UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAR 05 2018

Mr. Lee Currey, Director
Water and Science Administration
Maryland Department of the Environment
1800 Washington Boulevard., Suite 540
Baltimore, Maryland 21230-1718

Dear Mr. Currey:

The U.S. Environmental Protection Agency (EPA), Region III, is pleased to approve the sediment TMDL for the non-tidal Back River watershed. The TMDL report, *Total Maximum Daily Load of Sediment in the Non-Tidal Back River Watershed, Baltimore City and Baltimore County, Maryland,* was submitted by the Maryland Department of the Environment (MDE) to EPA for final review on February 14, 2018 and was received on February 20, 2018. The TMDL was established and submitted in accordance with Section 303(d)(1)(c) and (2) of the Clean Water Act to address impairments of water quality as identified in Maryland's Section 303(d) List.

The Maryland 8-digit Back River watershed (MD-02130901) was originally identified in Maryland's 2002 Integrated Report as impaired for aquatic life use due to impacts to biological communities. The listing was based on the biological assessment methodology, which uses aquatic health scores. As a result of a biological stressor identification analysis report prepared by MDE, the 2002 aquatic life use impairment (biological listing) for the non-tidal Maryland 8-digit Back River watershed was refined to identify the pollutant of concern, and the watershed was listed as impaired by sediment, chlorides, and sulfates, which require TMDLs, as well as channelization and a lack of riparian buffer. The TMDL established herein by MDE addresses the sediment listing as identified on MDE's 2014 Section 303(d) List. TMDLs were established for the tidal streams impaired by sediment and formerly considered part of the Maryland 8-digit Back River watershed as part of the Chesapeake Bay sediment TMDLs established by EPA in 2010.

In accordance with Federal regulations at 40 CFR §130.7, a TMDL must comply with the following requirements: (1) be designed to attain and maintain the applicable water quality standards; (2) include a total allowable loading and as appropriate, wasteload allocations for point sources and load allocations for nonpoint sources; (3) consider the impacts of background pollutant contributions; (4) take critical stream conditions into account (the conditions when water quality is most likely to be violated); (5) consider seasonal variations; (6) include a margin of safety (which accounts for uncertainties in the relationship between pollutant loads and instream water quality); and (7) be subject to public participation. In addition, these TMDLs considered reasonable assurance that the TMDL allocations

assigned to the nonpoint sources can be reasonably met. The enclosure to this letter describes how the sediment TMDL for the non-tidal Back River watershed satisfies each of these requirements.

As you know, any new or revised National Pollutant Discharge Elimination System permits must be consistent with the TMDL's wasteload allocation pursuant to 40 CFR §122.44(d)(1)(vii)(B). Please submit all such permits to EPA for review as per EPA's letter dated October 1, 1998.

If you have any questions or comments concerning this letter, please do not hesitate to contact me, or your staff may contact Jillian Adair, Maryland TMDL coordinator, at 215-814-5713 or adair.jillian@epa.gov.

Sincerely,

Catharine McManus, Acting Director
Water Protection Division

Enclosure

cc: Melissa Chatham, MDE-WSA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Decision Rationale
Total Maximum Daily Load of Sediment in the Non-Tidal Back River Watershed Baltimore City and Baltimore County, Maryland

Catharine McManus, Acting Director
Water Protection Division

Date: 3/5/2018

Decision Rationale
Approval of Total Maximum Daily Load of Sediment
In the Non-Tidal Back River Watershed,
Baltimore City and Baltimore County, Maryland

I. Introduction

The Clean Water Act (CWA) requires a Total Maximum Daily Load (TMDL) be developed for those waterbodies identified as impaired by the state where technology-based and other controls will not provide for attainment of water quality standards (WQS). A TMDL establishes a target for the total load of a particular pollutant that a water body can assimilate and divides that load into wasteload allocations (WLAs), given to point sources, load allocations (LAs), given to nonpoint sources and natural background, and a margin of safety (MOS), which accounts for any uncertainty.

This document sets forth the U.S. Environmental Protection Agency's (EPA) rationale for approving the TMDL for sediment in the non-tidal Back River watershed, which addresses the Total Suspended Sediment (TSS) impairment in the non-tidal Maryland 8-Digit Back River watershed (MD-02130901) as identified on Maryland's 2014 Section 303(d) List. The TMDL was established to address impairments of water quality, caused by Sediment/TSS. The report, *Total Maximum Daily Load of Sediment in the Non-Tidal Back River Watershed, Baltimore City and Baltimore County, Maryland,* was submitted by Maryland Department of the Environment (MDE) to EPA for final review on February 14, 2018 and was received on February 20, 2018.

