

GUIDE FOR FEDERAL LANDS AND FACILITIES' ROLE IN CHESAPEAKE BAY JURISDICTIONS' PHASE II WATERSHED IMPLEMENTATION PLANS

This Guide provides clarification on EPA's expectations regarding federal agency participation in the Chesapeake Bay TMDL Phase II Watershed Implementation Plans (WIPs) that will be developed by the Bay jurisdictions (Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia). This Guide provides additional detail on approaches available to federal agencies for ensuring that the Bay jurisdictions have the information regarding federal lands and facilities that the jurisdictions need to prepare Phase II WIPs and to demonstrate that needed pollutant reductions will occur.

This Guide is based on Section 10.4 of the TMDL¹, which addresses federal lands and facilities, and the Executive Order 13508 Strategy², which directs federal agencies with property in the watershed to reduce loadings of nitrogen, phosphorus, and sediment from federal lands and facilities and to contribute to the jurisdictions' WIPs. EPA previously communicated, in both the Chesapeake Bay TMDL and in communications to the Chesapeake Bay Program Principals' Staff Committee,³ its expectations for WIPs. Recently, EPA also provided the Bay jurisdictions with a guide for the Phase II WIPs including a schedule for development.⁴

General Expectations for Federal Agencies

This section provides an explanation of the general expectations regarding the Chesapeake Bay TMDL for federal agencies with lands and/or facilities in the Chesapeake Bay watershed. It also provides the source document references for those general expectations.

¹ USEPA (2010), *Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment*, December 29, accessed at <<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html>>.

² Executive Order 13508 Strategy for Protecting and Restoring the Chesapeake Bay Watershed (May 12, 2010), available at: www.executiveorder.chesapeakebay.net.

³ USEPA (2008), letter from Region III Administrator Donald S. Welsh to Secretary John Griffin, Maryland Department of Natural Resources, September 11, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/EPARegionIIIlettertoPSC091108.pdf>; USEPA (2009), letter from Region III Acting Administrator William C. Early to Secretary L. Preston Bryant, Virginia Department of Natural Resources, November 4, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf>; USEPA (2009), letter from Region III Administrator Shawn M. Garvin to Secretary L. Preston Bryant, Virginia Department of Natural Resources, December 29, accessed at <http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf>; U.S. EPA (2010), *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*, April 2, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/GuideforEPAWIPEvaluation4-2-10.pdf>; USEPA (2010), letter from Region III Administrator Shawn M. Garvin to Chesapeake Bay Program Principals' Staff Committee Members, June 11, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/TMDLScheduleLetter.pdf>; USEPA (2011), *EPA Expectations & Draft Schedule for Phase II Watershed Implementation Plans: Fact Sheet*, January 12, accessed at <http://archive.chesapeakebay.net/pubs/calendar/PSC_02-17-11_Handout_3_11177.pdf>.

⁴ Phase II WIPs are intended to determine local targets and refine implementation strategies to meet the overall allocation for the Chesapeake Bay TMDL as described in the *Guide for Chesapeake Bay Jurisdictions for the Development of Phase II Watershed Implementation Plans*, available at <http://www.epa.gov/chesapeakebaytmdl/>.

