

APPENDIX C

Inland Bays Tributary Action Team PCS Recommendations

Critical Environmental Area

“Designation of the Inland Bays Watershed as a ‘Critical Environmental Area’

The entire Inland Bays watershed shall be designated as a ‘Critical Environmental Area’ within which all land use activities shall be managed for nutrient reductions consistent with TMDL load reductions, or, reductions attributed to ‘best available technologies’ (BATs) where TMDL load reductions are not feasible.”

The activities in that area would include:

RIPARIAN BUFFER SYSTEM

A watershed riparian buffer system shall be implemented to remove and/or reduce nutrient discharge. This system will be implemented through county zoning ordinances, state land acquisition, open space designation associated with new development, agriculture cost share and other incentive programs as well as a targeted outreach/education program and technical assistance to riparian landowners

ONSITE WASTEWATER DISPOSAL

“Holding Tanks

- The administrative program for existing holding tanks shall be a ‘self-funded’ program (fees paid by permit holder).
- A ‘sunset’ clause shall be applied to existing, single lots.
- There shall be a ban on permanent holding tanks in all new subdivisions
- A system of record-keeping shall be employed which will demonstrate compliance by the permit holder
- Deeds shall include:
 - Disclosure statement that notifies property owner that they are served by a holding tank
 - Full disclosure of the condition of the holding tank and permit conditions
- DNREC shall assess funding requirements and make the appropriate request from the legislature for program support
- The State shall provide funding when available for initiation of actions associated with these recommendations.”

Septic Systems

Existing Systems

Management Program

- Require flexible and appropriate maintenance, educational support, and regular compliance inspections/enforcement with assurances that

Appendix C

owners will not be charged for inspections within a reasonable period after a maintenance pump-out has occurred

- The transfer of title shall include a system of record-keeping that demonstrates compliance by the owner; an inspection shall also occur at this time with costs assumed in agreement between the buyer/seller (eg. termite inspections using private/certified contractor)
- Develop a dedicated County fee collection system to fund the State's septic system inspection program
- DNREC shall pursue grants/private funding for the development and assessment of innovative and alternative technologies
- DNREC shall allow voluntary installation or upgrades that improve nutrient reduction capabilities of non-failing systems

Failing Systems/Replacement Systems

- Require use of systems that can achieve nutrient reduction levels equivalent to those addressed by the TMDL; in cases where technology is not available to meet the TMDL reductions, use "best available technologies" for nutrient reduction
- Offer economic incentives and economic assistance for those in need
- All existing systems shall be equipped with nutrient reduction BAT by 15 years following the initiation of the pollution control strategies
- DNREC shall develop a list of approved alternative systems/BATs which shall be made available to the public; replacement systems shall be selected from a list of approved alternative systems/BATs in consultation with a design engineer

New Systems

- *Management Program* (same as for existing systems)
- Within twelve (12) months, all new onsite, individual sewage disposal systems shall achieve TMDL level nutrient reductions; if the technology is not available to meet these reductions, then BATs for nutrient reductions shall be utilized
 - All subdivisions, as defined by Delaware code, in areas outside a legally established county sewer district shall be equipped with either: Individual, onsite systems that meet TMDL level nutrient reductions
 - A community system that utilizes technologies which meet TMDL load reductions; DNREC shall mandate a management program for all community systems
- All new development shall connect to central sewer if/when it becomes available in areas where a county sewer district exists
- In light of TMDL's, new regulations, proposed recommendations, etc., DNREC shall review and reconsider its policies/regulations regarding the permitting of alternative systems on properties with unsuitable soils as defined by current septic system regulations.

Pollution Trading

Pollution Trading shall be considered as one of several options in reducing phosphorous and/or nitrogen in the Inland Bays, so long as any trading is tightly regulated to ensure true net reductions within the Inland Bays watershed.

Non-DNMC Nutrient Management

The Delaware Nutrient Management Commission (DNMC) is the controlling authority for fertilizer application on parcels of land 10 acres in size or greater within the Inland Bays watershed. Recognizing the significant contributions of nitrogen and phosphorous from land parcels less than 10 acres in size, a program shall be developed which addresses practices that may result in nutrient reductions. These shall include, but are not limited to: establishing nutrient budgets for homeowners, technical support for small landowners, and education.

Land Use Incentives for Natural Resource Protection

The Land Use Planning Act (LUPA) has improved coordination between federal, state and local government, yet measures must be taken to ensure that local zoning codes and ordinances, particularly in the unincorporated areas of the watershed, provide adequate protection to the Inland Bays. The State Strategic Investment Plan is an important incentive tool in encouraging resource-based land use planning. It is suggested that the SSI and other incentive/disincentive tools shall be specifically tied to natural resource protection goals in the Inland Bays Critical Environmental Area.

Concurrence

A higher level of government accountability is necessary if nutrient reductions are to be affected. There exist numerous instances of government inconsistencies and lapses in application and enforcement of policies, laws, and regulations. We recommend that some mechanism be established to ensure concurrence of policies, laws, and regulations within, between, and among government and other agencies.

Stormwater

It is our understanding that the proposed regulations would require an 80% reduction in total suspended solids as a quality component, which does little to address the TMDL nutrient load reductions established for the Inland Bays. The state should consider site-specific design criteria that exceed the minimum quality criteria on a per project basis in order to further reduce nutrient contributions to the receiving waters.

Appendix C

The state should develop a program or means to provide outreach/education to homeowners served by a stormwater management facility required by state law. This effort should assist homeowners' associations in the development of a maintenance plan as well as to establish a funding mechanism to meet financial obligations for related stormwater facility maintenance. Failure by homeowners to properly maintain stormwater facilities will make it difficult to achieve the TMDL nutrient load reductions established for the Inland Bays.

Due to increases in impervious area in the Inland Bays watershed, the Tributary Action Team recommends the initiation of an incentive/disincentive program similar to tax incentives, which would encourage an increase in open space (green areas) for commercial development. The use of BMPs in commercial parking area designs might reduce the percentage of impervious surfaces and reduce nutrient contributions.

The state should consider offering tax incentives for the retrofit of existing stormwater facilities.

The state should encourage innovative designs such as rain gardens, natural landscaping, and constructed wetlands for stormwater management. These designs would further address the TMDL nutrient load reductions for the Inland Bays.

The Tributary Action Team encourages the Department to utilize current regulatory authority to establish a regional stormwater utility for the Inland Bays watershed. We believe this measure will adequately address both funding for maintenance of stormwater facilities and overall water quality improvements.