed to result in “100 percent removal of the baseline load.” The problem with this approach is that there is no basis for concluding that even full compliance with the negative allocations proposed in the draft will result in 100 percent removal of trash from point and nonpoint source discharges into the Anacostia. In fact, the draft clearly concedes that the TMDL target “is not the same as zero (0) trash in the waterway.” *Id.* Because it cannot be shown that any amount of trash can be discharged into the Anacostia and its tributaries while still ensuring compliance with water quality standards, the load allocations and wasteload allocations in the final TMDLs must be set at zero.”

Response #5

Section 303(d)(1)(C) of the Clean Water Act requires loads “to be established at a level necessary to implement the applicable water quality standards”. Federal regulations at 40 CFR 130.2(i) provide flexibility on how the TMDLs can be expressed in terms of “either mass per time, toxicity, or other appropriate measures.” In this case, expression of the WLAs and LAs in terms of trash to be removed before it enters the waterbody is an appropriate measure. With respect to the commentor’s point that the TMDL endpoint must be zero, see Response #4.

Comment #6

Submitted by: EarthJustice

“The draft TMDL claims that the applicable narrative criteria, which prohibits “objectionable, nuisance, and unsightly” trash is subjective, and cites a 1986 EPA guidance suggesting that a quantifiable threshold cannot be developed for such narrative standards. This decades-old document is directly refuted by EPA’s own more recent guidance documents describing various methods for translating narrative criteria into appropriate numeric values. *See, e.g.* EPA Protocol for Developing Sediment TMDLs, EPA 841-B-99-004 (October 1999); and EPA, Developing Water Quality Criteria for Suspended and Bedded Sediments (SABs); Potential Approaches (Draft, August 2003). Although these guidance documents concern total suspended solids and not trash, the methods for translating narrative criteria based on aesthetic and other such factors into numeric limits are relevant to this trash TMDL. Thus, the fact that some of the applicable criteria are expressed in narrative form cannot excuse an unlawful approach to this Trash TMDL.”

Response #6

MDE and DDOE’s interpretation of the narrative water quality criterion for trash is consistent with EPA’s *Quality Criteria for Water 1986* (known as the Gold Book). The recommended narrative criteria suggested by the Gold Book is consistent with the narrative criteria in both the District and Maryland. The Gold Book states with regard to aesthetic qualities that such “concepts may vary within the minds of individuals encountering the waterway” and that in such cases, narrative criteria are used because “a rationale for these qualities cannot be developed with quantifying definitions.” Though more than 20 years old, the Gold Book section remains EPA’s applicable guidance on this type of narrative water quality criteria. *See* EPA, *National Recommended Water Quality Criteria* (2009) (available at www.epa.gov/waterscience/criteria/wqctable/nrwc-2009.pdf) (citing narrative statement in the Gold Book with reference to aesthetic criteria).

EPA’s Protocol for Developing Sediment TMDLs cited in Comment #6 - intended for sediment TMDLs only – provides various examples of methods for establishing sediment TMDLs consistent with narrative criteria, including user surveys, literature values, indicator relationships, and best professional judgment (BPJ). The guidance states: “It is important to note that this guidance document presents a suggested approach, but not the only approach to TMDL development.” The guidance further states “it is sometimes infeasible to develop numeric targets based on the methods described above because adequate information is not available or relationships between designated uses and selected indicators are not well understood. In this case, it may be feasible to develop target values based on the best professional judgment of resource professionals involved in TMDL development.”¹ In this TMDL, the narrative criteria

for trash and the associated TMDL endpoint were interpreted and developed using BPJ. Therefore, the TMDL is consistent with this guidance document to the extent it applies.

The second document referenced Comment #6, Developing Water Quality Criteria for Suspended and Bedded Sediments (SABs); Potential Approaches, is a draft document. Further, the draft document applies to criteria development, not TMDL development, and applies strictly to sediment, not trash. Finally, the document focuses primarily on the protection of aquatic life, and to the extent it references the other uses, no specific guidance is provided. Therefore, the TMDL is consistent with the EPA's applicable guidance and is not inconsistent with the two documents cited by the commentor.

¹ Protocol for Developing Sediment TMDLs, p.4-21

Comment #7

Submitted by: Department of Defense, Regional Environmental Coordinator

"We recognize the difficulty in developing a TMDL to address an impairment for a narrative standard. In this instance, the narrative criteria in both jurisdictions describe unacceptable levels of trash in subjective terms such as objectionable, nuisance, and unsightly. The TMDL does not try to determine some quantity of trash that could be discharged to the Anacostia River before being deemed by the general public as objectionable. Rather the approach is to remove all sources of trash entering the Anacostia, expressed as lbs removed. In effect, the TMDL becomes a goal of zero trash in the Anacostia. While this is a worthy goal, from a science based standpoint zero trash in the Anacostia is not necessary to insure the health of aquatic biota or humans, or the designated use of the river....Therefore, we recommend that the TMDL be revised to make it explicitly clear the stated WLAs and the zero trash condition in the Anacostia are goals and not enforceable strictly as a numeric standard."

Response #7

See Response #3. The TMDL endpoint is not the same as zero trash in the water. This is made explicitly clear in the TMDL report.

Comment #8

Submitted by: Maryland Association of Municipal Wastewater Agencies, Inc. (MAMWA) and the Stormwater Association of Maryland (SWAM)

"Maryland's Narrative Water Quality Standards Do Not Require Zero Trash. MDE, DCDOE and several co-authors have written the Draft Trash TMDL to require dischargers to remove (or prevent the introduction of) 100% of the baseline load of trash annually discharged into the Anacostia. MDE and DCDOE assert that this level of reduction will bring the Anacostia into compliance with Maryland's and D.C.'s water quality standards.

MAMWA and SWAM disagree that 100% removal (or prevention) is necessary for water quality standards compliance. Furthermore, to the extent that MDE may be inclined to use this approach to develop future TMDLs for other parts of the state, MAMWA and SWAM strongly object. No water quality standard requires zero amounts of any pollutant. The standards recognize that pollutants, even toxic pollutants, will occur in certain amounts and are appropriately regulated at threshold levels of impact/effect. Trash/debris is and should be no different.

Maryland's narrative water quality standards, which would apply to discharges of trash and debris are, in relevant part, as follows:

B. General Water Quality Criteria. The waters of this State may not be polluted by:

(1) Substances attributable to sewage, industrial waste, or other waste that will settle to form sludge deposits that:

(a) Are **unsightly**, putrescent, or odorous, and create a **nuisance**, or

(b) Interfere directly or indirectly with designated uses;

(2) Any material, including floating debris, oil, grease, scum, sludge, and other floating materials attributable to sewage, industrial waste, or other waste **in amounts sufficient to:**

(a) Be **unsightly**;

(b) Produce taste or odor;

(c) Change the existing color to produce **objectionable** color for aesthetic purposes;

(d) Create a nuisance; or

(e) Interfere directly or indirectly with designated uses...

Maryland's water quality standards for trash and debris are narrative and subjective (as evidenced by the bolded terms above). They do not state that "no" or "none" of substances such as trash are permissible. It is only when the amount of trash in a water body reaches a threshold amount that becomes "unsightly," "objectionable," etc. that a discharge is problematic per the standard.

MDE and DCDOE acknowledge the fact that the water quality standards do not require a 100% removal/prevention target in the Draft Trash TMDL text ("...there might be a quantity of trash that could be discharged to the Anacostia River before being deemed by the general public as objectionable..."). Yet, MDE and DCDOE refuse to calculate that amount and establish a more achievable target, despite the fact that a target of less than 100% would comply with standards: "Whatever that level might be, the District and Maryland have concluded that removal of 100 percent of the baseline load would achieve the applicable narrative water quality criteria. Removal of 100 percent of the baseline load also would be sufficient to avoid interference with designated uses." Translated, MDE and DCDOE have admitted in the document that they are requiring removal (or prevention) at levels that are higher than those needed to meet water quality standards. MAMWA and SWAM object to this approach, particularly in light of the operational and financial difficulty involved in attempting to achieve the TMDL target. Localities can sweep streets and clean catch basins at reasonable frequencies to reduce discharges of trash, but they cannot reasonably prevent any discharge of trash. Moreover, localities cannot patrol every mile of shore line to ensure that people are not throwing trash directly into the water. Localities certainly cannot intercept trash that blows or runs off of private property before it reaches a waterbody.