EPA's rationale is based on the TMDL Report and information in the files provided to EPA by MDE. EPA's review determined that the TMDL meets the following seven regulatory requirements pursuant to 40 CFR Part 130:

1. The TMDL is designed to implement applicable water quality standards.
2. The TMDL includes a total allowable load as well as individual WLAs and LAs.
3. The TMDL considers the impacts of background pollutant contributions.
4. The TMDL considers critical environmental conditions.
5. The TMDL considers seasonal environmental variations.
6. The TMDL includes a MOS.
7. The TMDL has been subject to public participation.

In addition, this TMDL considered reasonable assurance that the TMDL allocations assigned to nonpoint sources can be reasonably met.

From this point forward, the terms TSS and sediment may be used interchangeably, consistent with MDE's Biological Stressor Identification (BSID) as discussed below. All references noted in this document can be found in the TMDL report.

II. Summary

The TMDL specifically allocates the allowable sediment loading and applies only to the non-tidal, 1st-4th order streams contained in the Maryland 8-digit Back River watershed (MD-02130901). TMDLs were established for the tidal streams impaired by sediment and formerly considered part of the Maryland 8-digit Back River watershed as part of the Chesapeake Bay sediment TMDLs established by

EPA in 2010.

There are several permitted point sources, in addition to those covered under the MDE general construction permit, in the TMDL watershed and assigned WLAs in this TMDL[1]. The sediment TMDL for the non-tidal Back River watershed under each permit scenario is expressed in Table 1 as an average annual load in tons per year because it was calculated so as to not cause any sediment related impacts to aquatic life. The daily loads under each scenario are presented in tons per day in Table 2, the calculation of which is explained in Appendix B of the TMDL report. The TMDL is the sum of the LAs, NPDES Stormwater WLA, Waste Water WLA, and an implicit MOS. The LAs include nonpoint source loads generated within the non-tidal Back River watershed. WLAs for permitted point sources under each scenario are provided in Tables 3 and 4, while the NPDES stormwater permits are displayed in Table 5.

Table 1: Back River Average Annual TMDL of Sediment/TSS (ton/yr)

TMDL (ton/yr)	=	LA_{BR}	+	NPDES Stormwater WLA_{BR}	+	Waste Water WLA_{BR}	+	MOS
1,460	=	72	+	1,274	+	114	+	Implicit

Table 2: Back River Maximum Daily Load of Sediment/TSS (ton/day)

MDL (ton/day)	=	LA_{BR}	+	NPDES Stormwater WLA_{BR}	+	Waste Water WLA_{BR}	+	MOS
6.8	=	0.3	+	5.5	+	1	+	Implicit

Table 3: Back River Sediment TMDL Wastewater Point Source WLAs

Facility Name	NPDES #	Permit Type	Baseline Load (ton/yr)	WLA (ton/yr)	Reduction (%)	MDL (ton/day)
Montebello Filtration Plant	MD0003042	Municipal	114	114	0	1

Table 4: Back River Sediment TMDL Allocations for NPDES Regulated Stormwater WLAs

NPDES Regulated Stormwater Sector	NPDES #	Baseline Load (ton/yr)	WLA (ton/year)	WLA (ton/day)	Reduction (%)
Baltimore City Phase I MS4	MD0068292	1,560	391	1.7	75
Baltimore County Phase I MS4	MD0068314	1,847	462	2.1	75
SHA Phase I MS4	MD0068276	180	45	0.2	75
"Other NPDES Regulated Stormwater"[1]	N/A	546	376	1.5	31
Total		**4,133**	**1,274**	**5.5**	**69**

Note: [1]See Table 5 below for a list of NPDES Stormwater Permits that identifies the "Other NPDES Regulated Stormwater" permits.

1 The fact that the TMDL does not assign WLAs to any other sources in the watershed should not be construed as a determination by either EPA or MDE that there are no additional sources in the watershed that are subject to the NPDES program. In addition, the fact that EPA is approving this TMDL does not mean that EPA has determined whether some of the sources discussed in the TMDL, under appropriate conditions, might be subject to the NPDES program.

Table 5: Back River Watershed NPDES Stormwater Permits

NPDES Permit #	Facility Name	NPDES Regulated Stormwater WLA Sector
MD0068292	Baltimore City	City Phase I MS4
MD0068314	Baltimore County	County Phase I MS4
MD0068276	State Highway Administration (SHA)	SHA Phase I MS4
MDR002123	Baltimore City, DGS, Fleet Maintenance	Other NPDES Regulated Stormwater
MDR001970	Baltimore County Bureau of Highways - Shop 7-1	Other NPDES Regulated Stormwater
MDR000254	Bowleys Lane Sanitation Yard	Other NPDES Regulated Stormwater
MDR001905	CCBC - Essex	Other NPDES Regulated Stormwater
MDR002130	Schmidt Baking Co	Other NPDES Regulated Stormwater
MDR000745	U.S. Postal Service – Parkville Auxillary VMF	Other NPDES Regulated Stormwater
MDRC[1]	MDE General Permit to Construct	Other NPDES Regulated Stormwater

Note: [1]Permit does not have a NPDES number.

