



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

MAY 30 2012

The Honorable Douglas Domenech
Secretary of Natural Resources
P.O. Box 1475
Richmond, Virginia 23218

Dear Secretary Domenech:

Thank you for the submission to the U.S. Environmental Protection Agency (EPA) of Virginia's final Phase II Watershed Implementation Plan (WIP). I greatly appreciate the efforts of you and your partners to respond to EPA's evaluation of the draft WIP that was provided on February 15, 2012. Virginia has made significant progress reducing pollution and moving forward with Phase I WIP commitments. The completion of the Phase II WIPs represents a transition from planning to accelerating the implementation of practices that will clean up the thousands of streams and rivers that make up the Chesapeake Bay watershed.

I am enclosing EPA's evaluation of Virginia's final Phase II WIP and 2012-2013 milestones. The improvements noted in the enclosed evaluation increase EPA's confidence that Virginia will meet its pollution reduction goals. The evaluation also identifies key areas that EPA expects Virginia to address in the next milestone period and through 2017 in order to fully succeed in this effort.

For the purposes of evaluating commitments and future progress, EPA will continue to refer to the milestone and 2025 WIP input decks with placeholder best management practices (BMPs) for nutrient management as the final submittals. As the Chesapeake Bay Program partnership approves BMPs for use in the partnership's modeling tools or as other new information becomes available, EPA is willing to conduct further model analysis of Virginia's WIP and milestone commitments. This approach is a fundamental component, and commitment, of the partnership's adaptive management approach.

Based on new information in the final Phase II WIP and progress to date, EPA intends to maintain ongoing oversight of Virginia's agriculture, wastewater, and offset and trading programs. EPA acknowledges Virginia's efforts to finalize an agreement responding to EPA's assessment of the Commonwealth's stormwater program and to develop an MS4 permit with enforceable provisions to implement the WIP commitments. Until these steps are completed, however, EPA will maintain enhanced oversight of the urban stormwater sector. EPA also expects Virginia to continue working with partners to identify more specific strategies that will better guide actions at the local level.

The enclosed evaluation identifies potential federal actions that EPA will consider if key issues are not addressed. It is EPA's desire to avoid these actions if possible, and we will work with you through our regular discussions and the two-year milestone process to assess progress.

I look forward to our continued dialogue as we work toward implementing the practices necessary to achieve our shared goals for a restored Chesapeake Bay.

If you have any questions or comments, please do not hesitate to contact me or have your staff contact Mr. Jeffrey Corbin at (215) 667-9304.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosure

cc: Mr. Anthony Moore, VADNR
Mr. David Johnson, VADCR
Mr. David Paylor, VADEQ

**EPA EVALUATION OF VIRGINIA'S FINAL PHASE II WATERSHED IMPLEMENTATION PLAN AND
2012-2013 MILESTONES**

Overview

Virginia's final Phase II Watershed Implementation Plan (WIP) continues to describe the Commonwealth's efforts to implement its Phase I WIP commitments. Since submitting the draft Phase II WIP, Virginia received plans from its localities. However, Virginia's final Phase II WIP does not include these plans or provide clear local area targets to help localities understand their role within the statewide WIP strategy. Instead, the final Phase II WIP includes a "menu" of local strategies and commits to engage with localities through an adaptive management process over the course of the two-year milestones. The U.S. Environmental Protection Agency (EPA) believes that communities within Virginia would benefit from seeing some strong examples of local plans.

Virginia's final Phase II WIP includes two provisional input decks for 2025 – one using the definition of nutrient management approved by the Chesapeake Bay Program, and another using an efficiency placeholder. These joined the provisional input decks provided for Virginia's 2012-2013 milestones. For purposes of this evaluation and for assessing future progress, EPA is considering the milestone and 2025 WIP input decks using the placeholder best management practices (BMPs) to be the final decks. As the Chesapeake Bay Program partnership approves BMPs for use in the modeling tools or as other new information becomes available, EPA is willing to conduct further model analysis of Virginia's WIP and milestone commitments. EPA will also develop a 2017 input deck for Virginia based on a previous 2017 wastewater input deck submission and assuming that 60 percent of practices to reduce pollution from other sources will be in place by 2017 compared to 2009.