In conclusion, Maryland's water quality standards do not require that Maryland's waters are entirely free of an annual average amount of trash. This is simply not achievable, and MDE's decision to go to such an extreme is unwarranted."

Response #8

See Responses #1, 2 and 4. To the extent that the commentor states that the TMDL is more stringent than minimally necessary to achieve the applicable water quality standards, that would be consistent with inclusion of a margin of safety.

Comment #9

Submitted by: MAMWA and SWAM

“MDE’s Mandate That MS4 Dischargers Remove 100% of the Baseline Trash Load Goes Beyond MEP. Section 402(p)(3)(B) of the Clean Water Act requires that permits for municipal storm sewers “...require controls to reduce the discharge of pollutants to the **maximum extent practicable**...”. MS4s must have programs in place that control the discharge of pollutants from their systems to the maximum extent practicable (MEP). This is the legal compliance standard, and it is implemented by iterative best management practices (BMPs) that are meant to improve the MS4’s performance over time and based upon adaptive management.

MDE’s proposal to require removal (or prevention) of 100% of the average annual trash baseline load is not consistent with the MEP standard. It is simply not practicable for an MS4 locality to remove (or prevent) trash at this level. As noted above, much of the trash/debris in a waterbody is introduced by sources over which localities have little to no control. This does not mean that localities are unwilling to take reasonable steps to keep trash and debris out of the waters in their communities—they are often eager to do so--, but asking an economically stressed community to remove (or prevent) 100% of the average amount of trash in a river is unreasonable and beyond MEP.”

Response #9

Section 303(d) of the Clean Water Act requires TMDLs to be established for impaired or threatened waters at a level necessary to implement the applicable water quality standards, with consideration of seasonal variations and a margin of safety. Federal regulations at 40 C.F.R. §130.7(c) track the statute and require TMDLs to be developed at levels necessary to attain and maintain the applicable narrative and numerical water quality standards, with consideration of seasonal variations, critical conditions, and a margin of safety. TMDLs are to include wasteload allocations for each point source and load allocations for nonpoint sources.

Neither the CWA nor EPA’s implementing regulations require the state or EPA to consider the costs or the technology required to implement the TMDL when establishing the TMDL at a level necessary to implement the applicable water quality standards. In the best professional judgment of MDE and DDOE, the agencies responsible for developing and interpreting the narrative criteria for trash, 100 percent removal of the baseline trash load is an appropriate TMDL endpoint that, when achieved, is expected to result in compliance with water quality standards in both jurisdictions.

Maximum extent practicable (MEP) is a permitting standard required for permits issued to municipal separate storm sewer systems (MS4s), pursuant to section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1412(p)(3)(B)(iii). As explained in the Preamble to EPA’s Phase II stormwater regulations, NPDES permits for MS4 systems must, at a minimum, require the operator to develop, implement, and enforce a stormwater management program designed to

reduce the discharge of pollutants from a regulated system to satisfy the appropriate water quality requirements of the Clean Water Act. Implementing the applicable water quality requirements of the CWA "recognizes the Agency's specific determination under the [Act] of the need to achieve reasonable further progress toward attainment of water quality standards according to the iterative BMP process, as well as the determination that State or EPA officials who establish TMDLs could allocate waste loads to MS4s as they would to other point sources." See 64 Fed. Reg. 68722, 68752-53 (Dec. 8, 1999).

Comment #10

Submitted by: MAMWA and SWAM

"The 100% Trash Removal Target Sets Up Affected Communities to Fail and Opens the Door To Citizen Litigant Control Over Trash Reduction Programs. MAMWA and SWAM are concerned that imposing a 100% removal (or prevention) requirement from the outset, before vetting trash reduction programs to see what level of reduction is realistically attainable, will set up affected communities to fail. That inevitable failure will be met with lawsuits, with litigants seeking attorneys' fees and, more importantly, control over local storm water programs.

In order to prevent this from happening, MDE should impose a much lower trash removal (or prevention) target, and should identify it as the maximum practical reduction for the foreseeable future. MDE could retain the option to increase the target in the future based upon the actual progress achieved over time."

Response #10

See Response #9.

Comment #11

Submitted by: Natural Resources Defense Council (NRDC) and the District of Columbia Environmental Network (DCEN)

"Under EPA regulations, a TMDL is supposed to be "the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background." In turn, both wasteload allocations and load allocations are supposed to consist of "portions of a receiving water's loading capacity," and "loading capacity" is defined as "the *greatest* amount of loading that a water can receive without violating water quality standards." In other words, the rules require this TMDL to be expressed as a number that represents the highest amount of trash pollution that is allowed to enter the river in compliance with water quality standards. There is no such number in the TMDL document. To the contrary, the TMDL document clearly states that the "TMDL target equal to 100 percent removal of the baseline load is not the same as zero (0) trash in the waterway," and does not otherwise attempt to quantify the amount of trash that could be added to the Anacostia without violating water quality standards.

At various places in the draft, the document implicitly acknowledges that this approach is not truly a TMDL, insofar as it describes what a TMDL is *supposed* to be:

- "A TMDL establishes the amount of a pollutant that a waterbody can assimilate without exceeding its water quality standard for that pollutant."
- "A TMDL is the total amount of pollutant that can be assimilated by the receiving waterbody while still achieving water quality standards or goals."

- “TMDLs represent an attempt to quantify the pollutant load that can be present in a waterbody and still ensure attainment and maintenance of water quality standards.”

These restatements of the law are consistent with the regulations quoted above and, critically, with the plain meaning of the phrase “total *maximum* daily load” in the Clean Water Act. Congress’s use of that term – which clearly contemplates some upper limit on loading – cannot be ignored. As you well know, this provision of the Clean Water Act has been the subject of recent litigation, with the U.S. Court of Appeals for the D.C. Circuit deciding a case in 2006 excoriating EPA for interpreting “daily” not to mean “daily” within the TMDL program; it is hard to imagine that the court would be inclined to accept a reading where a “maximum . . . load” does not include a maximum load.”

Response #11

See Response # 4 and 5.

Comment #12

Submitted by: NRDC and DCEN

“The solution is obvious – set a TMDL equivalent to zero. To comply with the requirements for an approvable TMDL and to avoid the problems created by over-reliance on the effort to monitor trash discharges to the watershed, the draft TMDL should be revised to specify a maximum loading rate at or near zero. As discussed below, complying with water quality standards means effectively eliminating garbage from permittees’ discharges.

In the District, the Anacostia River and all but two of its tributaries are considered “Class A” waters, which “*shall be free of discharges of untreated sewage, litter and unmarked, submerged or partially submerged, man-made structures which would constitute a hazard to the users.*” In addition, all of “the surface waters of the District shall be free from substances attributable to point or nonpoint sources discharged in amounts that . . . [s]ettle to form objectionable deposits [or] [f]loat as debris, scum, oil or other matter to form nuisances. . . .”

In Maryland, all waters are designated at least as “Use I” waters, which means they must protect several basic uses, including water contact recreation. In addition, Maryland has a generally applicable narrative water quality criterion which provides that “the waters of this State may not be polluted by . . . [a]ny material, including floating debris, . . . in amounts sufficient to . . . [b]e unsightly; . . . [c]reate a nuisance; or . . . interfere directly or indirectly with designated uses. . . .” These jurisdictions’ standards require virtually all trash to be removed from the watershed by the TMDL. Maryland law demands that trash be eliminated so as to ensure that conditions are not unsightly or do not interfere with water contact recreation, which common sense and experience tell us will happen when even a very small amount of trash is found in the water. The District requires that waters be free of litter discharges. Accordingly, we believe that an adequate TMDL will need to effectively eliminate trash discharges anywhere in the watershed.

