

**Comment Response Document
Regarding the Total Maximum Daily Loads and Water Quality Analysis for Restricted
Shellfish Harvesting Areas in the Miles River Basin in Talbot County, Maryland**

Introduction

The Maryland Department of the Environment (MDE) has conducted a public review of the proposed Total Maximum Daily Loads (TMDLs) and Water Quality Analysis (WQA) of bacteria for three restricted shellfish harvesting areas in the Miles River basin. The public comment period was open from May 12, 2005 through June 10, 2005. MDE received one set of comments.

Below is a list of commentors, their affiliation, the date comments were submitted, and the numbered references to the comments submitted. In the pages that follow, comments are summarized and listed with MDE’s response.

List of Commentors

Author	Affiliation	Date	Comment Number
John B. McCarthy	Talbot River Protection Association	May 19, 2005	1 through 4

1. The commentor stated that the Department’s conclusion that Hunting Creek does not require a TMDL could be attributed to chance, because the fecal coliform concentrations in Hunting Creek do not appear to be statistically significantly different from those in the Upper Miles or Leeds Creek (which do require fecal coliform TMDLs).

Response: The water quality standard for Use II – Shellfish Harvesting Areas is compared to both the geometric mean and 90th percentile of the monitoring data. The most recent five years of monitoring data is used to represent current watershed conditions and account for seasonal and hydrological variation. The most recent five–year monitoring data showed that the water quality in Hunting Creek has met the water quality standard and therefore a TMDL is not required for this waterbody. However, the MDE shellfish sanitation program will continue to monitor and assess this watershed. Tests of statistical significance such as a t-test compare means and variances. The key differences here are related to the distribution of the data, rather than central tendency.

2. The commentor stated that the Department is premature in determining whether or not a TMDL is required for these waters, given that bacteria source tracking (BST) studies are scheduled for later this year.

Response: BST does not determine or affect the need for a TMDL. BST provides only for a better allocation to sources and more effective management and mitigation of the problem.

MDE has received approval from EPA to proceed in this manner, with the understanding that the TMDL reports will be revisited upon receipt of the BST results. In the mean time, the State is using the best available information to estimate the bacteria loading contributions by the four major source categories (human, pet, livestock and wildlife). It is expected that this data will be used as a tool to identify significant source contributions in the basin. Please note that the TMDL is an estimate of the assimilative capacity of the water body and is based on the water quality criteria. We typically estimate the current condition (baseline) to give an approximation of the reduction that will be required for attainment of water quality standards. Therefore, the BST source information will not change the estimated assimilative capacity, but will provide more precision and accuracy to the current source distribution.

MDE has an on-going shellfish program that conducts shoreline surveys to identify actual and potential pollution sources impacting shellfish water quality. Where possible, the shellfish program works with other programs at MDE, local health departments, and the Soil Conservation Service to mediate any actual sources identified. This program has been successful in preventing illnesses associated with Maryland shellfish for over 50 years, and has resulted in upholding over 90% of shellfish waters in the “open” status.

3. The commentor stated that the Department’s decision to rule out a TMDL for Hunting Creek is premature, given that Talbot County “is about to begin consideration of a Watershed Restoration Action Strategy (WRAS) for the entire Miles River watershed” and implementation of said WRAS.

Response: The Department is aware of the Miles River WRAS, the funding for which was applied for in 2005 by Talbot County, in cooperation with the Talbot County Soil Conservation District, Farm Bureau, Talbot Creek Watchers, Environmental Concern, Chesapeake Wildlife, the Talbot River Protection Association and the Eastern Shore Land Conservancy. The WRAS will serve to identify impairments within the watershed and provide guidance for prioritized implementation opportunities aimed at achieving water quality enhancement, expanded wildlife habitat, more sensitive land use conversions, and conservation. The Department’s determination regarding Hunting Creek does not preclude the WRAS from moving forward. Additionally, although Hunting Creek does not display signs of aquatic life impairments due to fecal coliform, the State reserves the right to require additional pollution controls in the watershed if, evidence suggests that fecal coliform from sources in the basin are contributing to downstream water quality problems.

4. The commentor requested a public hearing.

Response: Comments received by the Department have been considered in preparing the draft final TMDL document to be submitted to the EPA. The Department received only one set of written comments and request for a public hearing regarding this document. In light of the limited number of individuals requesting a hearing, the Department has concluded that a hearing is not warranted; however, the Department will invite the commentor to meet at MDE to discuss his issues of concern.