

## **EPA EVALUATION OF NEW YORK FINAL PHASE I WATERSHED IMPLEMENTATION PLAN**

### **Overview**

New York's final Watershed Implementation Plan (WIP) provides detailed strategies that fully support aggressive agricultural and urban stormwater load reductions and commits to meeting lower wastewater treatment levels. However, the WIP does not fully meet New York's allocations.

### **Allocations**

EPA increased New York's nitrogen and phosphorus allocations and approved New York's exchange of some phosphorus for nitrogen as documented in the TMDL. New York's final Phase I WIP meets its sediment allocation and comes close to, but does not meet, its modified nutrient allocations. New York's WIP input deck results in loads that are 14% under its sediment allocation and 5% and 2% over its modified nitrogen and phosphorus allocations, respectively. EPA closed the gaps between New York's WIP and its allocations with an aggregate WLA backstop that further reduces New York's wastewater load.

### **Agriculture**

#### **Key improvements since draft WIP:**

- The foundation of the WIP is built on the strength of New York's Agricultural Environmental Management (AEM) and CAFO programs. Examples of program strengths include: AEM captures 95% of dairies in the watershed and farms must participate in AEM to get Farm Bill funding, CAFO permits are required at dairies with as few as 200 animal units, and every field covered by a nutrient management plan is tested for phosphorus.
- The WIP details in-depth strategies that support New York's BMP implementation rates. The strategies are based on analyses of historic rates and cost of practices, realistic estimates of state and federal funding, and the type of agriculture practiced in New York. These strategies provide reasonable assurance that New York can and will implement its WIP commitments.
- The WIP includes consideration of a regulatory requirement for pasture fencing as a contingency action.
- Specific steps are outlined to implement advanced technologies to process dairy manure.

#### **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. EPA reserves its authority to object to permits if they are not protective of water quality.

### **Urban Stormwater**

#### **Key improvements since draft WIP:**

- New York has shifted 50% of the urban stormwater load from the load allocation to the wasteload allocation. This change enhances reasonable assurance that nutrient and sediment allocations will be achieved and maintained by signaling that substantially more urban stormwater could potentially be subject to NPDES permits issued by the state as necessary to protect water quality.
- The New York construction general permit imposes volume-based post-construction controls on a significant portion of all construction projects state-wide.
- The WIP documents a variety of funding sources to implement proposed strategies.
- The WIP commits to BMPs that address urban stormwater quality and quantity.
- New York finalized a legislation limiting the use of fertilizer for residential use.

**EPA actions:** Ongoing oversight for Chesapeake Bay jurisdictions

- EPA will monitor New York's progress in developing a system for tracking inspections and compliance information.
- EPA will provide oversight of the stormwater permitting program.

### **Wastewater**

#### **Key strengths:**

- The WIP includes a commitment to improve WWTP performance to BNR equivalent performance levels for nitrogen (8 mg/l) and to 0.5 mg/l for phosphorus at design flow.

#### **Key shortcomings:**

- Despite increasing New York's nitrogen and phosphorus allocations, New York's WIP did not reduce loads enough to meet the modified allocations.

**EPA actions:** Backstop allocations, adjustments and actions

- EPA is closing the numeric gap between New York's WIP and its modified allocations by establishing a backstop that further reduces New York's load for wastewater.
- EPA is establishing an aggregate wasteload allocation for wastewater treatment plants.
- EPA calculated this backstop WLA using the nitrogen and phosphorus performance levels that New York committed to, but assumes that significant wastewater treatment plants (WWTPs) are at current flow rather than design flow.
- EPA understands that New York plans to renew and/or modify WWTP permits after the Phase II WIP, consistent with the applicable TMDL allocations at that time.
- New York commits to provide information to support individual WLAs for these WWTPs in its Phase II WIP.

### **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.