Such an approach would be consistent with the way that the State and regional water quality boards that developed the trash TMDL for the Los Angeles River watershed handled their trash target. Specifically, “despite many objections from affected municipalities, the Trash TMDL set a numeric target of zero trash as ‘even a single piece of trash can be detrimental, and no level of

trash is acceptable in waters of the state.’ Moreover, in light of the unique nature of trash pollution, a zero TMDL would serve water quality goals even without a detailed analysis of what amount of pollution could be acceptable; as the court in California noted in reviewing the Los Angeles River TMDL:

the evidence amply shows that because of the nature of trash, including Styrofoam containers and other materials that are undiluted by water, in contrast to chemical pollutants, and the dangers to wildlife of even small amounts of trash, an assimilative capacity study would be difficult to conduct and of little value at the outset. For instance, given the ill effects of trash in a water body it is unlikely such a study would determine the Los Angeles River may be loaded with a certain percentage of trash without affecting beneficial uses, particularly since a TMDL must include a margin of safety that “takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” (33 U.S.C. § 1313(d)(1)(C).) In any event, the Trash TMDL requires the Regional Board to reconsider the zero trash target after a 50 percent reduction of trash is achieved, and no party suggests a trash reduction of at least 50 percent is unwarranted or unattainable. Because of this escape hatch, compliance with a zero trash target may never actually be mandated. The Water Boards’ decision not to conduct or require an assimilative capacity study is within their expertise, not the court’s, and we defer to them on the issue.

We strongly encourage that the draft TMDL be revised to set a zero loading target. The good work that has gone into the effort to estimate current loadings to the river can still be useful without being the lone basis for the obligations to clean up the river; for instance, if replicated, it could help determine if jurisdictions are on track to achieve their goals.

Response #12

See Response # 4

COMMENTS ON BASELINE LOAD & TMDL ALLOCATIONS

Comment #13

Submitted by: WASA

“Clarify in the TMDL that the annual load for the combined sewer system is based upon the LTCP average year, defined as the average of the loads for the years 1988, 1989 and 1990. This will remove uncertainty regarding the climatic basis for establishing the baseline load.

Clarify in the TMDL that evaluation of removal of baseline trash load for the combined sewer system is based on the capture provided by the LTCP. The capture provided by the LTCP is the difference in volume of overflows between the pre-LTCP and the predicted volume of overflows remaining after completion of the LTCP.

Indicate in the TMDL that the calculated pound per day of trash removed is based on the annual load divided by 365 days. This is important because CSOs are episodic events driven by rainfall and trash loading will not occur from this source when there is no rainfall.”

Response #13

WASA exhibit 1 suggests adding average year language to Section 1.5 and 5.1. It is more appropriate in 5.2.2. Based upon these comments, several sections of the TMDL report have been revised, and will read as follows:

Section 5.1

The baseline load is defined as the annual trash load calculated from monitoring data obtained through storm drain and CSO monitoring and in-stream sampling. The baseline load represents a typical annual load. The numeric target is derived from the narrative water quality criteria and includes an explicit margin of safety (MOS).

Section 5.2.2

On the basis of the *District of Columbia Combined Sewer System Long Term Control Plan* (2002), the estimated CSO overflow volume in an average year is 1.282 billion gallons. It is assumed that the current condition of the combined sewer system represents the Scenario with Phase I controls and pump station rehabilitation. The annual average overflow volume in the Upper Anacostia CSO drainage area is 854.81 million gallons, and in the Lower Anacostia CSO drainage area, it is 427.19 million gallons. Given the known trash loading rate (73 pounds per million gallons of overflow) and the average overflow volumes, the estimated baseline trash load from the District CSO system is 93,586 pounds per year. For the CSS, the annual load is the LTCP average year. This is the average of the loads for the years 1988, 1989 and 1990. Table 23 provides a summary of the baseline wasteload to be removed or captured from discharges from the CSS.

Section 5.3

TMDLs must be expressed in terms of a daily load. For this TMDL the calculated annual quantity of trash that must be removed was divided by 365 days to obtain the daily load. Compliance with these TMDLs will require the removal of 100 percent of the daily baseline trash load calculated as an average.

Additional Comments Submitted by DCWASA via Exhibit 1:

Executive Summary pg ix:

- Change “100 percent removal” to “100 percent removal or capture” – **Completed.**
- Change “baseline load is defined as the annual trash load calculated from monitoring data obtained through storm drain monitoring...” to “obtained through storm drain monitoring and combined sewer overflow (CSO)...” – **Completed.**
- Change “quantities of trash that must be removed or prevented from entering” to “trash that must be removed, captured or otherwise prevented from entering” – **Not changed.** Existing phrase is self-explanatory.

Executive Summary pg xi

- Change “100 percent removal” to “100 percent removal or capture” – **Not changed.** Capture is already included elsewhere.
- Add “performance standards established for the LTCP in the Blue Plains NPDES Permit” to the bulleted list – **Not changed.** Too specific and Blue Plains permit is already mentioned above and performance standards should be addressed through the permit, not in the TMDL.

Section 1.5

- Change “100 percent removal” to “100 percent removal or capture” – **Completed.**
- Add sentence about CSS capture provided in the LTCP and sentence about annual load of LTCP average year – **Not changed.** LTCP is discussed in Section 5.2.2, which includes additional changes based on WASA comments.
- Change “baseline load is defined as the annual trash load calculated from monitoring data obtained through storm drain monitoring...” to “obtained through storm drain monitoring and combined sewer overflow (CSO)...” – **Completed.**

Section 5.1

- Change “baseline load is defined as the annual trash load calculated from monitoring data obtained through storm drain monitoring...” to “obtained through storm drain monitoring and combined sewer overflow (CSO)...” – **Completed.**
- Add sentence about annual load of LTCP average year – **Not changed.** LTCP is discussed in Section 5.2.2, which includes additional changes based on WASA comments.

Section 5.2.2

- Change “a summary of the baseline wasteload to be removed from the CSO system” to “a summary of the baseline wasteload to be removed or captured from discharged from the CSS” – **Completed.** Section 5.2.2 was revised to reflect multiple comments from DCWASA. See Response to Comment 13.

Section 5.4

- Indicate that the critical condition for the CSS was previously determined to be the LTCP average year. – **Completed.** Sentence added “For the CSS, the critical condition is addressed through the hydrological variability of the three years (1988, 1989 and 1990) used to develop the LTCP.”

Section 6

- Change “calculated as an average of the measured or estimated removal rate” to “calculated as an average of the measured or estimated removal or capture rate” – **Completed.**
- Add sentence about CSS capture provided in the LTCP – **Not changed.** Section 5.2.2 addresses this topic.

Section 6.4

- Add sentences about target load calculation for CSS and permit compliance. – **Not changed.** Target load calculation is addressed in Section 5.2.2. TMDL will not address permit compliance issues.

Comment #14

Submitted by: Anacostia Watershed Society

“It may be too difficult to measure the amount of grass clippings entering the Anacostia River. In order to measure the amount, a net with about 1” mesh may be installed. It may not be practical to monitor for grass clippings. In fact, the Anacostia Watershed Society (AWS) discontinued the use of 1” mesh net to capture trash. The grass clippings formed a filter that captured fine sediment particles and the net was almost completely clogged with sediment which backed up the stream water behind the trap.

Though measuring the weight of grass clippings may be impracticable, too much organic matter input into a waterbody could produce objectionable odor, color, and turbidity. When it decays in

the water it sucks up oxygen lowering dissolved oxygen and may impose negative impacts on aquatic animals. Thus, the trash TMDL should acknowledge the potential water quality impact posed by grass clippings and should mention the need of better management of lawns.

It may be difficult to enforce private property owners to collect grass clippings or educate them not to leave grass clippings on impervious surfaces where it is expected to be washed off; it is very practicable that public entities such as National Park Service or District Department of Transportation request their contractors and employees to collect grass clippings and bring it to composting facilities. Another suggestion is that after the mowing the contractor could collect clippings on impervious surfaces and properly spread it over the lawn area so that the clippings will not be washed away to stormwater drain system. Over time contractors will be educated and it could be a de facto standard to collect grass clippings even on private lands.”

Response #14

Although organic matter such as grass clippings and leaves can be components of trash, organic matter was not considered in the calculations of the baseline trash because there was no reasonable method to distinguish between intentionally or accidentally deposited organic matter and naturally occurring organic matter. Control measures implemented to capture non-organic trash are assumed to also be effective at capturing organic matter; however because organic matter was not included in the baseline trash load calculations, any organic matter collected through implementation activities should not count towards the TMDL. Specific implementation measures and strategies to address man-made and/or organic trash loads will be addressed by the individual jurisdictions.

