

EPA EVALUATION OF WEST VIRGINIA'S 2012-2013 and 2014-2015 MILESTONES

The U.S. Environmental Protection Agency (EPA) is providing this evaluation of West Virginia's progress towards meeting its 2012-2013 milestones and its sector-specific commitments for the 2014-2015 milestone period.

West Virginia has made progress in the agriculture and wastewater sectors to ensure implementation is occurring and is on track for meeting its load reduction commitments. West Virginia will need to conduct their comprehensive assessment of new growth and nutrient loadings for stormwater to ensure they will meet its Watershed Implementation Plan (WIP) and Chesapeake Bay Total Maximum Daily Load (Bay TMDL) stormwater commitments by 2025.

Load Reduction Review

According to the data provided by West Virginia for the 2013 progress run, West Virginia achieved its 2013 milestone targets for nitrogen and phosphorus. West Virginia did not achieve its 2013 milestone target for sediment¹ but is still on track to meet its 2017 target for this pollutant and is currently meeting its 2025 target for sediment.

West Virginia did not meet their sediment milestone target because the combination of BMPs planned to meet the targets for nitrogen and phosphorus were not exactly the same as those ultimately installed on the ground in the 2-year period. EPA recognizes that West Virginia's sediment load is decreasing and that the 2013 progress run shows West Virginia is below both its 2017 and 2025 targets for sediment.

West Virginia's current progress and anticipated reductions for phosphorus and sediment during the 2014-2015 milestone period are on track to meet its 2017 targets for having practices in place to achieve 60% of West Virginia's reductions necessary to obtain water quality standards in the Chesapeake Bay compared to 2009. Additional reductions are needed to ensure West Virginia's 2017 target for nitrogen will be achieved, as the 2015 milestone target is greater than its 2015 loading projection for nitrogen. Progress over the next few years will not be linear as West Virginia plans to accomplish all significant wastewater treatment plant upgrades prior to December 31, 2017.

West Virginia needs to improve their tracking, verification and reporting of BMPs in order to ensure the practices implemented are achieving the anticipated pollutant load reductions. EPA commends West Virginia for adding programmatic milestones related to enhancing the state's existing BMP tracking, verification and reporting program so that it is consistent with the Chesapeake Bay Program (CBP) partnership's forthcoming verification framework and guidance and to begin implementing the state's enhanced program in 2015 upon review and approval.

EPA also commends West Virginia for including programmatic milestones to review and correct its data on urban and agricultural BMPs previously reported to the Chesapeake Bay Program by fall 2015 as part of the Chesapeake Bay Program's midpoint assessment in 2017. EPA expects that West Virginia will also correct its data in the wastewater sector by fall 2015.

¹ West Virginia's 2013 sediment loading milestone, set at 319 million pounds, is well below their 2025 TMDL allocation of 372 million pounds.

Agriculture – Maintain Enhanced Oversight

2012-2013 Milestone Achievements

- West Virginia met all their programmatic agricultural milestone commitments.
- West Virginia met their nitrogen, phosphorus and sediment 2012-2013 loading milestones.
- Nutrient management rule went into effect on July 1, 2012.
- The U.S. Department of Agriculture National Resource Conservation Service's (NRCS) cooperative position was filled to focus on Farm Bill implementation in priority watersheds.
- Updated Phosphorus Index (P-Index) and included the revised P-Index in the new West Virginia-NRCS Nutrient Management Conservation Practice Standard that was implemented April 18, 2013. This new Standard serves as guidance for all federally cost-shared nutrient management plans.
- Developed 19 nutrient management plans for Concentrated Animal Feeding Operations (CAFOs).

2012-2013 Milestones Missed

- None.

2014-2015 Milestones Strengths

- Commits to develop and implement a tracking and reporting system for agricultural non-cost-shared BMPs in 2014.
- Acreage for certain agricultural practices (e.g. nutrient management) reflect a better accounting of what is being implemented on the ground.

Key Areas to Address in 2014-2015 Milestone Period

- Continue implementation of its CAFO program and strengthen voluntary programs in unregulated areas beyond education and outreach efforts to ensure agricultural targets continue to be achieved.
- EPA encourages West Virginia to continue to provide a strong education and outreach program to stakeholders to increase BMP implementation. However, further information on the intended outcome of these education and outreach efforts (e.g. number of farmers reached, anticipated and actual number of BMPs installed) is needed.

Urban/Suburban Stormwater – Maintain Ongoing Oversight*

2012-2013 Milestone Achievements

- West Virginia met all 2012-2013 programmatic milestone commitments.
- Construction General Permit (CGP) went into effect on January 4, 2013.
- Developed a new BMP and Land Use Change tracking and reporting tool that will reflect more accurate data for its stormwater practices.
- West Virginia's statewide stormwater management guidance manual was completed and released in December 2012.
- Jefferson County and the City of Martinsburg have adopted revised stormwater ordinances to reflect the provisions in the model stormwater ordinance.

2012-2013 Milestones Missed

- West Virginia did not meet their nitrogen, phosphorus and sediment 2012-2013 loading milestones.