The option is always available to refine the TMDL for resubmittal to EPA for approval if environmental conditions, new data, or the understanding of the natural processes change more than what was anticipated by the MOS.

III. Background

The Back River watershed is located within Baltimore City and Baltimore County, Maryland and has a population of approximately 255,000 (US Census Bureau 2010). The watershed is associated with two assessment units in Maryland's Integrated Report: a non-tidal 8-digit watershed (02130901) and an estuary portion. The tidal river estuary portion is separately identified as the Back River Oligohaline Chesapeake Bay Segment (BACOH). As set forth in footnote 2, a separate TMDL has been established to achieve applicable water quality standards in BACOH and other Chesapeake Bay segments, and this TMDL is limited to impairments in the non-tidal MD-02130901 segment. For simplicity, further reference in this document to the Back River watershed refers only to the non-tidal Maryland 8-digit watershed (02130901). The total drainage area of the Back River non-tidal watershed is approximately 34,800 acres, not including water/wetlands, and the land-use distribution consists primarily of urban land (87.9 percent) and forest (11.2 percent). There are no "high quality," or Tier II, stream segments (aquatic life assessment scores > 4 [scale 1-5]) located within the Back River watershed.

The Back River watershed was originally listed for biological impairment on the 2002 Integrated Report. The original listing was based on the biological assessment methodology, which uses aquatic health scores, consisting of the Benthic Index of Biotic Integrity (BIBI) and Fish Index of Biotic Integrity (FIBI). To further refine the biological listing, MDE conducted a Biological Stressor Identification (BSID) analysis for the Back River watershed. The BSID analysis applies a case-control, risk-based, weight-of-evidence approach to identify potential causes of biological impairment. The risk-based approach estimates the strength of association between various stressors and an impaired biological community. The analysis then identifies individual stressors as probable or unlikely causes of the poor biological conditions within a given watershed, and subsequently reviews ecological plausibility. Finally, the analysis concludes whether or not these individual stressors or groups of stressors are contributing to the impairment (MDE 2014d).

MDE's BSID report states that the degradation of biological communities in the Back River watershed is strongly associated with anthropogenic impacts, bar formation, channel alteration, high

embeddedness, channelization, no riparian buffer, high chlorides, high sulfate, high conductivity, and low dissolved oxygen. Overall, stressors within the sediment parameter grouping were identified as having a statistically significant association with impaired biological communities at approximately 85 percent of the sites with BIBI and/or FIBI scores significantly less than 3.0 throughout the watershed (MDE 2014b). As a result of the BSID analysis, the 2002 aquatic life use impairment (biological listing) for the non-tidal Maryland 8-digit watershed was refined and identified the watershed as impaired by sediment, chlorides, and sulfates, which require TMDLs, as well as channelization and a lack of riparian buffer. The TMDL established herein by MDE addresses the sediment listing for the non-tidal 8-digit Back River (MD-02130901) as identified in MDE's 2014 Integrated Report.

The primary dataset for the BSID analysis includes Maryland Department of Natural Resources (MDDNR)- Maryland Biological Stream Survey (MBSS) Round 2 and Round 3 data (collected between 2000-2009) because it provides a broad spectrum of paired data variables, which allow for a more comprehensive stressor analysis. MDDNR-MBSS Round 1 can also be used if there is limited Round 2 and 3 data. The MBSS is a robust statewide probability-based sampling survey for assessing the biological conditions of 1st through 4th order, non-tidal streams (Klauda et al. 1998; Roth et al. 2005). A total of 21 water quality monitoring stations were used to characterize the Back River watershed for this TMDL. The biological assessment was based on the combined results of MBSS Round 1 and Round 2 data, which includes 21 stations. The BSID analysis used only stations from MBSS Round 2, which includes nine stations. There are no MBSS Round 3 stations in the Back River watershed.

To quantify the impact of sediment on the aquatic life of non-tidal stream systems, a reference watershed TMDL approach was used, which resulted in the establishment of a *sediment loading threshold* (MDE 2006). This threshold is based on a detailed analysis of sediment loads from watersheds that are identified as supporting aquatic life (i.e., reference watersheds) based on Maryland's biological assessment methodology (Roth *et al.* 1998, 2000; Stribling *et al.* 1998; MDE 2014c). This threshold is then used to determine a watershed specific sediment TMDL endpoint, which represents the maximum allowable load the waterbody can receive without causing any sediment related impacts to aquatic health.