Comment #15

Submitted by: Anacostia Watershed Society

“We’d like to reiterate that neutrally buoyant trash pieces such as (especially small) food wrappers and cellophane should be addressed carefully. Practices that could capture these neutrally buoyant trash pieces, both small and large, should be used first. Only after those practices are strategically and carefully used, other low rated practices should be used.”

Response #15

Neutrally buoyant trash was accounted for in the baseline point source load, since the point source trash was captured and counted before it reached a waterbody. Specific implementation measures and strategies to address trash loads will be addressed by the individual jurisdictions.

Comment #16

Submitted by: EarthJustice

“The draft TMDL states that waste load allocations for point sources address trash items that can travel through sewer systems while load allocations for nonpoint sources are assigned to “larger trash and debris that are attributed to activities such as dumping.” The draft also suggests that smaller trash items entering along the tributaries and river are “presumed to be either a small part of the total trash load, or would eventually have been washed down a storm drain.” However, there is no basis for broadly presuming that nonpoint source trash is only, or even mainly, attributable to the dumping of large items. In fact, all types and sizes of trash and debris make their way into streams from nonpoint areas. Although it is not clear whether or how these

statements affect the baseline estimates (and although TMDL allocations must in any case be set at zero), the final TMDL must be revised to eliminate this presumption and make clear that permits and other control measures required to comply with the final TMDLs cannot be limited by such a presumption.”

Response #16

Without *a priori* knowledge of the origin of individual pieces of trash, broad assumptions were necessary in order to distinguish between the point and nonpoint sources of trash and avoid double counting when loading rates were extrapolated to the entire watershed. During the stream surveys smaller items were noted, but there was no way to establish their source. Because all land area in the watershed was assumed to contribute to the point source load and all stream miles were used in the calculation of the nonpoint source load, an individual piece of trash small enough to fit through the storm drain was assumed to have gone through the storm drain system for the purposes of establishing the loading rates. Although an individual piece of trash small enough to fit through the storm system may have actually arrived from a nonpoint source area, it cannot also be counted as part of the nonpoint source load because it would in effect be counted twice as all the land area was assumed to contribute to the point source load and all stream miles were assumed to contain a nonpoint source load. Similarly, larger items were attributed only to the non-point source load.

The distinction between point and nonpoint source trash types is necessary for the calculation of the loads, and does not imply that small pieces of trash are only attributable to point source loading or that all nonpoint source trash is attributable to dumping activities. This artificial distinction was made in order to avoid double counting during the calculation of the baseline point and nonpoint source loads and should not influence the implementation measures required to comply with the TMDL.

Comments #17

Submitted by: EarthJustice

“We appreciate the goal of attempting to quantify the amount of trash entering the Anacostia. However, ultimately the TMDLs cannot be based on estimates of baseline loads, for the reasons discussed in the prior section. Moreover, although it might be permissible to include specific load reduction goals that are based on estimates of current loading, the baseline loads contemplated in the draft document are extremely low compared to prior government estimates, including AWRP’s and MWCOC’s “Anacostia Watershed Trash Reduction Strategy” report. That report estimated that 20,000 tons of trash per year are discharged into the Anacostia. In stark contrast, the draft TMDLs include allocations totaling only 1,199,345 pounds or approximately 600 tons per year ($1,199,345 \text{ lbs.} \div 2,000 = 600 \text{ tons}$). See Draft TMDLs at Tables E1-E8. This figure appears preposterous in light of the statement in the draft TMDL showing the that WASA Floatables program alone recovers ~400 tons of trash per year. Draft TMDL at 49...

...even if the final TMDL is revised to include legally required allocations equal to zero (and by law it must be), any load reduction goals based on estimates of the current baseline loads must be revised in order to have any chance of being effective. At an absolute minimum, the final document must compare its estimate of baseline loads to prior estimates and explain not only why those estimates were wrong, but also how it can be reasonably determined that the extremely smaller baseline underlying the draft TMDL is a more accurate and reliable estimate.”

Response #17

Although often cited, the estimate that 20,000 tons of trash are discharged into the Anacostia per year is not based on data from the Anacostia Watershed. This value was noted to be “generally accepted” because it has been often repeated and cited; however, this is only the case because until now there has never been a comprehensive effort to monitor the actual trash loading in the Anacostia Watershed.

The value of 20,000 tons was derived by extrapolating from an Austin, Texas study of a 50-acre downtown area where 90 high efficiency storm drain filters were installed. According to the Prince George’s County report that originally developed the estimate for the Anacostia River Watershed, Austin collected 1,000 lbs of trash per week, which were noted as “primarily litter.”¹ Prince George’s County used 1000 lbs/50 acres/week and extrapolated this to the urban areas of the Maryland portion of the Anacostia Watershed (38,994 acres) to get 390 tons of trash generation weekly, which equals 20,280 tons per year. The details of the Austin, Texas study were not provided, and the characterization of the study area was not discussed. It is unknown if this 50-acre study area was chosen because it represents a typical urbanized area in Austin, or if it was chosen because it represents an area of exceptionally high trash generation. Texas has a different rainfall regime and different topography and geology from the Anacostia watershed. It is not clear whether the study collected trash once a week for several weeks, several seasons, or just a few times, and there is no discussion of how rainfall events affected monitoring. Additionally, although it was noted that the trash collected was primarily litter, this does not quantify what portion was organic matter. MDE and DDOE feel that an estimate of the baseline load of trash based on recent monitoring data from numerous monitoring locations within the Anacostia Watershed is more credible than relying on a gross estimate extrapolated from 20-year old monitoring data from one location in Austin, Texas.

As indicated in the TMDL the loading rates across jurisdictions are highly variable from location to location and among land uses. Assuming the downtown area of Austin (presumably high density, paved, commercial and industrial land) is similar to the heavily urbanized portions of the District, the point source loading rates for industrial, commercial, institutional and public facilities compare favorably. Monitoring data from the Anacostia River watershed indicated that loading rates for other land uses, even in urbanized areas are consistently lower in the District, indicating that the Austin, Texas data may be a poor predictor of overall watershed loading for the Anacostia. Additionally, sampling data from Maryland indicate that loading rates are consistently even lower than the District loading rates for almost all land uses.

¹Prince George’s County Department of Environmental Resources. 1994. Anacostia River Waterfront Environmental Restoration and Economic Revitalization Floatable Trash Abatement Study. Requested by The Stakeholders of the Anacostia River.

Comment #18

Submitted by: NRDC and DCEN

“Even if one were to accept that a TMDL could lawfully be structured as a degree of estimated baseline pollution removed (a premise we reject), the integrity of the TMDL would depend on the accuracy of the baseline estimate. This is true because the draft seems to contemplate that dischargers will be in compliance with the document’s wasteload allocations if they show that

they have taken out at least as much trash as their goals (pegged to their estimated “baseline” discharge), even if they still have significant trash in their discharge. There will be no maximum limit on the amount of trash that they can discharge. The only way that this scheme even approaches a zero discharge standard is if the surveys that were done were precisely correct. For the reasons discussed below, we have significant concerns with relying on the precision of the trash surveys conducted.

First, the surveys are based on snapshots of trash discharges combined with information about regional land uses. For both Maryland and the District, as we understand the effort, a total of 18 stormwater outfalls were monitored. Following these surveys, areas throughout the watershed were assigned trash loading rates based on the land use type draining to the MS4, on the assumption that areas with similar land uses to those areas that were monitored would have similar loading rates. While we do not mean to understate the effort involved with monitoring 18 sites – indeed, it strikes us as difficult and time-consuming – we note that it only covered a miniscule fraction of the Anacostia watershed’s MS4 outfalls, of which there are 3,225. As such, the potential variability of loading rates from the 99.4 percent of the outfalls that were not monitored is an important reason to be concerned that the surveys do not accurately reflect actual trash pollution rates.”