Virginia did not submit amended 2012-2013 programmatic milestones. Instead, Virginia added additional detail on their near-term actions in their final Phase II WIP that partially addressed EPA's February 15 evaluation on the final 2012-2013 milestones.

EPA intends to maintain ongoing oversight of Virginia's agriculture, wastewater, and offset and trading programs. Virginia has made progress working with EPA to finalize a letter of agreement that addresses EPA's stormwater assessment, developing a permit that meets EPA's expectations and is consistent with WIP provisions, and committing to a schedule for reissuing the remaining Phase I and II MS4 permits. Until these actions are complete, however, EPA will maintain enhanced oversight of the urban stormwater sector.

Local Engagement

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- Seventy-five percent of localities submitted plans with information on resources and strategies to implement the WIP.
- Virginia includes a process to continue engagement with local partners and adaptively manage implementation strategies over time, in part through the use of Technical Advisory Committees (TAC) and Stormwater Local Government Advisory Committee (SLGAC) to prioritize BMPs and assistance tools.

- Virginia has established a public comment period, including hosting several meetings throughout the Commonwealth, in order to solicit additional input into the Phase II WIP.

Key areas to address in 2012-2013 milestone period and through 2017

- Include a more specific process and timeframe for transforming the menu of local strategy ideas into specific local area targets so that localities can better understand their role in achieving the WIP commitments and meeting the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) allocations.

Agriculture

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- Virginia clarifies that provisions included in the Phase I WIP still stand, such as two-year BMP implementation targets and a commitment to adopt contingencies as necessary to fulfill WIP strategies.
- Virginia provides a detailed timeline, next steps and an outreach strategy on how Virginia will implement their Resource Management Plan (RMP) program.

Key areas to address in 2012-2013 milestone period and through 2017

- Provide detailed strategies for how Virginia will achieve BMP implementation levels. Through EPA's oversight meetings with Virginia, EPA looks forward to more detailed strategies that clearly explain how farmers will be engaged and incentivized to meet the WIP commitments and how Virginia will secure and direct funding and staff to make it happen.
- Share with EPA the Memorandum of Understanding between the Department of Environmental Quality and the Department of Agriculture and Consumer Services in order to build assurance that these departments are addressing environmental issues at small animal feeding operations (AFOs).
- Provide a plan to fill key staffing needs.
- Provide additional details on communication and outreach campaign to agricultural producers on WIP expectations.

Potential EPA Actions: Maintain ongoing oversight.

Urban Stormwater

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- In the Final Phase II WIP, Virginia references a letter of agreement to address EPA's stormwater assessment and continues to work with EPA to complete this agreement. Among other things, the agreement will include a schedule to reissue all Phase I and II MS4 permits.
- The final Phase II WIP details an outreach strategy to raise local knowledge and increase technical capacity to meet the requirement of forthcoming MS4 permits and stormwater regulations. This strategy includes several conferences and meetings scheduled for spring of 2012, regional meetings involving planning district commissions and soil and water conservation districts, individual locality meetings through July 2014, and the creation of a SLGAC to help assess Virginia's toolbox of technical assistance.
- Virginia submitted a draft Phase I MS4 permit to EPA for review, and the Final Phase II WIP explains that Virginia has begun the process for revising the Phase II MS4 general permit.

- Separate from the Phase II WIP, the Department of Conservation and Recreation (DCR) has provided a draft compliance management strategy to EPA.
- DCR is developing the Virginia ePermitting System website to digitally track and report all urban and suburban BMPS. Data collected through this website can be uploaded into NEIEN.

Key areas to address in 2012-2013 milestone period and through 2017

- Finalize letter of agreement with EPA on how Virginia is responding to EPA's assessment of its stormwater programs, including a strategy and schedule for submitting six Phase I MS4 permits for EPA review by December 31, 2012 and the remaining five proposed permits for EPA review by February 28, 2013. EPA expects all permits to include provisions to implement the WIP strategies.
- To demonstrate progress toward the December 2012 deadline, officially submit a draft Phase I MS4 permit that could be an example for all other MS4 permits. EPA notes that it is not necessary to revise the Bay TMDL to establish aggregate wasteload allocations for urban stormwater in advance of issuing Phase I MS4 permits.
- Demonstrate progress toward enforcing stormwater permits and regulations.
- Develop local strategies with specific commitments, actions and a timeframe for when these strategies will be developed through the milestone process.