To use a reference watershed approach, total watershed sediment loads were estimated using the Chesapeake Bay Program Phase 5.3.2 (CBP P5.3.2) watershed model. The CBP P5.3.2 model was considered appropriate for this TMDL because the spatial domain of the model segmentation aggregates to the Maryland 8-digit watershed scale, which is consistent with the impairment listing. The model calculates the sediment loads that enter modeled river reaches (*edge-of-stream* loads (EOS)) by determining the sediment loss from all individual land-uses and the portion of that loss that is delivered to the river reaches. These sediment loads represent not only the erosion from the land, but all the intervening processes of deposition on hillsides and sediment transport through smaller rivers and streams that are not represented in the Phase 5.3 Model. Loads from individual land-uses are calculated as a product of the land-use acreage and the average annual simulated sediment loading rates (tons/ac/yr) from the 2009 Progress Scenario. The 2009 Scenario represents 2009 land-use, loading rates, and best management practice (BMP) implementation simulated using precipitation and other meteorological inputs from the period 1991 - 2000 to represent variable hydrological conditions. Please refer to Section 2.2 of the TMDL report for more information.

Reference watersheds were used for the establishment of a *sediment loading threshold* and were determined based on Maryland's biological assessment methodology. The biological assessment methodology assesses biological impairment at the watershed scale based on the percentage of MBSS monitoring stations, translated into watershed stream miles, that have BIBI and/or FIBI scores lower

than the Minimum Allowable IBI Limit (MAL). The MAL represents the threshold under which a watershed is listed as impaired for biology and is calculated based on the average annual allowable IBI value of 3.0 (on a scale of 1 to 5), the coefficient of variation of annual sentinel site results, and an assumed normal distribution. It accounts for annual variability and helps to avoid classification errors (i.e., false positives) when assessing for biological impairments (Roth *et al.* 1998, 2000; Stribling *et al.* 1998; MDE 2014c). In addition to supporting aquatic life, reference watersheds must also be similar in physical and hydrological characteristics to the TMDL watershed. The Back River Watershed lies within both the Coastal Plain and Piedmont physiographic eco-regions. Since the biological impairment is based on MBSS data, which are customized based on ecoregion, the ecoregions defined by the MBSS will be used in this TMDL. In the Back River watershed, 14 of the 21 sites used for the biological assessment are in the Piedmont region; therefore, the Piedmont/Highland reference group was used and eleven reference watersheds were identified.

To further reduce the effect of variability within the Highland and Piedmont physiographic regions (i.e., soils, slope, etc.), the watershed sediment loads were then normalized by a constant background condition, the all forested watershed condition. This new normalized term, defined as the *forest normalized sediment load*, represents how many times greater the current watershed sediment load is than the *all forested sediment load.* The *all forested sediment load* is a modeled simulation of what the sediment load would be if the watershed were in its natural all forested state, instead of its current mixed land use, and is calculated using the CBP P5.3.2 model. The *forest normalized sediment load* is calculated as the current watershed sediment load divided by the *all forested sediment load.*

Reference watershed *forest normalized sediment loads* were calculated and the median (50th percentile) and 75th percentile of the reference watershed *forest normalized sediment loads* (also referred to as the *sediment loading threshold*) were calculated and found to be 3.6 and 7.2, respectively. The median value of 3.6 was used as an environmentally conservative approach for establishing the sediment loading threshold for the TMDL. The *forest normalized sediment load* for the Back River watershed, estimated as 10.7, was calculated to best represent current conditions. A comparison of the Back River watershed *forest normalized sediment loads* to the *forest normalized reference sediment load* demonstrates that the watershed exceeds the *sediment loading threshold*, indicating that it is receiving loads above the maximum allowable load that it can sustain and still meet water quality standards.

The allowable load for the impaired watershed is calculated as the product of the *sediment loading threshold* (determined from watersheds with a healthy biological community) and the Back River *all forested sediment load.* The resulting load is considered the maximum allowable load the watershed can sustain and support aquatic life. It was determined that the non-tidal Maryland 8-Digit Back River average annual TMDL of sediment/TSS is 1,460 ton/yr (a 66% reduction from the baseline load). This TMDL consists of point and nonpoint source allocations and is comprised of a Load Allocation (LA) of 72 ton/yr, a NPDES Stormwater Waste Load Allocation (NPDES Stormwater WLA) of 1,274 ton/yr, and a Process Water Waste Load Allocation (Process Water WLA) of 114 ton/yr. See Table 1, above.

IV. Discussion of Regulatory Conditions

EPA finds that MDE has provided sufficient information to meet all seven of the basic requirements for establishing a sediment TMDL for the Back River watershed. EPA, therefore, approves this sediment TMDL for the non-tidal Back River watershed. This approval is outlined below according to the seven regulatory requirements.