Response #18

It is unreasonable to expect that monitoring could be conducted at every single MS4 outfall in the watershed or even a majority. Thus, monitoring was conducted at a subset of outfalls. While there is certainly variability between loading rates at individual outfalls, time and funding limit the extent to which over 3,000 outfalls can be monitored. Attempts were made to select locations that represented specific land use drainage areas. This was done to avoid creating one mixed use loading rate that would be applied to the entire watershed, which would likely have more deviation from actual trash loading rates across the watershed than deriving land use specific loading rates. Monitoring data incorporated into the TMDL constitutes the best available data for the Anacostia Watershed.

Comment #19

Submitted by: NRDC and DCEN

“Second, the design of the monitoring effort itself appears to be subject to under-counting trash items. For instance, in DC, the draft document explains that “it was determined that the large amount of organic debris moving through the storm sewer system during the fall and winter would overwhelm the trash traps; therefore, monitoring was not conducted during those seasons.” In Maryland, “to reduce the likelihood of major blowouts during larger, more intense rainfall events, the six trash fences had a maximum operational/working height of approximately 2 feet above the invert of the channel.” In both DC and Maryland, smaller trash items could pass through the traps, as the DC effort used one-inch diameter mesh, and the MWCOG effort used two-inch fencing plus some additional sub-sampling using a one-inch sub-sampler.

Response #19

Trash trap loading rates were developed based on an annual average per inch of rain, not a total count for the year, so suspending monitoring during the fall and winter should not inherently bias the average trash load towards lower numbers.

The leaf litter volume was high enough that leaving the traps in place through a fall or winter storm would be to risk a blowout. If the traps blowout, trash cannot be counted accurately anyway. Attempting to count whatever trash remains trapped after a blowout of the system would certainly underestimate the total amount of trash for that collection period, artificially lowering the average loading rate. The same rationale explains why the trash fences in Maryland only had an operational height of 2 feet above the invert of the channel. Organic matter was an overwhelming majority of what was captured in the Maryland trash traps and nets, regardless of season, but was especially problematic in the fall and winter. Even in April, the total amount of materials collected from the Ray Road trash nets in Maryland was 1,692 pounds. Only 62 pounds were actually trash, and the remaining 1,630 pounds were organic and inorganic debris. There were no reports in the data collected from Maryland indicating that trash had overtopped the trash fences and was therefore undercounted.

With regard to under sampling of small items, initially subsamplers with 1" diameter mesh size were installed on the trash traps in an attempt to collect smaller trash items. It was quickly discovered that the organic materials became entrapped in the 1" opening and collected sediments behind the trap. As the traps became clogged with sediment, they caused a backup of water upstream. During monitoring, items smaller than the mesh openings were consistently identified, indicating that the high organic material content was creating a finer filter through which small trash items could not easily pass.

Comment #20

Submitted by: NRDC and DCEN

"Third, some of the loading rates for different land uses give us pause. For example, in Maryland, the low-density residential rate was based on a single site, and was set at 1.195 pounds per acre per year, whereas the low-density loading rate in the District was 4.52 lb/ac/yr; no explanation is offered for a 278% higher loading rate in the District. Similarly, for Maryland, loading rates for commercial, industrial, and institutional areas are based on a single site and set at 2.22 lb/ac/yr, whereas the District has far higher rates – 22.08 lb/ac/yr for commercial areas, 18.90 lb/ac/yr for industrial areas, and 25.45 lb/ac/yr for institutional areas. These dramatic differences are not discussed. Finally, Maryland's extractive, transportation, and bare ground areas' loading rates were not monitored and are based on the commercial/industrial/institutional rate of 2.22 lb/ac/yr, even though the transportation and similar areas' loading rate in the District is 31.12 lb/ac/yr."

Response #20

The higher loading rates in the District than in Maryland are likely explained by the inherent differences in the jurisdictions. In cases where Maryland's point source monitoring did not adequately represent a specific land use, the District's data were used. The land uses where District data were substituted were limited to the land uses that could reasonably be assumed to be similar between the jurisdictions. These included open land, forest and agriculture. Maryland's transportation, extractive and bare ground land uses were considered to have a loading rate similar to the commercial, institutional and industrial rate in Maryland because these land uses were frequently associated with each other spatially within the watershed.

Additionally with regard to the differences in loading rates between transportation land use in Maryland and the District, the jurisdictions define transportation differently in the geospatial data. In the District, transportation land use represents roadways, while in Maryland roadways are not separated out from the adjoining land uses. The Maryland transportation land use represents transportation facilities, such as airports and train stations. These facilities likely more closely resemble the commercial, industrial and institutional land uses in Maryland than they do the District roadway land use.

Comment #21

Submitted by: NRDC and DCEN

“Fourth, the total estimate of trash being added to the watershed is significantly lower than the one prior estimate that was widely publicized. It was previously reported that an estimated 20,000 tons of trash enter the river annually. Recently, staff involved with the development of the draft TMDL indicated that this prior estimate was based on an estimate from outside our region, and of uncertain reliability. Maybe so – however, it bears reflecting that this prior, generally accepted, estimate is 3,228% higher than the estimate contained in the Draft TMDL, which is approximately 601 tons/year. In a similar vein, the Draft TMDL states that the “Anacostia River Floatable Debris Removal Program, operated by the District’s Water and Sewer Authority (DC-WASA) in cooperation with the U.S. Army Corps of Engineers, removes about 400 tons of trash per year from the Anacostia River (DC WASA 2009). Skimmer boats collect floatable debris from the Anacostia Mainstem.” It is hard to believe that this single program on the mainstem of the river removes 2/3 of the trash that annually enters the entire watershed.”

Response #21

If the commentor is concerned over a lack of sufficient data points (as expressed in Comment #18) then the study using one data point from Austin TX should be considered equally unreliable, if not more so,. As explained in Response #17, the only reason it is “generally accepted” that 20,000 tons of trash are deposited in the Anacostia Watershed annually is that there has never been a systematic collection of data specific to this watershed. MDE and DDOE feel that it is more accurate to rely on the results of monitoring data collected from numerous locations within the actual Anacostia River watershed, rather than data from one location in Austin, TX that were collected 20 years ago.

Clement Oguns, Sewer Maintenance Supervisor for DC WASA, indicated that 400 tons is the annual collection goal for the Anacostia River Floatables Debris Program. The actual amount collected annually varies based largely on precipitation conditions. Mr. Oguns indicated that the total weight of materials collected each year includes trash, as well as organic material, such as logs, leaves, grass or any other floating materials. The individual components collected are not inventoried for data analysis, but in all the DC WASA *Quarterly Operations Reports for Combined Sewer Outfall Facilities* from 2008-2010, materials collected by the program are listed as bottles, cans, natural debris and plastics.

During the CSO Fresh Creek trash collection pilot program, it was noted that 90 percent of the material captured during the CSO monitoring was organic matter. Similarly, materials collected from the MS4 storm drains also consistently indicated an equally high proportion of organic

matter. It would not be unreasonable to expect that direct collection of floating material from the river would also contain a high portion of organic matter. Organic matter was not included in the trash loading rates for the TMDL. If organic matter is excluded from the calculations of materials collected through the Anacostia River Floatable Debris Program, it is unlikely that such a large proportion of the trash that annually enters the river is being collected through this activity.

Comment #22

Submitted by NRDC and DCEN

“Finally, there would seem to be a number of complications involved with establishing a TMDL (and component load and wasteload allocations) that is based on the “baseline” loading weights measured during the monitoring efforts.

1. If population or precipitation rates increase in the watershed, and that increase brings more trash into the river, the compliance target apparently will not change, because the target is based on the current estimated loadings.
2. It might provide an incentive to ignore the non-weighty trash.
3. It is going to be difficult, if this TMDL is implemented, for permitted systems and pollution control officials to know what amount of trash is reduced. It is one thing to have a trash trap at the end of a pipe, since you can capture and weigh the trash. But it will be much harder to quantify the weight of reduced trash if a municipality improves its street sweeping or litter education programs. A limit on the discharge rate, by contrast, can be monitored at the point of discharge.”

Response #22

MDE and DDOE take note of the concerns stated by the commentor. The TMDL is based on the monitoring conducted over several months/seasons and captures a range of rainfalls in the region. This represents an average year condition. It is possible that the trash loading may vary year to year depending on rainfall and other factors. The TMDL therefore requires 100 percent removal of the baseline, with compliance based upon a multi-year average of total trash removal to account for year to year variability in trash loadings.