- In a November 18, 2010 letter from the Assistant Administrator of Office of Water, EPA communicated a call to federal agencies to participate in the WIP process.
- “Federal agencies with property in the watershed will provide leadership and will work with the Bay jurisdictions in the development of their Watershed Implementation Plans.” (EO Strategy pg. 24)
- In doing so, federal agencies are expected to work with the Bay jurisdictions to:
 - Identify federal lands and facilities;
 - Estimate nitrogen, phosphorus and sediment loads from those federal lands and facilities;
 - Identify potential pollutant reductions from point and nonpoint sources associated with federal lands and facilities by providing information on property boundaries, land cover, land-use, and implementation of management practices;
 - Commit to actions, programs, policies, and resources necessary through 2017 and 2025 to reduce nitrogen, phosphorus, and sediment pollutant loads associated with federal lands and facilities by specific dates; and
 - Provide information on those actions, programs, policies, and resources that are or will be necessary to achieve target load reductions for federal lands and facilities determined by the jurisdictions in their Phase II WIPs subsequent to collaboration with the federal agencies.
- The Clean Water Act requires that:
 - Federal agencies that own or operate a facility in the Chesapeake Bay watershed participate in regional and sub-watershed planning and restoration programs (section 117(f)(1))
 - Federal agencies that own or occupy real property in the Chesapeake Bay watershed ensure that the property, and actions taken by the agency with respect to the property, comply with the Chesapeake Bay Agreement and any subsequent agreements and plans (section 117(f)(2))
- As stated in Section 10.4 of the Chesapeake Bay TMDL, “The federal sector is like other sectors in that EPA expects federal land owners to be responsible for achieving load allocations (LAs) and wasteload allocations (WLAs) through actions, programs, and policies that will reduce the release of nitrogen, phosphorus, and sediment (CWA Section 313, 33 U.S.C. 1323).”
- This guide also applies to federal agencies that lease or occupy land or facilities in the Bay watershed subject to the terms and conditions of any applicable lease or occupancy agreements.

Approaches Available to Federal Agencies

As part of their Phase II WIPs, EPA expects jurisdictions to identify, as appropriate, “local area targets” for nitrogen, phosphorus and sediment reductions to meet TMDL allocations. These local area targets are not finer scale wasteload and load allocations in the Bay TMDL but, when added together, are expected to equal the relevant TMDL allocations. Local area targets will help

partners better understand their expected contribution to meet the TMDL allocations and assumptions.

- Jurisdictions and the federal partners are expected to work together to set BMP implementation levels and the nutrient and sediment reductions that federal lands and facilities will need to achieve to meet their share of the TMDL allocations and local area targets.
 - Each Bay jurisdiction will decide what loading reductions to include for federal lands and facilities in its Phase II WIP subsequent to collaboration with federal partners.
 - Final negotiated load reductions for federal lands and facilities should be expressed at whatever scale (e.g., county or facility level) fits with the respective jurisdiction's approach to setting local area targets.
- Target loads for federal lands and facilities, at whatever scale fits with the jurisdiction's approach to setting local area targets, are expected to be included in the jurisdictions' Phase II WIPs. via one of two approaches:
 - (1) A jurisdiction could establish explicit load reduction expectations for federal facilities in its Phase II WIP either specific to federal facilities or as part of their load reduction expectations for each source sector; or
 - (2) A jurisdiction could establish broad load reduction goals for federal facilities in its Phase II WIP, which would be implemented by Federal Facility Implementation Plans (FFIPs) that are developed for individual federal facilities, lands, or installations.
- The decision whether to include broad or explicit load reduction goals for federal lands and facilities in the Phase II WIP should depend in part on whether the federal agency develops a FFIP and will be made jointly among the jurisdiction, local partners (e.g., local governments, conservation districts, planning commissions) and the federal agency. It is expected, however, that the decision whether to develop a FFIP would most often be deferred to the federal agency to allow the federal agency to use the most efficient approach including whether to aggregate agency lands and facilities.
- If a federal agency develops a FFIP prior to the draft and final Phase II WIPs, it is expected that the FFIP will provide input into the nitrogen, phosphorus and sediment reductions from these lands and facilities and that the jurisdictions will incorporate this information into their Phase II WIPs, assuming that sufficient time exists for the jurisdictions to do so.
- If a federal agency develops a FFIP after the jurisdiction finalizes its Phase II WIP, the federal agency is expected to notify the jurisdiction so that the FFIP can be appended to the jurisdiction's Phase II WIP documentation. FFIPs submitted after the Phase II WIPs are completed should result in reductions in nitrogen, phosphorus and sediment that are equivalent to or greater than those the jurisdiction included for the relevant federal lands or facilities in its Phase II WIP and that are consistent with EPA's assumptions underlying the TMDL allocations.

- Regardless of the chosen approach, federal agency senior management is expected to review and approve planned actions, policies, and programs to demonstrate to EPA and the jurisdictions that leadership commitment and sufficient resources are in place to enable implementation and provide each agency's share of reductions, as agreed to with the relevant jurisdiction(s).