1. ***The TMDLs are designed to implement applicable water quality standards.***

Water quality standards consist of three components: designated and existing uses; narrative and/or numerical water quality criteria necessary to support those uses; and an anti-degradation statement. The Back River watershed's nontidal tributaries are designated as Use Class I - *water contact recreation, and protection of nontidal warmwater aquatic life* and Use Class IV – *recreational trout waters.* Tidal tributaries and the Back River mainstem are designated Use Class II - *support of estuarine and marine aquatic life and shellfish harvesting* (COMAR 2016a, b, c). As discussed above, the TMDL only applies to the 1st through 4th order, non-tidal streams and ensures that watershed sediment loads are at a level that supports the Use Class I and Use Class IV designation. This TMDL focuses primarily on the protection of the aquatic life designated use because the Integrated Report listing was based on a biological assessment of the watershed. However, the required reductions are expected to protect all designated uses of the watershed, including water contact recreation and recreational trout waters. It is understood that aquatic life is more sensitive to sediment impacts than recreation because aquatic life impacts result from continuous exposure that can affect respiration and propagation. Recreation, on the other hand, is sporadic and often avoided during times when sediment concentrations are likely to be highest (e.g. rainstorms). Sediment also poses no human health risk due to dermal contact or minimal ingestion that could occur during recreation. This TMDL's protection of aquatic life from sediment impacts includes protection of trout and, therefore, support the recreational trout waters designated use. Narrative sediment criteria for recreational trout waters (Use Class IV) are the same as that for Use Class I waters. Therefore, if the TMDL is at a sediment level to support aquatic life (Use Class I), it is also meeting sediment requirements for recreational trout waters. Additionally, nine of the eleven reference watersheds contain recreational trout waters. Therefore, it can be inferred that setting sediment values based on these reference watersheds would be supportive of trout waters.

The impairment of the Back River watershed is caused in part by an elevated sediment load beyond a level that the watershed can sustain, which causes sediment related impacts that cannot support aquatic life. The BSID analysis for the Back River watershed identified TSS/sediment, instream habitat, riparian habitat, low dissolved oxygen, and inorganic pollutants (i.e. chlorides, sulfates) as stressors that impact aquatic life.

Sediment load reductions are expected to result in an increase in the number of benthic sensitive species present, an increase in the available and suitable habitat for a benthic community, a possible decrease in fine sediment (fines), and improved stream habitat diversity, all of which will result in improved water quality. The sediment TMDL established herein reduces sediment loads, and subsequent effects on aquatic life in the 1st through 4th order streams in the Maryland 8-Digit non-tidal Back River watershed, to levels that support the designated uses for the watershed. EPA finds these are reasonable and appropriate water quality goals.

2. ***The TMDLs include a total allowable load as well as individual wasteload allocations and load allocations.***

Total Allowable Load

EPA regulations at 40 CFR §130.2(i) state that *the total allowable load shall be the sum of individual WLAs for point sources, LAs for nonpoint sources, and natural background concentrations.* The sediment TMDL for the Back River watershed is consistent with 40 CFR §130.2(i) because the total loads provided by MDE equal the sum of the WLAs for point sources and the land-based LAs for

nonpoint sources.

In the TMDL calculation, the allowable load for the impaired watershed is calculated as the product of the *sediment loading threshold* (determined from watersheds with a healthy biological community) and the Back River all *forested sediment load* (see Section 4.2 of the TMDL report). The resulting load is considered the maximum allowable load the watershed can sustain and support aquatic life. TMDL loading and associated reductions are averaged at the watershed scale and some subwatersheds may require higher reductions than others, depending on the distribution of the land-use. The sediment TMDL for the Back River watershed was calculated to be 1,460 ton/yr. The sediment TMDL and allocations are presented as mass loading rates of tons per year for the average annual load and tons per day for the maximum daily load.

Expressing TMDLs as annual average and maximum daily mass loading rates is consistent with Federal regulations at 40 CFR §130.2(i), which states that *TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.* The annual average sediment loads are presented in Table 1 and the maximum daily sediment loads are presented in Table 2, above.

The TMDL was developed to address the sediment listings for the 1st through 4th order tributaries in the Maryland 8-Digit non-tidal Back River watershed. The Back River Baseline Load and TMDL are presented in Table 6.

Table 6: Back River Baseline Load, TMDL, and Total Reduction Percentage

Baseline Load (ton/yr)	TMDL (ton/yr)	Total Reduction (%)
4,319	1,460	66

Load Allocations

According to Federal regulations at 40 CFR §130.2(g), LAs are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loadings should be distinguished. The TMDL summary in Table 1, above, contains the LA for the Back River watershed.

