

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

July 16, 2015

VIA EMAIL & U.S. MAIL

Jon M. Capacasa, Water Protection Division Director
Evelyn MacKnight, NPDES Permitting Branch Chief
U.S. Environmental Protection Agency – Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Formal Request to Extend the Public Comment Period Concerning Proposed USEPA Nutrient TMDL for Wissahickon Creek

Dear Mr. Capacasa and Ms. MacKnight:

On behalf of a broad coalition of municipal wastewater treatment facilities and MS4 dischargers that contribute nutrient loading to Wissahickon Creek, Hall & Associates (“H&A”) formally requests an additional extension of the public comment period past the current July 30th deadline for the Wissahickon Creek Watershed Total Phosphorous Total Maximum Daily Load (“TMDL”). As EPA is well aware, the economic impact of this TMDL will be in the hundreds of millions of dollars and the affected communities are keenly interested in providing detailed comments on the need for and reasonableness of the federal proposal. EPA has determined, through its 40 C.F.R. § 25.2 and, *inter alia*, § 130.7, 130.10 regulations, that formulation of a TMDL is an activity requiring public comment/access to relevant records and improper completion of public participation will nullify a draft TMDL. Consequently, a further extension of the July 30th comment deadline is necessary due to inadequate production (non-public availability) of records vital to informed public comment during the comment period, as is required under 40 C.F.R. § 25.4(b).

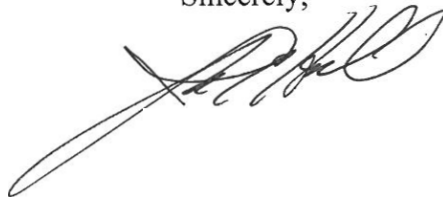
During discussions with Region 3 staff concerning the availability of records used in the development of the Total Phosphorous TMDL for the Wissahickon Creek Watershed, H&A was told that a “public record” or Docket is not being maintained on the matter and that entities may, instead, file a FOIA request for particular supporting documents desired for the comment process. (See attached Email Exchange between EPA Region III and H&A). The communities represented by H&A have consequently submitted over a dozen FOIA requests to obtain critical records. This approach, chosen by EPA to meet its Part 25 and related Part 130 public participation rules, effectively prevents public accesses to records until EPA responds under

HALL & ASSOCIATES

FOIA. This "FOIA approach" does not appear to be allowable under Part 25 since a public docket on the TMDL is not being maintained. Nonetheless, since such records are not presently available for public review, as required by 40 C.F.R. § 25.4(b) and 130.7, and are vital to the public's ability to comment in an informed manner on the TMDL, an extension of time is necessary to allow for review and consideration of the documents requested under FOIA before the close of the public comment period.

Therefore, please confirm that EPA will be again extending the public comment period until 30 days after the records requested under FOIA that provide the factual and scientific basis for statements made within the TMDL summary documents have been provided.

Sincerely,

A handwritten signature in black ink, appearing to be "A. Hall", written in a cursive style.

cc: Wissahickon Wastewater & MS4 Permittees

Enclosure

Attachment

From: Toy, Ashley [<mailto:toy.ashley@epa.gov>]

Sent: Monday, July 13, 2015 1:40 PM

To: Bill Hall

Cc: John Hall; Benjamin Kirby; MacKnight, Evelyn; Richardson, William; Schepel, Kristen; Day, Christopher

Subject: RE: Wissahickon Creek TMDL

Bill,

I apologize for the delay in response. I was trying to get information on all outstanding issues to be more comprehensive.

Regarding your question about Figure 9 in the 2012 Stressor Verification report, the graph should have been labeled ug/L (analyzed water column chlorophyll data). A corrected version is attached. I will broadly distribute to the stakeholders asap.

An administrative record is “*the set of non-deliberative documents that the decision-maker considered, directly or indirectly (e.g., through staff), in making the final decision.*” Please see our guidance document at <http://www.epa.gov/ogc/adminrecordsguidance09-00-11.pdf>. There is an open comment period for the proposed Total Phosphorus TMDL for the Wissahickon Creek Watershed which closes July 30th. With that in mind, I tried to be helpful to point you to documents that were directly used in development of the draft document which is what I thought you were asking. There is no administrative record for you to view and there is no requirement for EPA to prepare an administrative record at this time. As stated in my earlier message EPA has not made a final decision in this matter. If there are certain documents you want to be made available for viewing in our office, please provide a list of the specific documents via a FOIA request.

Sincerely,
Ashley

From: Bill Hall [<mailto:bhall@hall-associates.com>]

Sent: Wednesday, July 08, 2015 11:39 AM

To: Toy, Ashley

Cc: John Hall; Benjamin Kirby; MacKnight, Evelyn; Richardson, William; Schepel, Kristen; Day, Christopher

Subject: RE: Wissahickon Creek TMDL

Thanks Ashley.

I would like to review the Administrative Record next week. Do I need to make an appointment and, if so, whom should I contact?

Bill

William T. Hall

Associate

Hall & Associates – **Note New Address:**

1620 I Street NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

Cell: 610-247-4651

E-Mail: bhall@hall-associates.com