Specific Expectations for Federal Agencies

As described above, EPA expects federal agencies to work with the Bay jurisdictions to ensure that they have the information necessary to prepare Phase II WIPs. This section further describes specific expectations for that information-sharing process.

- Regardless of whether the federal agency chooses to develop a FFIP or to contribute needed information directly to Bay jurisdiction WIPs, EPA expects that the federal agency will include or provide the following:
 - Location, and description of the federal land or facility (such as facility name, area, land use types, nature of activities) some of which EPA provided to the jurisdictions and federal agencies on November 23, 2010;
 - Description and estimation (where available) of current releases of nitrogen, phosphorus, and sediment;
 - Inventory of discharges with NPDES permits and nonpoint source permits;
 - Load reduction goals agreed to with the jurisdiction as a federal facilities' share of a local area target;
 - Reduction objectives for lands' and facilities' point and nonpoint sources that support the jurisdiction's Phase II WIP targets;
 - Planned actions, programs, policies, and time-frame for implementation and maintenance of Best Management Practices (BMPs) through the facility's environmental management systems (where appropriate or when federal agency chooses);
 - Procedure for tracking and reporting BMPs to the jurisdiction in a manner that is consistent with the jurisdiction's procedures;
 - Process for assessing implementation progress and adapting management actions to continually improve the implementation of practices to reduce nitrogen, phosphorus, and sediment loads; and
 - Other information needed by the jurisdictions.
- In determining how to target and achieve load reductions, EPA expects the federal agency to:
 - Assess properties to determine the feasibility of installing urban retrofit practices and implementing nonstructural control measures that reduce volume and improve quality of stormwater runoff.
 - Align cost-effective urban stormwater retrofits and erosion repairs with TMDL allocations and states' two-year milestones.
 - Assess and implement appropriate nonstructural practices to control stormwater runoff from developed areas and to reduce, prevent, or control erosion from unpaved roads, trails, and ditches.

- Consider the full spectrum of nitrogen, phosphorus, and sediment sources at a particular facility or installation to assess the ideal approach to achieve the needed nitrogen, phosphorus, and sediment reduction.
- Federal agencies also could take additional steps, such as providing support (e.g., financial, technical, staff resources) in sector areas where EPA is applying enhanced oversight or additional federal actions.

Additional Expectations for Federal Agencies from Related Requirements That Will Assist Phase II WIP Development

There are a number of additional expectations that may assist the federal agencies in carrying out their role in the jurisdictions' development of Phase II WIPs. These additional expectations may build on and streamline the process because they envision the federal agency developing or preparing similar information, thereby reducing the amount of work needed to provide the jurisdictions with the necessary information.

- **Two-Year Milestones:** The implementation of actions, programs and policies related to the TMDL will be tracked through two-year milestones that, for the most part, are specific to individual federal lands and facilities or that reflect implementation milestones for multiple properties and/or programmatic actions being taken at the agency level to support the jurisdictions' WIPs. See the *Two-Year Milestone Guide* for more details when available at <http://www.epa.gov/chesapeakebaytmdl>.
 - Two-year milestones are expected to detail specific implementation actions to achieve federal lands' and facilities' share of point and nonpoint load reductions.
 - Federal two-year milestones should support the implementation of jurisdictions' WIPs and their two-year milestones.
 - Federal two-year milestone commitments should be submitted to EPA at the same time as jurisdictions' milestone commitments. EPA encourages federal agencies and jurisdictions to coordinate prior to these submissions to ensure consistency among milestones.
 - Milestones are expected to be the basis for tracking progress and providing transparency on federal sector performance related to agency TMDL responsibilities.
- **EO 13508 Section 502 Guidance:** Federal agencies with land, facilities or installation management responsibilities affecting 10 or more acres in the Bay watershed will implement Section 502 guidance *Guidance for Federal Land Management in the Chesapeake Bay Watershed* (EPA May 12, 2010), EPA 841-R-10-002 (available at <http://epa.gov/nps/chesbay502>).
 - Federal agencies are expected to incorporate the Section 502 guidance into their overall strategy to meet the loading reduction goals that the jurisdictions assign to them in their Phase II WIPs.
 - Federal agencies are expected to work with jurisdictions and EPA to build Section 502 guidance-management actions on federal lands into input decks including those