As indicated above, the computational framework chosen for the Back River sediment TMDL was the CBP P5.3.2 watershed model 2009 Progress Scenario EOS sediment loads. Individual land-use EOS loads are calculated within the CBP P5.3.2 watershed model as a product of the land use area, land use target edge-of-field (EOF) loading rate, and loss from the EOF to the main channel (i.e., sediment delivery factor). For the 2009 Progress Scenario, Best Management Practice (BMP) data and reduction efficiencies are then subsequently applied to produce the final EOS loads.

In order to attain the TMDL loading cap calculated for the watershed, reductions were applied to the predominant sources (i.e., significant contributors of sediment to the stream system). If only these predominant sources are controlled, the TMDL can be achieved in the most effective, efficient, and equitable manner. Individual LAs for these nonpoint land-use sectors were calculated using the allocation methodology in the Maryland Phase I WIP (MDE 2010). The allocations were calculated by applying equal reductions to the reducible loads of all sectors. The reducible load is defined as the difference between the No Action (NA) scenario and the "Everything, Everyone, Everywhere" (E3) scenario. The NA scenario represents current land-uses without any sediment controls applied, while

the E3 scenario represents the application of all possible BMPs and control technologies to current land-use.

Land uses that contributed less than 1 percent of the total load were not reduced as they would produce no discernible reductions. In the Back River watershed, only regulated point sources were identified as predominant sources of sediment; therefore, no nonpoint sources were assigned reductions. Additionally, forest was not assigned reductions, as it represents the most natural condition in the watershed. Table 7 provides allocations of the nonpoint source sediment loads in the Back River Watershed.

Table 7: Back River Sediment TMDL Allocation by Nonpoint Source Category (tons/year)

General Land Use	Detailed Land-Use	Baseline Load	LA	Reduction
Forest	Forest	46	46	0%
	Harvested Forest	3	3	0%
AFOs	Animal Feeding Operations	0	0	0%
Pasture	Pasture	1	1	0%
Crop	Crop	21	21	0%
Nursery	Nursery	1	1	0%
Total		**72**	**72**	**0%**

Note: [1]The source categories represent aggregates of multiple sources (e.g., crop is an aggregate of high till, low till, and hay).

Wasteload Allocations

WLAs have been calculated for NPDES regulated individual permits, individual and general MS4 permits, the general permit for stormwater dischargers from industrial activities, and the general permit for stormwater discharges from construction sites in the Back River watershed. The permits can be grouped into two categories, waste water and stormwater. Information for the sediment WLAs in this TMDL are included in Tables 1-5, above.

The waste water category includes those loads generated by continuous discharge sources whose permits have TSS limits (i.e., contributors to the watershed sediment load). Other permits that do not meet these conditions are considered *de minimis* in terms of the total watershed sediment load. There is one municipal water treatment facility within the Back River watershed that contributes to the overall sediment load. The WLA for the water treatment facility is calculated based on its TSS limit and corresponding flow information.

The stormwater category includes all NPDES regulated stormwater discharges, both general and individual. In the Back River watershed, these include the Baltimore City and Baltimore County Phase I MS4 permits, the Phase I State Highway Administration (SHA) MS4 permit, and other general NPDES stormwater permits. These stormwater permits are regulated based on Best Management Practices (BMPs) and do not include TSS limits. In the absence of TSS limits, the baseline loads for these NPDES regulated stormwater discharges are calculated using the urban land-use EOS loads as calculated within the CBP P5.3.2 watershed model. The associated WLAs are calculated by applying reductions to the urban land use.

Individual WLAs have been calculated for the Baltimore City and Baltimore County Phase I

MS4 permits and the SHA Phase I MS4 permit. An aggregate WLA has been calculated for the other general NPDES stormwater permits. Other NPDES regulated stormwater permits include general MS4s, all industrial facilities permitted for stormwater discharges, and general construction permits. This aggregate WLA is referred to as the "Other NPDES regulated stormwater" WLA. See Tables 4 and 5, above.

In order to calculate the NPDES stormwater WLA, MDE further refined the CBP P5.3.2 urban land-use. For any given watershed, the refined CBP P5.3.2 land-use contains the specific level of detail needed to determine individual WLAs for Phase I MS4s, the State Highway Administration (SHA) Phase I MS4, and Phase II MS4s, and an aggregate WLA for "Other NPDES Regulated Stormwater" entities.

