

EPA EVALUATION OF WEST VIRGINIA FINAL PHASE I WATERSHED IMPLEMENTATION PLAN

Overview

West Virginia provides more detail on specific urban stormwater contingencies to meet reduction targets and commits to enhanced financial assistance for POTWs. The WIP does not include detailed strategies or contingencies to achieve reductions from the agriculture sector.

Allocations

West Virginia meets its nutrient and sediment allocations for each basin in the final TMDL. After adjusting for EPA-approved nitrogen and phosphorus exchanges, West Virginia's input deck resulted in statewide loads that are 0% under nitrogen, 1% under phosphorus and 11% under sediment allocations.

Agriculture

Key improvements since draft WIP:

- EPA identified few improvements in the agriculture section of WV's final WIP. However, key strengths that appeared in both the draft and final WIP include:
 - The state's focus on effective nutrient-reducing practices, such as poultry litter transport, targeted Nutrient Management Plans in high nitrogen-loading counties, and stream fencing.
 - West Virginia has increased coordination efforts with USDA to support proposed agriculture strategies and implementation.

Key areas for improvement:

- The WIP does not include detailed strategies for how the state will implement nutrient and sediment controls on agricultural lands at levels necessary to meet TMDL allocations.
- The WIP does not include strong contingencies such as new policies, programs, or mandates in the event that voluntary approaches are not sufficient to meet reduction goals.
- West Virginia's recently approved CAFO program has not yet had an opportunity to demonstrate a successful track record for AFO outreach and permitting.

EPA actions: Backstop allocations, adjustments and actions

- EPA is shifting 75% of West Virginia's animal feeding operation (AFO) load into the wasteload allocation and assuming full implementation of barnyard runoff control, waste management, and mortality composting practices required under a CAFO permit on these AFOs. The shift signals that these operations could potentially be subject to NPDES permits as necessary to protect water quality. AFOs would only be subject to NPDES permit conditions as issued by West Virginia upon designation. EPA will consider this step if West Virginia does not achieve reductions in agricultural loads as identified in the WIP. EPA may also pursue designation activities based upon considerations other than TMDL and WIP implementation.
- Based on West Virginia's ability to demonstrate near-term progress implementing the agricultural section of its WIP, including CAFO Program authorization and permit applications and issuance, EPA will assess in the Phase II WIP whether additional federal actions, such as establishing more stringent wasteload allocations for WWTPs, are necessary to ensure that TMDL allocations are achieved.
- 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 West

Virginia'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:

- West Virginia clarified contingencies in the WIP, including mechanisms to regulate urban stormwater discharges from new and redevelopment outside of regulated MS4s and implementation of retrofits to reduce pollutant loads from existing discharges.

EPA actions: Enhanced oversight and actions

- EPA may shift a greater portion of West Virginia's urban stormwater load from the load allocation to the wasteload allocation if stormwater regulations and/or the Phase II WIP do not provide additional reasonable assurance that nutrient and sediment reductions within the TMDL will be achieved. 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.
- Consistent with other jurisdictions, EPA will maintain close oversight of West Virginia's MS4 program to ensure implementation and to monitor any increased discharges above the current baseline, as no reductions from permitted stormwater are expected.

Wastewater

Key improvements since draft WIP:

- The WIP includes a commitment in 2011 for the West Virginia Legislature to consider mechanisms to enhance financial assistance for POTWs and facilitate prompt compliance with NPDES permit requirements resulting from the Chesapeake Bay TMDL.
- West Virginia has committed to reevaluate certain wastewater dischargers in its Phase II WIP to determine whether it will be necessary to reallocate loads.

EPA actions: Enhanced oversight and actions

- EPA is establishing individual wasteload allocations for significant wastewater plants in the TMDL to increase assurance that permits are consistent with the overall wasteload allocation. Individual allocations do not commit wastewater plants to greater reductions than what the jurisdiction has proposed in its WIP. Provisions of the TMDL Report allow for allocation modifications within a basin to support offsets and trading opportunities.
- EPA may consider federal actions such as revisiting wastewater allocations if the Phase II WIPs do not demonstrate adequate progress toward implementing WIP strategies for agriculture and stormwater.
- 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.