

EPA EVALUATION OF DELAWARE FINAL PHASE I WATERSHED IMPLEMENTATION PLAN

Overview

Delaware's final Watershed Implementation Plan (WIP) provides stronger agricultural contingencies to enhance reasonable assurance that reduction targets will be met, improves POTW performance levels to meet nitrogen allocations, and shifts the urban stormwater load into the wasteload allocation.

Allocations

Delaware meets its nutrient and sediment allocations in the final TMDL. Delaware's WIP input deck resulted in statewide loads that are 3% under nitrogen, 12% under phosphorus, and 33% under sediment allocations. Delaware has agreed to apply the spare pounds back to the nonpoint source agriculture allocation, and the implementation measures will be refined in the Phase II WIP.

Agriculture

Key improvements since draft WIP:

- The WIP includes a strong contingency to significantly bolster EPA's reasonable assurance that agricultural allocations will be met:
"Delaware commits to review and evaluate the pace and progress of Ag BMP implementation at the end of 2013. If needed, Delaware will enact new policy measures and explore mandatory BMP compliance options in a timely manner to ensure that water quality commitments will be met."
- The WIP includes more detail on funding coordination and some of the proposed strategies to implement agricultural BMPs.

EPA actions: Ongoing oversight for Chesapeake Bay jurisdictions

- EPA will use its national review of CAFO State Technical Standards in 2011 and beyond to identify any deficiencies in the State Technical Standards for protecting water quality, including Delaware's phosphorus management program. EPA reserves its authority to object to permits if they are not protective of water quality.

Urban Stormwater

Key improvements since draft WIP:

- The WIP utilizes BMPs that address urban stormwater quality and quantity.
- Delaware's proposed regulatory revisions will increase required treatment volume for new development to the annualized runoff from the 1-year frequency storm event (about 2.7" rainfall); the initial goal would be to use runoff reduction practices so that effective imperviousness is 0%.
- Redevelopment will be required to reduce effective imperviousness by 50%.
- The WIP documents a variety of funding sources to implement proposed strategies.
- The WIP provides detailed strategies to restrict turfgrass fertilizer.
- As in the draft WIP, Delaware has shifted the entire urban stormwater load into the wasteload allocation. This shift enhances reasonable assurance that nutrient and sediment allocations from urban discharges will be achieved and maintained. It signals that more discharges could potentially be subject to state permit coverage and/or federal Clean Water Act permit coverage as needed to protect water quality.

EPA actions: Ongoing oversight for Chesapeake Bay jurisdictions

- EPA is aware that Delaware has proposed to incorporate performance standards for new development and redevelopment in stormwater regulation changes currently under consideration. EPA will continue to monitor Delaware's progress in securing these important regulatory changes to meet the TMDL allocations.
- EPA will monitor Delaware's progress in developing a system for tracking inspections and compliance information.
- EPA will review Delaware's progress in the implementation of voluntary programs to limit turfgrass fertilizer use and the application of regulatory tools as a contingency should the voluntary programs not result in fertilizer reductions on 95% of available urban lands.

Wastewater

Key improvements since draft WIP:

- The WIP lowers 3 significant POTWs to 4mg/l TN at design flow to meet the nitrogen allocations.
- Delaware has hired additional staff and commits to additional hires for the onsite and wastewater treatment plant programs consistent with the Chesapeake Bay TMDL.
- The WIP confirmed that all wastewater treatment plants are included within the wasteload allocations.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- EPA will review NPDES permit conditions to ensure that they are consistent with the loads and assumptions of the Chesapeake Bay TMDL.

General Note on EPA Actions

EPA will assess annual progress and track 2-year milestone commitments. EPA may take additional actions beyond those listed above, as described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the WIP and needed to meet TMDL allocations are achieved.