Federal regulations at 40 CFR §122.44(d)(1)(vii)(B) require that, for a NPDES permit for an individual point source, the effluent limitations must be consistent with the assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA. There is no express or implied statutory requirement that effluent limitations in NPDES permits necessarily be expressed in daily terms. The CWA definition of "effluent limitation" is quite broad (effluent limitation is "any restriction on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources ...)." See CWA 502(11). Unlike the CWA's definition of TMDL, the CWA definition of "effluent limitation" does not contain a "daily" temporal restriction. NPDES permit regulations do not require that effluent limits in permits be expressed as maximum daily limits or even as numeric limitations in all circumstances, and such discretion exists regardless of the time increment chosen to express the TMDL. For further guidance, refer to Benjamin H. Grumbles memo (November 15, 2006) titled *Establishing TMDL Daily Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in Friends of the Earth, Inc. v. EPA, et al., No. 05-5015 (April 25, 2006) and implications for NPDES Permits.*

EPA has authority to object to the issuance of an NPDES permit that is inconsistent with WLAs established for that point source. It is expected that MDE will require periodic monitoring of the point source(s), through the NPDES permit process, in order to monitor and determine compliance with the TMDL's WLAs. Based on the foregoing, EPA has determined that the TMDLs are consistent with the regulations and requirements of 40 CFR Part 130.

3. The TMDLs consider the impacts of background pollutant contributions.

The TMDL considers the impact of background pollutants by considering the sediment load from natural sources such as forested land. The CBP P5.3.2 model also considers background pollutant contributions by incorporating all land uses.

4. The TMDLs consider critical environmental conditions.

EPA regulations at 40 CFR §130.7(c)(1) require TMDLs to account for critical conditions for stream flow, loading, and water quality parameters. The intent of the regulations is to ensure that: (1) the TMDLs are protective of human health, and (2) the water quality of the waterbodies is protected during the times when they are most vulnerable. Critical conditions are important because they describe the factors that combine to cause a violation of water quality standards and will help in identifying the

actions that may have to be undertaken to meet water quality standards[2]. Critical conditions are a combination of environmental factors (e.g., flow, temperature, etc.), which have an acceptably low frequency of occurrence. In specifying critical conditions in the waterbody, an attempt is made to use a reasonable worst-case scenario condition.

The biological monitoring data used to determine the reference watersheds reflect the impacts of stressors (i.e., sediment impacts to stream biota) over the course of time and therefore depict an average stream condition (i.e., captures all high and low flow events). Since the TMDL endpoint is based on the median of forest normalized loads from watersheds assessed as having good biological conditions (i.e., passing Maryland's biological assessment), by the nature of the biological data described above, it must inherently include the critical conditions of the reference watersheds. Therefore, since the TMDL reduces the watershed sediment load to a level compatible with that of the reference watersheds, critical conditions are inherently addressed.

5. *The TMDLs consider seasonal environmental variations.*

This TMDL accounts for seasonality through various methods. It is implicitly included through the use of the biological monitoring data since it reflects the impacts of stressors over time, as described above. Also, the MBSS dataset included benthic sampling in the spring (March 1 - April 30) and fish sampling in the summer (June 1 - September 30). Benthic sampling in the spring allows for the most accurate assessment of the benthic population, and therefore provides an excellent means of assessing the anthropogenic effects of sediment impacts on the benthic community. Fish sampling is conducted in the summer when low flow conditions significantly limit the physical habitat of the fish community, and it is also most reflective of the effects of anthropogenic stressors. Moreover, the sediment loading rates used in the TMDL were determined using the CBP P5.3.2 model, which is a continuous simulation model with a simulation period 1991-2000, based on Hydrological Simulation Program Fortran (HSPF) model, thereby addressing annual changes in hydrology and capturing wet, average, and dry years.

6. *The TMDLs include a Margin of Safety.*

The requirement for a MOS is intended to add a level of conservatism to the modeling process in order to account for uncertainty. Based on EPA guidance, the MOS can be achieved through two approaches. One approach is to reserve a portion of the loading capacity as a separate and explicit term, and the other approach is to incorporate the MOS implicitly as part of the design conditions. MDE has adopted an implicit MOS for this TMDL. The reference watershed forest normalized EOS loads were chosen in a conservative manner. Analysis of the reference group forest normalized sediment loads indicates that the 75th percentile of the reference watersheds is a value of 7.2 and the median value is 3.6. Achieving a 75th percentile forest normalized sediment load would assure that the watershed falls within the range of unimpaired watersheds. However, for this analysis, the forest normalized reference sediment load (also referred to as the sediment loading threshold) was set at the median value of 3.6 (Currey et al. 2006). Use of the median as the threshold creates an environmentally conservative estimate, and results in an implicit MOS.

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[2] EPA memorandum regarding EPA Actions to Support High Quality TMDLs from Robert H. Wayland III, Director, Office of Wetlands, Oceans, and Watersheds to the Regional Management Division Directors, August 9, 1999.

7. The TMDLs have been subject to public participation.

MDE provided an opportunity for public review and comment on the sediment TMDL for the Back River watershed. A first public review and comment period was open from June 15, 2017 through July 14, 2017. However, due to a calculation error in the WLA, the TMDL and the report had been revised and opened for a second public review and comment period from October 16, 2017 through November 14, 2017. In total, MDE received two sets of written comments from EPA and Baltimore County Department of Environmental Protection and Sustainability and provided a comment response document that adequately addressed those comments.