Potential EPA Actions: EPA will maintain enhanced oversight until Virginia finalizes a letter of agreement with EPA to address EPA's stormwater assessment and submits a permit that includes provisions to implement the WIP strategies. EPA may initiate the following actions starting in 2012:

- Negotiate Chesapeake Bay Implementation Grant and Regulatory and Accountability Program (CBIG and CBRAP) grant work plans and/or add conditions to CBRAP grants to ensure grants implement the highest priority strategies articulated in the WIP and milestones.
- Object to or takeover permits that do not implement the "L2" actions identified in Virginia's WIP.
- Continue targeted enforcement until adequate compliance monitoring strategy is in place.
- Extend assistance to Virginia for permit writing and conducting inspections.
- Provide technical training and guidance for Virginia staff and communities that are responsible for implementation, including localities outside of MS4 areas.

Wastewater and Onsite Systems

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- Added Sections 4.1.1 and 4.1.2 to include clarification on general permits and how the wasteload allocations (WLAs) for combined sewer systems will be met, as agreed with EPA.
- Included a comparison of how Virginia Department of Health's recent regulation amendments for alternative onsite systems relate to the "Voluntary National Guidelines for the Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems."
- Included a commitment to work with EPA and the Chesapeake Bay Program to identify a list of new, innovative and alternative onsite system designs that may be effective in nitrogen reduction.

Key areas to address in 2012-2013 milestone period and through 2017

- Further clarify how Virginia will coordinate across agencies in light of the recent regulatory amendments for onsite systems.
- EPA expects notification and periodic updates when regulatory actions are occurring for alternative onsite systems.

Potential EPA Actions: Maintain ongoing oversight.

Offsets and Trading

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- The final Phase II WIP provides a clear summary of the process used to develop a report to the Virginia General Assembly on the expansion of the Nutrient Credit Exchange program. EPA commends Virginia on completing the development of this report and on subsequent legislative action related to the report. EPA expects periodic updates as the program is further developed through the regulatory process.

Key areas to address in 2012-2013 milestone period and through 2017

EPA expects Virginia to add milestones, amend its WIP, or provide other written commitment that:

- References EPA's final assessment of Virginia's Trading and Offset Program.
- Commits to resolve all jurisdiction-specific Tier 1 and Tier 2 issues in 2012 and all unresolved recommendations that are common to all jurisdictions in 2013.
- Clarifies that a fully effective offset program will be in place by December 2013 for sectors with planned new or increased loadings, or demonstrations will be made to show that specific sectors will not experience net growth in loadings.

EPA recognizes that Virginia may address some of these areas through the development of regulations to implement recent legislation that expands Virginia's Nutrient Credit Exchange.

Potential EPA Actions: Conduct ongoing oversight, including NPDES permit reviews, to ensure commitments are implemented and recommendations from EPA's offsets and trading program assessment are addressed.

Federal Facilities

Key improvements since draft Phase II WIP and final 2012-2013 milestone submission

- Constructive discussions with federal facilities regarding the clarification of MS4 treatment for federal MS4s.
- Negotiating an agreement with Department of Defense that will describe federal leadership pursuant to Executive Order (EO) 13508, the Energy Independence and Security Act and EO 13514.

Key areas to address in 2012/13 milestone period and through 2017

- Consider how the process underway with Department of Defense could be extended to or inform all federal agencies with property in Virginia.

Potential EPA Actions: Conduct ongoing oversight. Through the Federal Facilities Team, EPA will assist jurisdictions in coordinating with federal facilities for purposes of WIP implementation.

General Note to All Jurisdictions

- EPA will assess annual progress and track two-year milestone commitments. EPA may take federal actions, including but not limited to actions described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the jurisdictions' individual WIPs and needed to meet Bay TMDL allocations are achieved.
- The Chesapeake Bay Program partnership is developing verification protocols in order for nutrient and sediment controls to be credited by the Chesapeake Bay Program models. These protocols will address unreported and non-cost shared practices and will include guidelines for identifying and removing duplicate records and addressing expired, failed, or removed practices.
- EPA may conduct special studies or program assessments to ensure progress under the WIPs and milestones.