MDE and DDOE also understand the challenge in evaluating controls and measuring success during the implementation of the TMDL. However, the issues such as weighty vs. non-weighty trash and evaluation of institutional controls are beyond the scope of the TMDL and should be addressed through TMDL implementation plans. It is expected that specific permits would address baseline estimates, if needed, through monitoring and other means, and provide guidance for evaluating control measures, including both structural and non-structural or institutional controls.

Finally, if the amount of trash entering the Anacostia River increases due to population changes or other factors, or if the long-term average precipitation changes substantially, the TMDL should be revised to reflect the new rate of removal necessary to comply with the applicable narrative water quality standards.

COMMENTS ON TMDL IMPLEMENTATION

Comment #23

Submitted by: Anacostia Watershed Society

“LID installation should be considered as one of the most effective trash reduction practices as a long term solution. One important fact is that stormwater runoff carries trash to a water body. If stormwater runoff could be significantly reduced or eliminated altogether, most trash would remain on the land to be picked up later. Despite having a severe snow storm in February 2010, there was no trash found during that month in the Nash Run Trash Trap.

The trash TMDL and its to-be-developed implementation plan should clearly mention the importance of stormwater runoff reduction and that LID has to be used to reduce the runoff that carries trash into the stream. The LID practices may be most effective to keep small pieces of trash out of the streams.”

Response #23

MDE and DDOE generally agree that LID is a very cost effective best management practice that reduces runoff and pollutant loads from urban and suburban land. We also recognize the importance of stormwater runoff reduction in reducing the amount of trash conveyed to a stream. Jurisdictions will evaluate all available options to effectively control trash as well as other pollutants for the development of the implementation plans.

Comment #24

Submitted by: Anacostia Watershed Society

“In order that the implementation plan should be developed correctly, the trash TMDL should mention that implementation practices have to be rated or prioritized from the most favored practices to least favored practices. For example, the trash boom should be rated as a least favored technique though it is still a very important practice. The trash boom can collect only floatables such as empty and capped plastic bottles, and glass bottles. However, there are so many neutrally buoyant trash pieces such as food wrappers, cellophane, plastic bags, etc that will be rarely captured by the trash boom. Technologies that can capture trash as close to its source as possible and that can capture small pieces of trash should be rated high.”

Response #24

The TMDL document lists a range of controls or practices that can be considered for implementing the TMDL. The document does not prioritize such practices. Because urban and suburban lands could have a number of variables or constraints, a single practice or control may not be applicable for all places or conditions. Jurisdictions will consider all available technologies or control practices for the development of the implementation plan that will be cost effective as well as meet the goals of the TMDL. MDE and DDOE also agree with the commentor that **it is preferable that** trash be captured as close to its source as possible and that controls be designed to capture large as well as small pieces of trash.

Comment #25

Submitted by: Alice Ferguson Foundation

“Just as the development of the TMDL was collaborative and participatory with community stakeholders, we also hope that the development of the implementation plan for the TMDL will be participatory and multi-jurisdictional. Since each jurisdiction that is within the Anacostia Watershed; Prince George’s County, Montgomery County, and the District of Columbia, is responsible for development of separate implementation plans it is possible that three completely unique plans will be developed with varying levels of effectiveness and enforceability. With the river flowing through each of the jurisdiction it seems logically that collaboration on implementation continue to the fullest extent possible. Without collaboration, one jurisdiction may be placed with the burden of another’s ineffectiveness. Additionally, with such diverse stakeholders throughout the region who will be effective partners in implementation it will be crucial to maintain continued involvement from all stakeholders in order to maintain momentum towards trash reduction on the Anacostia.”

Response #25

Jurisdictions will develop specific TMDL implementation plans as part of their permit requirements. MDE and DDOE expect permit requirements to be comparable. We agree that implementation plans should be developed in coordination with stakeholders and should have public input in the development process. All implementation plans should be developed to achieve the goals of the TMDL as soon as possible.

Comment #26

Submitted by: Alice Ferguson Foundation

“We expect the Implementation Plans to be comprehensive strategies which include all possible BMPs along with specific and accountable numbers for those BMPs and a timetable for implementation. We also expect there to be innovative plans for increasing education to reduce littering and dumping from the source. Additionally, since non-point source trash will not be enforced via the MS4 permits and other stormwater controls we expect other mechanisms for enforcement of illegal dumping will be considered in the implementation plan.

However, just as important as a detailed plan for removal of the baseline is the need for a timetable to evaluate the effectiveness of this TMDL. A strategy for monitoring and revaluation will be needed to determine if the baseline load that was calculated is indeed an accurate target for trash reduction in the Anacostia. If, after each jurisdiction fulfills their required 100% daily baseline removal at the rates calculated and there is still trash present throughout the watershed, then there needs to be continued monitoring and analysis in order to obtain a more accurate number. The need for a strategy for evaluation should be included under *Section 6. Reasonable Assurance for TMDL Implementation* to ensure that there is recognition that this process will need evaluation.”

Response #26

Even though implementation plans are beyond the scope of the TMDL development process, implementation plans should consider all available technologies for removal or capture of trash before it is discharged into a waterbody. MDE and DDOE agree all implementation plans should

have a timetable for implementation as well as a strategy for evaluation. In addition we believe all implementation plans must have a comprehensive monitoring plan for evaluating effectiveness of controls to reduce trash.

Comment #27

Submitted by: Alice Ferguson Foundation

“One of the great challenges of any TMDL is enforcement of a pollutant with non-point source origins. Without knowing the source of a pollutant it is difficult to enforce. The TMDL addresses that by categorizing trash into non-point and point source, using the NPDES permits to hold jurisdictions responsible for point source trash. However, the recently approved Montgomery County MS4 and the recently released DC MS4 permit refer to the Implementation Plans of the TMDL for BMPs and enforcement. We recognize that this means that violating the Implementation Plan will mean a violation of the MS4 permit, however without knowledge of what this Implementation Plan will be, it is difficult to have assurance that the TMDL will be enforceable. Thus, it will be necessary for each implementation plan to have sufficient descriptions of monitoring and enforceable actions. There is also the challenge of enforcing across jurisdictional lines as trash that can move through a sewer can also flow down the river to another jurisdiction. This issue will need to be addressed in all the implementation plans developed. The challenge of enforcement, again, points to the need for Implementation Plan development to be participatory and collaborative throughout the process, not just during a public comment period.”

Response #27

As permits will be used to implement the TMDLs, the permits are expected to also specify how the implementation will be tracked, evaluated and enforced. It is beyond the scope of the trash TMDL to specify what and how the enforcement will take place. However, MDE and DDOE recognize the importance of stakeholder involvement in the development of implementation plans and the need for comparable levels of effort across the jurisdictions to realize the benefit of reducing the trash in the entire watershed.

Comment #28

Submitted by: Department of Defense, Regional Environmental Coordinator

“From a practical standpoint, implementing the TMDL will be difficult and expensive. We agree that BMPs and programs such as those listed in Section 6.5 of the TMDL need to be implemented and maintained. Of concern, is the documentation that may be required to demonstrate that 100% capture has been achieved. In addition, the TMDL does not provide sufficient guidance to regulators or the regulated public regarding requirements for an acceptable implementation plan. For example, as currently written the TMDL could be interpreted to require collection and weighing of all trash collected on a daily basis. This would not be practical and we doubt this is the intent, but the public could claim that it was necessary to meet the zero trash target. Even more problematic, since numeric WLA's are stated in the TMDL it could be claimed that compliance with the TMDL demands the collected and weighed trash equal or surpass the daily and annual WLAs. The fact that the WLA are merely derived estimates/averages may not be well enough understood... We also recommend that the TMDL provide additional guidance regarding what will be considered an acceptable implementation plan.”

Response #28

It is beyond the scope of the TMDL to specify implementation strategies for the TMDL. MDE and DDOE understand and realize that there will be a need for developing appropriate methods or strategies for implementing the trash TMDL. However, it is expected that specific permits to address such issues in a manner that is consistent with the TMDL and provide practical ways for evaluating controls for reducing trash depending on specific sources or facilities.