2014-2015 Milestones Strengths

- Will conduct a comprehensive assessment of new growth and nutrient loadings for stormwater.
- Commits to reissue the Phase II Municipal Separate Storm Sewer System (MS4) General Permit by June 30, 2014.

- Will train three local governments on the use of West Virginia's urban BMP database.
- Will evaluate the feasibility of incorporating nutrient management into reissued CGP.
- Commits to update the BMP and Land Use Change Tracking System to enable stormwater management reporting consistent with the performance standards and retrofit approaches approved by CBP.

Key Areas to Address in 2014-2015 Milestone Period

- Work with EPA to finalize the scope for the comprehensive assessment of new growth and nutrient loadings for stormwater.
- Complete comprehensive assessment of new growth and nutrient loadings for stormwater by September 30, 2015.
- Follow through on Phase II WIP contingencies starting in 2015 and implement them fully by 2017 if the comprehensive assessment shows urban stormwater goals will not be achieved.
- Provide inspection and compliance information to EPA to substantiate the claim that all lands under construction are permitted and have been verified to have the appropriate erosion and sediment controls in place, and are therefore in compliance with the CGP.
- Future nutrient reduction efficiencies from the erosion and sediment control BMP may not be as aggressive as originally anticipated. This factor should be considered in the midpoint assessment with respect to West Virginia's ability to achieve their stormwater goals in their Phase II WIP.
- Encourage West Virginia to demonstrate of how education and outreach efforts, including trainings and workshops, will result in stormwater reduction improvements. Increased tracking and reporting of BMPs in both regulated and non-regulated areas is one way to demonstrate these improvements.

Wastewater Treatment Plants and Onsite Systems – Maintain Ongoing Oversight

2012-2013 Milestone Achievements

- West Virginia met all their programmatic wastewater treatment plant and septic milestone commitments.
- West Virginia met all their nitrogen, phosphorus and sediment 2012-2013 loading milestones.
- Completed upgrades to Shepherdstown and Fort Ashby/Frankfort Public Service Districts (PSD) as of December 31, 2012.
- The Frankfort PSD is now accepting all wastewater from the Fort Ashby PSD and other non-significant facilities taken over by the new facility. West Virginia Department of Environmental Protection is tracking the transfer of loads from these facilities to the Frankfort PSD.
- Reeds Creek facility is currently in compliance with West Virginia's wasteload allocations.
- The wastewater treatment plant upgrade and permit compliance schedule was updated to reflect information through December 31, 2013.

2012-2013 Milestones Missed

- None.

2014-2015 Milestones Strengths

- The Moorefield Regional Wastewater Treatment Plant has been built to accept flows from two Pilgrim's Pride facilities and the City of Moorefield. It is expected to achieve compliance with its individual wasteload allocations starting in 2015.
- Commits to continue the submission of upgrade and compliance schedules into EPA's Integrated Compliance Information System.

Key Areas to Address in 2014-2015 Milestone Period

- None.

Offsets and Trading – Maintain Ongoing Oversight

2012-2013 Milestone Achievements

- West Virginia met all their 2012-2013 milestone commitments.
- Committed to reevaluate sector growth periodically and submitted an initial sector growth demonstration in February 2013 in response to EPA's trading and offset 2012 program assessment findings.
- Provided a response to the common recommendations that EPA made in its 2012 trading and offset program assessment in November 2013.

2012-2013 Milestones Missed

- None.

2014-2015 Milestones Strengths

- Commits to perform a comprehensive assessment of new growth and nutrient loadings from the urban stormwater sector by December 31, 2015.
- Commits to update and maintain offsets tracking and accountability system in accordance with EPA requirements.
- Includes a milestone to approve offset and trading requests on a case-by-case basis.

Key Areas to Address in 2014-2015 Milestone Period

- Adhere to the Phase II WIP provisions for calculating point and nonpoint source baselines when offsets are needed.

Potential Federal Actions and Assistance

- *EPA may downgrade the urban/suburban stormwater sector from ongoing to enhanced oversight in 2015 if the comprehensive assessment of new growth and nutrient loads shows that urban loads will not meet the Bay TMDL allocations and West Virginia does not demonstrate that additional actions will be taken to reduce increased loads from the urban baseline. EPA expects this comprehensive assessment to be completed by September 30, 2015.
- No changes in oversight are recommended for the remaining sectors.
- EPA will continue targeted enforcement of National Pollutant Discharge Elimination System stormwater permits.
- When evaluating 2014-2015 milestone progress, EPA will assess whether statewide and sector load reductions are on track to have practices in place by 2017 that will achieve 60% of necessary reductions compared to 2009.
- EPA is supporting jurisdictions' development or enhancement of trading and offset programs, tracking systems and BMP verification programs through technical assistance and grant resources.
- EPA will work with federal partners to provide leadership and coordinate with the jurisdictions on WIP and milestone implementation to reduce pollution from federal lands and meet the Bay TMDL, consistent with the Chesapeake Bay Executive Order 13508 Strategy.