



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

MAY 30 2012

The Honorable Collin P. O'Mara, Secretary  
Delaware Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

Dear Secretary *Collin* O'Mara:

Thank you for submitting Delaware's final Phase II Watershed Implementation Plan (WIP) to the U.S. Environmental Protection Agency (EPA). I greatly appreciate the efforts of you and your partners to respond to EPA's evaluation of the draft WIP and milestones that was provided on February 15, 2012. Delaware has made 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 Delaware's final Phase II WIP and 2012-2013 milestones. The improvements noted in the enclosed evaluation increase EPA's confidence that Delaware will meet its pollution reduction goals. The evaluation also identifies key areas that EPA expects Delaware to address in the next milestone period and through 2017 in order to fully succeed in this effort.

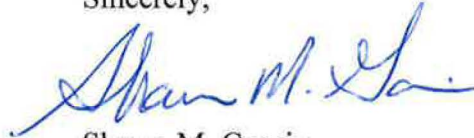
Delaware's recently proposed revisions to state regulations to address sediment, stormwater, and on-site wastewater treatment and disposals systems demonstrates progress toward implementing WIP and milestone commitments. The schedule for renewing significant wastewater permits in the Chesapeake Bay watershed that is included in the final Phase II WIP addresses EPA's comments from the February 15 evaluation. I recognize that funding the implementation of agricultural best management practices will remain challenging and appreciate Delaware's commitment to work with USDA and conservation districts on a process and strategies to minimize any funding gaps. EPA will look towards this process and coordination to build assurance that agricultural strategies will be successful. EPA will maintain ongoing oversight for all sectors.



EPA 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. Jon Capacasa at (215) 814-5422.

Sincerely,



Shawn M. Garvin  
Regional Administrator

Enclosure

cc: Honorable Ed Kee, Secretary  
Delaware Department of Agriculture



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

**Overview**

The final Phase II Watershed Implementation Plan (WIP) and 2012-2013 milestones provide a framework for reducing nitrogen, phosphorus and sediment loads to meet water quality standards in the Bay and achieve the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) allocations. There was no backsliding from the key commitments or reasonable assurance in the Phase I WIP, local partners and other key stakeholders were engaged, and the 2025 draft input deck meets the Phase II WIP planning targets. Delaware did not submit amended 2012-2013 milestones. Instead, the state added additional detail on their near-term actions in its final Phase II WIP that addressed most items raised in the U.S. Environmental Protection Agency's (EPA's) February 15<sup>th</sup> evaluation of the final 2012-2013 milestones. Delaware's final Phase II WIP also explains that pollutant loads associated with the 2012-2013 milestones are on track for Delaware to meet its 2017 interim goals and final, 2025 planning targets.

EPA will maintain "ongoing" oversight for all sectors in Delaware to ensure that commitments are implemented.

**Local Engagement**

**Improvements made since draft Phase II WIP and final 2012-2013 milestone submission**

- The Phase II WIP has not changed significantly from Phase I WIP in terms of level of detail for local engagement and local strategies. EPA expects Delaware Department of Natural Resources and Environmental Control (DNREC) to maintain the strong coordination described in the draft Phase II WIP, including partnerships with conservation districts, counties, municipalities, the U.S. Department of Agriculture, University of Delaware, and Delaware Department of Agriculture.

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

- Continue to clarify the role of local partners in reducing nitrogen, phosphorus and sediment to the Bay.

**Agriculture**

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

- Delaware committed to include the development of a detailed strategy to address the permitting of Concentrated Animal Feeding Operations (CAFOs) and ensure that CAFOs comply with permitting requirements in their Section 106 grant workplan.

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

- Provide a process and detailed strategies on how to minimize funding gaps identified in the final Phase II WIP.

**Potential EPA Actions:** Maintain ongoing oversight.

### **Urban Stormwater**

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

- Delaware included an expanded funding discussion in the final Phase II WIP.
- Delaware provided additional information on their Livable Lawns strategy and discussed working with the Urban Fertilizer Best Management Practices (BMPs) Panel to determine whether they can receive credit for banning phosphorus in fertilizers since they are benefitting from the phosphorus bans in surrounding states.
- Delaware provided additional detail on how they are tracking street sweeping efforts in the watershed, which will result in improved reporting of their implementation rates.
- Delaware included a schedule for the re-issuance of the New Castle County Municipal Separate Stormwater System (MS4) permit in their final Phase II WIP.
- Delaware included additional detail on how and when MS4 permit inspections and construction site inspections will occur.

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

- Provide a strategy for how Delaware agencies will track and report on stormwater nutrient and sediment controls.

**Potential EPA Actions:** Maintain ongoing oversight, including conducting a stormwater program assessment and providing technical assistance, training and outreach assistance.

### **Wastewater and Onsite Systems**

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

- Delaware included a permit schedule for the renewal of significant permits in the Chesapeake Bay watershed.
- Delaware provided EPA the opportunity to review and comment on the draft septic regulations.
- Delaware incorporated information from the National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems in the draft septic regulations.

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

- Continue to address the permit backlog for significant wastewater treatment plants in the Chesapeake Bay watershed.

**Potential EPA Actions:** Maintain ongoing oversight.

### **Offsets and Trading**

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

- Delaware has committed to have a fully effective offset program in place by December 2013 for sectors with planned new or increased loadings, or make a demonstration that a specific sector will not experience net growth in loading. In addition, Delaware will track and determine how to address new or increased loads from all sources that occur prior to offset program implementation in 2013.
- Delaware is pursuing a phased approach for the implementation of an offset and trading program.

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

- None specified.

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

**Federal Facilities**

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

- Delaware's final Phase II WIP included an effective recognition of the importance of management activities on the full range of public lands, including land owned by the state, as a key component of reaching goals.
- Delaware included reduction targets for federal agencies in the final Phase II WIP.

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

- Continue to reach out to federal facilities as necessary to address comments or concerns on how those sites can contribute to achieving the nitrogen, phosphorus and sediment reduction goals.

**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.