A letter was sent to the U.S. Fish and Wildlife Service (US FWS) pursuant to Section 7(c) of the Endangered Species Act, requesting the Service's concurrence with EPA's findings that approval of this TMDL does not adversely affect any listed endangered and threatened species, and their critical habitats.

V. Discussion of Reasonable Assurance

EPA requires that there be a reasonable assurance that the TMDLs can be implemented. WLAs will be implemented through the NPDES permit process. According to 40 CFR §122.44(d)(1)(vii)(B), the effluent limitations for a NPDES permit must be consistent with the assumptions and requirements of any available WLA for the discharge prepared by the state and approved by EPA. Furthermore, EPA has the authority to object to issuance of an NPDES permit that is inconsistent with WLAs established for that point source.

While this TMDL establishes a sediment loading target for the watershed, watershed managers and other stakeholders should always remain cognizant that the endpoint of this TMDL, and hence the definition of its successful implementation, is based on in-stream biological health. Load reductions are critical to tracking this effort, since the TMDL target is defined as the point where sediment loads match those seen in reference watersheds, but the watershed cannot be delisted or classified as meeting water quality standards until it is demonstrated that the biological health of the stream system is no longer impaired by sediment. In planning any implementation efforts related to this TMDL, careful consideration should be given both to the sediment load reductions, and to the direct potential impacts on biological communities.

Implementation of the non-tidal Back River watershed sediment TMDL is expected to occur in parallel with implementation efforts to meet sediment target loads consistent with the 2010 Chesapeake Bay TMDLs. While the objectives of the two efforts differ, with the 2010 Bay TMDLs focused on tidal water quality and this TMDL targeting biological integrity in non-tidal streams, many of the sediment reductions achieved through implementation activities should result in progress toward both goals. The strategies for implementing the 2010 Bay TMDLs are described in Maryland's Phase I WIP (MDE 2010) and Phase II WIP (MDE 2012). The WIPs are the centerpieces of the state's "reasonable assurance" of implementation for the 2010 Bay TMDLs, and the strategies encompass a host of BMPs, pollution controls and other actions for all source sectors that cumulatively will result in meeting the state's 2025 targets. In particular, the implementation of practices to reduce sediment loadings from the urban stormwater sectors should result in decreased loads to the Back River watershed's non-tidal streams.

MDE published the Final Determination to Issue Stormwater Permit to Baltimore City and Baltimore County in December 2013. The permit states, "By regulation at 40 CFR §122.44, BMPs and programs implemented pursuant to this permit must be consistent with applicable WLAs developed

under EPA approved TMDLs." Section IV.E. of the permit details requirements for Restoration Plans and Total Maximum Daily Loads. Implementation plans should include the following: a detailed implementation schedule, the final date for meeting applicable WLAs, a detailed cost estimate for all elements of the plan, a system that evaluates and tracks implementation through monitoring or modeling to document progress towards meeting established benchmarks, deadlines, and stormwater WLAs, and a public participation program. An annual TMDL assessment report shall also be submitted to MDE. Stormwater retrofits can address both water quality and quantity. Examples of these retrofits include the reduction of impervious surfaces, modification of existing or installation of new stormwater structural practices, increased urban tree canopy, and stream restoration projects.

In agricultural areas, comprehensive soil conservation plans can be developed that meet criteria of the USDA-NRCS Field Office Technical Guide (USDA 1983). Soil conservation plans help control erosion by modifying cultural practices or structural practices. The reduction percentage attributed to cultural practices is determined based on changes in land-use, while structural practices have a reduction percentage of up to 25%. In addition, sediment loadings from livestock can be controlled via stream fencing and rotational grazing. Sediment reduction efficiencies of methods applicable to pasture land-use range from 40% to 75% (USEPA 2004). Lastly, riparian buffers can reduce the effect of agricultural sediment sources through trapping and filtering. In response to the WIP and the increased responsibility for local governments to achieve nutrient and sediment reduction goals, Maryland has continued to increase funding in the Chesapeake and Atlantic Coastal Bays Trust Fund. Some other examples of programs that can provide funding for local governments and agricultural sources include the Federal Nonpoint Source Management Program (§ 319 of the Clean Water Act), the Buffer Incentive Program (BIP), the State Water Quality Revolving Loan Fund and the Maryland Agricultural Water Quality Cost-Share Program.

In summary, through the use of the aforementioned funding mechanisms and BMPs, there is reasonable assurance that this TMDL can be implemented. For specific details about implementation and funding programs discussed here, refer to Section 5.0 of the TMDL report.