Comment #29

Submitted by: MAMWA and SWAM

“The TMDL Should Initially Impose a More Realistic Level of Control and Reevaluate Higher Requirements Over Time. Because the narrative water quality standards do not require zero trash, MDE (and DCDOE and EPA) should develop the TMDL in an iterative fashion, starting with an initial five or ten year trash removal (or prevention) target that is more realistic and achievable through the implementation of BMPs. MAMWA and SWAM fail to understand why the TMDL would not require several escalating phases of reduction (i.e., 25% reduction, followed by 50%, etc.), rather than setting up the affected communities to fail as they certainly won’t get 100% reduction for years, if ever.”

Response #29

It is beyond the scope of the TMDL to prescribe implementation strategies. It is expected that implementation plans developed by the jurisdictions will incorporate specific strategies and milestones for achieving the TMDL reduction goals.

Comment #30

Submitted by: MAMWA and SWAM

“The Trash TMDL Will Divert Resources from Addressing Aquatic Life Impairments Such as Nutrients. MAMWA and SWAM are concerned that the Anacostia trash TMDL will divert resources from TMDLs that address water quality impairments that matter to aquatic life (rather than aesthetics (trash) for the infrequent human use of the River).

If MDE (and DCDOE and EPA) insist on promulgating the Draft Trash TMDL, we urge you to include a section which specifically allows affected localities to prioritize their efforts in implementing TMDLs across their system. Otherwise, the Anacostia trash TMDL may take [the] place of efforts to address more important impairments such as reducing nutrients to the Chesapeake Bay.”

Response #30

It is the goal of the Jurisdictions to make the Anacostia swimmable and fishable. The river is impaired for trash and other pollutants. Our objective is to restore the river as soon as possible as we all can benefit from this natural resource. We understand that resources are limited and need to be prioritized. As trash can also bring other pollutants associated with it and can itself harm aquatic life, removal of trash from the river certainly is a priority. However, it is up to each jurisdiction to allocate their resources effectively, and in way that maximizes the benefit for the waterbody.

Comment #31

Submitted by: Anacostia Watershed Citizens Advisory Committee (AWCAC)

“The District of Columbia has enacted a 5 cent fee on plastic bags from stores selling food items. Based upon revenue to date from the fee it appears that there has been tremendous reduction in the number of plastic bags used by citizens of the District. We are greatly disappointed that the Maryland Department of Environment chose to oppose a similar bill in their own legislature. This is an ill omen of the State’s willingness to implement the trash TMDL.”

Response #31

MDE supports the objectives of the proposed “bag bill,” recycling and waste reduction. MDE opposed the bill’s reallocation, redirection, and dilution of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. Additionally, the bill required MDE to conduct two public outreach programs in the next six months and this timeline was not realistic. MDE hopes to see future legislative efforts regarding this topic.

Comment #32

Submitted by: AWCAC

“Efforts are underway to establish a municipal food composting center in the Anacostia Watershed. If such a facility were established then it would be possible to use legislation to reduce Styrofoam packaging of takeout food. This would further reduce one of the prevalent trash categories found in the Anacostia River. It will require cooperation between all of the jurisdictions.”

Response #32

Comments noted.

Comment #33

Submitted by: AWCAC

“We recommend that all of the permits which have received an allocation for reduction in the TMDL be reopened immediately and have conditions added to implement the TMDL. This includes all federal facilities, the City of Takoma Park, the Maryland National Capital Park and Planning Commission, school systems, the University of Maryland, and all other MS4 permit holders.”

Response #33

The decision to reopen the MS4 permits (or any other permits) affected by this TMDL will be left to the discretion of the appropriate permitting authority and is beyond the scope of the TMDL document.

Comment #34

Submitted by: AWCAC

“We recommend that the Maryland State Highway permit be reopened immediately and trash reduction requirements be added. In particular, storm drains and bridges need to be retrofitted such that trash is not drained straight to the waterways that they cross or feed into. Bridges that have structural support members in the stream channel should be surveyed biannually and the trash accumulations removed.”

Response #34

See Response #33.

Comment #35

Submitted by: AWCAC

Montgomery and Prince Georges County transportation departments should be required to implement design standards for storm drains and bridges such that trash is not discharged to the waterways and the structural supports do not accumulate trash. Their permits should include requirements for biannual maintenance of storm drains and bridges which chronically accumulate trash.

Response #35

In Montgomery County's NPDES municipal stormwater permit issued previously this year, MDE formalized the County's role in implementing the Trash Treaty's Action Agreement. This stormwater permit obligates the County to develop trash reduction strategies, implement control measures, and monitor program effectiveness all in an effort to reach the goal of a trash free Potomac River. The public education and participation recommendations made by the AWCAC have already been included in the County's stormwater permit in the form of plans to increase recycling and trash management, and holding public forums as the County's program is further developed and implemented. All of this is over and above the County's routine trash collection programs. Likewise, the State Highway Administration (SHA) and Prince George's County have significant ongoing trash collection and maintenance programs.

Comment #36

Submitted by: AWCAC

"We believe that the public participation requirement of the development of each implementation plan should include adequate public notice and at least one public forum."

Response #36

See Response #25.

Comment #37

Submitted by: AWCAC

We commend both the District of Columbia and Montgomery County for extending their trash reduction efforts to basins such as Rock Creek and the Potomac. The Prince George's County MS4 permit should contain similar language"

Response #37

See Response #35.

Comment #38

Submitted by: AWCAC

The State of Maryland, Montgomery County, Prince George's County and the District each need to insure that their stormwater regulations are updated to include trash reduction BMPs. All new BMPs installed in their jurisdictions should include the capability to reduce trash discharges to zero. Each stormwater permit for development or redevelopment in the Anacostia watershed

should be evaluated by the issuing agency in light of required reductions for each individual pollutant for which a TMDL has been approved. These pollutants should be listed in those permits such that the developer is clear on the requirements that must be maintained over the life of the project.

Response #38

MDE and DDOE value the recommendation for implementing the trash TMDL, as well as other TMDLs. However, it is beyond the scope of the TMDL to specify implementation strategies for the TMDL. MDE and DDOE understand and realize that there will be a need for developing appropriate methods or strategies for implementing the trash TMDL. However, we expect specific permits to address such issues in a manner that is consistent with the TMDL and provide practical ways for evaluating controls for reducing trash depending on specific sources or facilities.

OTHER COMMENTS

Comment #39

Submitted by: MAMWA and SWAM

“MDE Has Not Provided a Reasonable Basis for Concluding That 100% Trash Removal is Attainable. MAMWA and SWAM are concerned that despite best efforts and the expenditure of enormous public resources, 100% trash removal (or prevention) will not be attainable. We question MDE’s basis for determining that such removal (or prevention) perfection across municipalities is achievable.

Accordingly, we ask that in response to this comment, MDE (and DCDOE and EPA) specifically identify where in the Country trash TMDLs have been developed and the level of removal (or prevention) over time which has been achieved to date.”

Response #39:

Section 6 of the TMDL provides significant explanation of the many programs that provide reasonable assurance that the TMDL will be met. Included in these programs are the Montgomery County, Prince George’s County, and DC MS4 permits. These permits will be used to apply a legal requirement on the various localities to achieve the TMDL. There are also several voluntary initiatives which strive to meet the same goal as the TMDL, including the Potomac River Trash Treaty and the Anacostia Watershed Trash Reduction Plan. With the combination of the regulatory and voluntary initiatives, MDE and DDOE feel confident that a reasonable basis has been provided that the TMDL is achievable.

According to the USEPA’s Assessment Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) there are currently 65 approved Trash TMDLs, all in the State of California. MDE and DDOE are not able to comment on the results of other States TMDLs.