- needed for the jurisdictions' Phase II WIPs, annual progress runs and future model calibrations.
- When planning and documenting management actions, federal agencies are expected to describe how the Section 502 guidance was utilized to develop the overall strategy to meet load reductions.
 - The Section 502 guidance and practices are expected to be implemented as expeditiously as possible and to the extent permitted by law.
- **EISA Section 438:** The additional requirements for stormwater management on federal lands that are specified in Section 438 of the Energy Independence and Security Act (EISA) are expected to be reflected in the information provided by the federal agencies to the Bay jurisdictions for the Phase II WIPs or via FFIPs. As outlined in the EO 13508 Strategy, federal agencies with lands or facilities in the watershed shall take the following actions:
 - Adopt an agency-specific policy (was to be completed by December 31, 2010) to ensure implementation of the stormwater requirements for new development and redevelopment in EISA 438 consistent with guidance developed by EPA in coordination with other federal agencies.
 - The policy should include mechanisms for developing an annual internal action plan and progress report;
 - Begin implementation of the agency-specific policy in 2011; and
 - Publish results of actions as part of the EO 13508 Annual Progress report.

Considerations for Federal Agencies

Agency Sustainability Plans (EO 13514)

Under Executive Order 13514 (<http://www.fedcenter.gov/programs/eo13514/>), Federal agencies are directed to develop, implement and annually update a plan that prioritizes actions to meet energy, water, and waste reduction targets including actions related to stormwater management. For federal lands or facilities in the Chesapeake Bay watershed, the Sustainability Plans and actions to meet load reduction targets documented in WIPs or FFIPs should be coordinated. The use of environmental management systems required by EO 13514 (where appropriate or when the federal agency chooses) provides an opportunity to blend Chesapeake Bay priorities and BMP implementation and maintenance into the day-to-day operations of federal lands and facilities. As federal agencies work toward meeting the full range of the sustainability goals, the Chesapeake Bay Watershed will benefit.

Annual Action Plans and Progress Reports (EO 13508)

As a result of EO 13508 (<http://executiveorder.chesapeakebay.net/>), federal agencies are required to submit annual action plans and progress reports describing how federal funding proposed in the President's Budget will be used to protect and restore the Bay. The action plans identify activities that federal agencies, at the agency and facility levels, will undertake in the following year to carry out actions and achieve the goals and outcomes outlined in the EO 13508 Strategy.

The annual progress reports assess implementation of the action plans during the preceding fiscal year and recommend steps to improve progress in restoring and protecting the Bay. Federal agencies will join the jurisdictions in establishing two-year Bay TMDL water quality milestones, which will be developed and incorporated into the annual action plans and annual progress reports.

EPA's Role and Support to Federal Agencies and the Jurisdictions

As described in the *Guide For Chesapeake Bay Jurisdictions For The Development Of Phase II Watershed Implementation Plans*⁴, EPA will help coordinate with federal agencies to provide input to Phase II WIPs including commitments to federal actions on federal lands and facilities, the development of Federal Facility Implementation Plans (FFIPs) where appropriate, and two-year milestones. The EO 13508 Strategy (p. 121) states that EPA will coordinate the effort for developing federal water quality milestones.

Should there be an issue on which a jurisdiction and a federal agency cannot agree, EPA will assist with the resolution of that issue at the request of the jurisdiction or the federal agency. This role is consistent with the EO 13508 Strategy and is established through a provision of EO 12088, which states in part:

“1-602. The (EPA) Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency.”

EPA will support and provide oversight of the development of federal agency policies related to EISA 438 implementation and will provide agency policies to the jurisdictions when available. Ongoing coordination and tracking of information related to the location and boundaries of federal lands and related analyses will be provided by EPA. EPA also will assist the federal agencies in reporting implementation progress on federal land and facilities.