



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

MAY 30 2012

The Honorable Randy Huffman, Secretary
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

Dear Secretary Huffman:

Thank you for submitting West Virginia's final Phase II Watershed Implementation Plan (WIP) and amended 2012-2013 milestones 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. West Virginia 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 West Virginia's final Phase II WIP and 2012-2013 milestones. The improvements noted in the enclosed evaluation increase EPA's confidence that West Virginia will meet its pollution reduction goals. The evaluation also identifies key areas that EPA expects West Virginia to address in the next milestone period and through 2017 in order to fully succeed in this effort.

The final Phase II WIP demonstrates substantial improvements compared to the Phase I WIP by providing additional information that clarifies how implementation will increase over time and the role of key partners in supporting these efforts. The schedule to reissue the Construction General permit and commitment to develop and implement a compliance monitoring strategy addressed important comments in EPA's February 15 evaluation. Based on the continued improvements in the Phase II WIP and 2012-2013 milestones, EPA is upgrading West Virginia's stormwater and wastewater sectors from enhanced to ongoing oversight and will maintain ongoing oversight of the state's offset and trading program. Based on stronger agricultural strategies within the Phase II WIP and milestones, including providing additional details on West Virginia's education and outreach strategy to inform the agricultural community about WIP conservation practice implementation priorities, EPA is upgrading from a backstop action to enhanced oversight of this sector.

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. Richard Batiuk at (410) 267-5731.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosure

cc: Commissioner Gus R. Douglass

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

Overview

West Virginia's final Phase II WIP demonstrates substantial improvements compared to the Phase I WIP and meets the key purposes of Phase II: engaging key local and federal partners, addressing shortcomings from Phase I, and ensuring no backsliding. The final Phase II WIP continued to improve since the draft was submitted in December 2011, as West Virginia addressed the U.S. Environmental Protection Agency's (EPA's) comments in the February 15, 2012 evaluation. In addition, the final 2012-2013 milestones closely align with West Virginia's Phase II WIP commitments. Finally, the 2012-2013 milestones and the 2017 and 2025 WIP model input decks meet or approximate the planning targets for nitrogen, phosphorus, and sediment loads.

Reasonable assurance is stronger in all pollutant source sectors and programmatic topic areas. The complete rewrite of the agricultural section in the Phase II WIP and inclusion of specific programmatic commitments within the final 2012-2013 milestones have greatly increased EPA's reasonable assurance that the 2017 and 2025 targets within this source sector will be met. West Virginia has also strengthened its Concentrated Animal Feeding Operation (CAFO) program and demonstrated its ability to move forward with other key agricultural commitments. For stormwater, West Virginia has clearly articulated plans for managing stormwater outside of the Municipal Separate Storm Sewer System (MS4) areas and identifies contingencies if targets are not achieved by 2017. Finally, West Virginia provided important updates to wastewater treatment plant data, provided a specific schedule for compliance with the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) allocations, and enacted a dedicated funding source.

Given these improvements, EPA has:

- Upgraded the agriculture sector from a "backstop action" to "enhanced oversight."
- Upgraded the stormwater sector from "enhanced oversight" to "ongoing oversight."
- Upgraded the wastewater sector from "enhanced oversight" to "ongoing oversight."

Local Engagement

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

- West Virginia provided additional information on the role of state agencies in reaching out to key local partners through the implementation process.
- West Virginia added a milestone that encourages communities to adopt a model ordinance to manage pollutant loads from the urban stormwater sector.

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

- EPA expects West Virginia will continue engagement with local partners during WIP implementation and ensure that local targets are clear enough so that localities and conservation districts know what needs to be done to implement their share of the respective WIP strategies.

Agriculture

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

- West Virginia explained how practices committed to in the input decks for the Chesapeake Bay Program models align with expected implementation. Specifically, sharp increases in mortality composting and animal waste management systems are a result of improved reporting and expanded implementation under West Virginia's new CAFO rule. West Virginia adjusted 2011 numbers to more accurately reflect current acres of land covered by nutrient management plans.
- West Virginia provided additional detail on their education and outreach strategy to inform the agricultural community about WIP best management practice (BMP) implementation priorities. Details included the roles of West Virginia Departments of Environmental Protection and Agriculture and the USDA Natural Resources Conservation Service.

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

- Through future progress runs and/or milestones, EPA expects West Virginia to explain changes in the amount of agricultural acres subject to conservation plans.

Potential EPA Actions: Based on improvements since the Phase I WIP and strong 2012-2013 milestones, EPA upgraded West Virginia's agriculture sector from a "backstop action" to "enhanced oversight."

Urban Stormwater

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

- West Virginia committed to a schedule for issuing the Construction General Permit that is consistent with the Bay TMDL and to sharing a draft permit with EPA according to the memorandum of understanding between West Virginia Department of Environmental Protection and EPA.
- West Virginia clarified the status and provisions of West Virginia's compliance monitoring efforts.
- The final Phase II WIP further clarifies the commitment to develop and implement a comprehensive tracking and reporting system.
- West Virginia committed to work with EPA to secure the necessary resources to support additional stormwater training.
- West Virginia added a milestone on efforts to encourage communities to adopt a model ordinance to manage stormwater loads.

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

- EPA will work directly with West Virginia on its Chesapeake Bay Implementation Grant and Chesapeake Bay Regulatory and Accountability Program (CBIG and CBRAP) grant work plans to include specific commitments to enhance West Virginia's capacity-building strategies.
- EPA will closely monitor West Virginia's development of a database to track urban stormwater BMPs and land use changes.

- EPA will evaluate West Virginia's 2015 urban stormwater growth assessment and work with West Virginia to pursue identified contingencies if Phase II WIP controls are not expected to achieve the 2017 and 2025 urban stormwater target loads.

Potential EPA Actions: Based on the improvements since the Phase I WIP, strong 2012-2013 milestones, and pending issuance of the Construction General Permit on schedule, EPA has shifted West Virginia's stormwater sector from "enhanced" to "ongoing" oversight. As part of a regional effort, oversight will include conducting a stormwater assessment and providing technical assistance and training.

Wastewater Treatment Plants and Onsite Systems

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

- West Virginia and EPA reached agreement on how to resolve any differences between the Bay TMDL, the final Phase II WIP, and any proposed or reissued permits.
- West Virginia added the commitment that any future efforts to address pollutant loads from onsite septic systems would be consistent with EPA guidelines.

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

- None specified.

Potential EPA Actions: Based on the improvements since the Phase I WIP and the strong 2012-2013 milestones, EPA has shifted West Virginia's wastewater sector from "enhanced" to "ongoing" oversight.

Offsets and Trading

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

- The final Phase II WIP and amended 2012-2013 milestones included commitments to address EPA's recommendations from its recent assessment of West Virginia's 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 offsets and trading program assessment are addressed.

Federal Facilities

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

- West Virginia addressed gaps in the federal facilities permit inventory and completed sector-based narratives within the federal facilities section of the final Phase II WIP.
- West Virginia added information to reflect ongoing interactions with federal facilities and a process to continue this engagement in the future, including options for improving tracking of pollution reduction practices on federal lands.

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

- None specified.

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.