Comment #40

Submitted by: EarthJustice

“Because it cannot be shown that any amount of trash can be discharged into the Anacostia and its tributaries while still ensuring compliance with water quality standards, the load allocations and wasteload allocations in the final TMDLs must be set at zero. However, there is still a legal requirement and a practical need for a valid margin of safety, as required by the CWA, 33 U.S.C. § 1313(d)(1)(C). The draft TMDL claims that “an implicit MOS was incorporated into the Anacostia Trash TMDL since the TMDL requires 100 percent removal of the baseline load and the LAs and WLAs were calculated using conservative assumptions.” Draft TMDL at 43. As explained above and as expressly stated in the draft, the allocations in the draft do not even purport to achieve removal of 100 percent of all trash from discharges into the Anacostia. Rather, they purport to achieve removal of an estimated “baseline load,” that itself is both highly dubious as well as impossible to determine with certainty. Therefore, the fact that the allocations total the entire estimated “baseline load” is simply ineffectual at establishing a legally adequate margin of safety.

One solution to this problem is to include an implicit margin of safety providing that, in order to comply with the TMDL, point source and nonpoint source discharges must ultimately be reduced to zero pounds of trash, regardless of the initial estimated baseline load and regardless of the initial allocations. For several reasons, including the one noted above, there is a great deal of uncertainty surrounding the estimate of current pollutant loading of trash to the Anacostia. Trash is not a pollutant for which the District and Maryland have been reliably monitoring for a long period. Therefore, there needs to be a proportionately commensurate margin of safety – the level of uncertainty in estimating the pollutant loading needs to be matched by a robust margin of safety. Since the load reduction requirement is 100%, there needs to be a mechanism built in to this TMDL for increasing the load reductions if it becomes apparent, from later monitoring or other data, that the estimated baseline loading has in fact been underestimated.”

Response #40

With regard to the statement that the final TMDLs must be set at zero, see Response #4.

While the commentor states that “*One solution to this problem is to include an **implicit** margin of safety,*” MDE and DDOE assume that the commentor is requesting an *explicit* margin of safety, as an implicit margin of safety is already included in the TMDL. Based on the admitted uncertainty in the estimation of trash loads, MDE and DDOE have decided to add an explicit margin of safety of 5% to the TMDL.

Comment #41

Submitted by: EarthJustice

“CWA regulations require that “[d]eterminations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.” 40 C.F.R. § 130.7(c)(1). The draft report at x-xi suggests that the TMDL addresses critical conditions because the baseline monitoring data were collected “over four seasons and included monitoring after rain events.” Discussions in section 2 of the report suggest that this monitoring was conducted mainly in March-August 2009, along with some monitoring in 2007 and 2008. There is no explanation of whether this period of three years contained larger than average storms. If not, the mere fact that

data were collected in all four seasons is not enough to demonstrate that critical conditions have been accounted for.”

Response #41

It is inaccurate to state that monitoring “*was conducted mainly in March – August 2009.*” In the TMDL report, Sections 2.2.1 – 2.2.4 describe the four different sampling programs that were conducted in support of the TMDL. Section 2.2.1 details the District of Columbia Stormwater Outfall Monitoring, which occurred between March and August 2009. Section 2.2.2 details the Montgomery and Prince George’s County Stormwater Outfall Monitoring, which occurred between October 2008 and July 2009. Section 2.2.3 details the District of Columbia In-Stream Monitoring, which occurred between August 2007 and June 2008. Section 2.2.4 details the Montgomery and Prince George’s County In-Stream Monitoring, which occurred between June 2008 and April 2009.

While the main rationale that critical conditions are accounted for was monitoring over all four seasons, this was not the only rationale presented in the TMDL. As stated in Section 5.4 of the TMDL, “*the critical conditions for trash are high flow events because these events represent conditions during which trash is most easily transported to and through streams and the sewer system.*” Section 5.4 goes on to describe several sampling events that occurred after high-flow events, “*including one storm with over 3 inches of rain during the event, and several storms with maximum intensities between 3 and 4 inches per hour.*” As well, the annual rainfall for 2008 and 2009 were both well above the 50 year average annual rainfall, which could itself be considered to represent a critical condition.

Comment #42

Submitted by: Anacostia Watershed Society

“The definition of trash should be explicitly mentioned in the TMDL. For example, it would need to clearly be stated if small pieces of trash and some type of organic material are included in the TMDL and will be included in the implementation plan or not. Also, the trash TMDL allocates the amount of trash to be eliminated from each source by weight. If the definition of trash is not clear, each responsible entity may focus on heavy trash removal first leaving small pieces of trash unaddressed to satisfy legal responsibilities. Small pieces of trash are eaten by many aquatic animals which they cannot digest nor excrete; this often leads to starvation, suffocation, and the death of these animals. If the definition is not clear, an entity might want to count tree logs’ weight that were flowing in a stream and removed. However, the trash monitoring conducted for the TMDL development did not weigh tree logs. So, the weight of tree logs should not be included in the allocated amount. Secondly, an entity might remove only large trash pieces such as bottles and cans instead of items like cellophane, cigarette butts, and small candy wrappers if trash is not defined well and if allocation is made only by weight. Thirdly, AWS captured an abundance of grass clippings on our trash trap located in Nash Run, a tributary of the Anacostia River. If trash is not defined well, these types organic trash will not be addressed.

The trash definition should at least cover these points:

- All man-made objects that are broken off, removed, or thrown away intentionally and sometimes un-intentionally.
- Natural matter that was removed or thrown away intentionally and sometimes unintentionally due to human activities

Trash could include cans and bottles, food wrappers, small plastic pieces, cigarette butts, and grass clippings from lawn mowing activity. Small pieces of trash, grass clippings, etc. should be removed as thoroughly as possible to the maximum extent practicable.”

Response #42

The definition of trash is stated in Section 1.0 of the TMDL. The definition reads “*Trash is defined by the Anacostia River Watershed Trash TMDL Work Group as all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials thrown or deposited on the land or water.*” As noted, the definition of trash was thoroughly discussed, and agreed upon by the TMDL Workgroup, prior to release of the TMDL. The TMDL workgroup included representatives from MDE, DDOE, EPA, Prince George’s County Department of Environmental Resources (DER), Montgomery County Department of Environmental Protection (DEP), Anacostia Watershed Society, Alice Ferguson Foundation, NRDC, and MWCOG. Therefore, it is the opinion of MDE and DDOE that the definition currently provided in the TMDL is adequate to address the issues mentioned in the comment.

Comment #43

Submitted by: MAMWA and SWAM

“Trash and Debris in the Anacostia Watershed Should Be Addressed Locally, Not Through a TMDL. MAMWA and SWAM do not oppose cleaning up the Anacostia River. However, this work should be done at the local level, with local commitments to the clean-up, and implementation using existing programs.

As support for this position, MAMWA and SWAM would note the work that is being done on the Potomac River pursuant to the Potomac Trash Treaty. This aggressive, non-regulatory, regional approach has a goal of zero trash in the Potomac by 2013. In order to meet the goal, the 105 signatories have agreed to take a number of specific steps: implement regional programs to reduce trash in the water and to increase recycling; increase public education and outreach efforts to teach citizens about trash; and meet annually to discuss efforts. MAMWA and SWAM suggest that MDE and the DCDOE consider whether it would be possible to design a similar approach for the Anacostia Watershed.

This would be far preferable to finalizing a TMDL for the Anacostia. As discussed below, neither the water quality standards nor the nature of trash itself lend itself well to a proscriptive TMDL document. Even one of the most basic aspects of the TMDL--removal (or prevention) of a specific amount of trash, versus setting allocations to limit the introduction of a substance into

the water—makes it clear that trying to regulate the clean-up of trash and debris in a regulatory document is awkward at best.”

Response #43

As stated in the TMDL, Section 303(d) of the Clean Water Act and the U.S. Environmental Protection Agency’s (EPA’s) Water Quality Planning and Management Regulations (codified at Title 40 of the *Code of Federal Regulations* [CFR] Part 130) **direct** require states to develop Total Maximum Daily Loads (TMDLs) for impaired waterbodies. Therefore, MDE and DDOE have **authority** to establish this TMDL.

While the TMDL is developed at the State/District level, the implementation will be achieved at the local level with full support of the local communities. MDE and DDOE strongly agree with you on the value of the Potomac River Trash Treaty and expect that this will be one of the many mechanisms used to achieve the TMDL. Additionally, this TMDL has been developed with full participation and support of various local organizations, including: Prince George’s County DER, Montgomery County DEP, Anacostia Watershed Society, Alice Ferguson Foundation, NRDC, and MWCOG.