

**EPA EVALUATION OF DELAWARE DRAFT PHASE II WIPs AND FINAL 2012-2013
MILESTONES**

WIP and Milestone Overview

Overall, the Phase II WIP meets EPA's expectations. There was no backsliding from the key commitments or reasonable assurance in the Phase I WIP, local partners and other key stakeholders were engaged, and the 2025 draft input deck meets the Phase II WIP planning targets. Delaware also provided additional detail on how the state will implement its agricultural strategy has been working to update its stormwater regulations.

The draft 2017 WIP and final 2013 milestone input decks meet the targets for phosphorus and sediment and are close to meeting the targets for nitrogen. EPA is not concerned that Delaware exceeded the milestone target for nitrogen because Delaware included loads for significant wastewater facilities at the permitted loads. There are no plans for these facilities to discharge at the permitted loads within the planned milestone period. Delaware may need to offset any planned increases in wastewater loads from current loads in future milestones by reductions within other sectors. Otherwise, the 2012-2013 milestones generally align with key, near-term WIP commitments.

EPA will maintain "ongoing" oversight for all sectors in Delaware to ensure that commitments are implemented.

Local Engagement

- Delaware convened a Chesapeake Bay Interagency Workgroup to assist in the development of the WIP, which included representatives from relevant state agencies, counties, the U.S. Department of Agriculture, and affected stakeholders.
- Delaware has included Bay TMDL wasteload and load allocations by sector and basin for easy reference within the WIP by affected jurisdictions. Wasteload allocations are also broken out by permit for significant and non-significant wastewater treatment facilities.
- Great engagement with counties, municipalities, and public as part of the process to revise stormwater regulations.
- EPA expects the Final Phase II WIP to explain how Delaware will continue engagement with local partners during WIP implementation.

Agriculture

Key Strengths of Draft Phase II WIP

- Positive strides to implement Phase I WIP commitments, such as increased staff and new initiatives with strong local engagement.
- Phase II WIP has positive additions including: BMP goals for 2011, 2013, 2017, and 2025 with identified current status and gaps; strengthened and more detailed contingencies; WLA and LA for each 303(d) segment; a commitment to hold a P Index workshop (which EPA recognizes has already occurred in February 2012); and new initiatives targeted to the specific agricultural challenges facing Delaware.

Key Strengths of Milestones

- Commitment to explore the establishment of an Ag Certainty program for farmers.
- Commitment to seek funding for cover crops, which aligns with milestones to increase implementation of cover crops.
- Milestones to coordinate with federal agencies, modify federal cost-share programs, and actions to minimize funding gaps demonstrate strategic thinking to support WIP.

Improvements EPA Expects in Final Phase II WIP

- Provide strategies, including how to secure additional funding and resources, to support BMP implementation levels outlined in WIP. EPA also identified this gap in the Phase I WIP.
- The Phase II WIP needs to better address the CAFO permitting backlog issue and how Delaware plans to ensure CAFOs comply with the permitting requirements.
- Provide additional details of how DE will achieve full implementation of phytase (currently projected for 2013).

Improvements Delaware Should Consider in Final 2012-2013 Milestones

- Delaware is encouraged to add milestones that demonstrate actions Delaware will take to fill funding gaps and address CAFO permitting backlog.

Potential EPA Actions: Maintain ongoing oversight.

Urban/Suburban Stormwater

Key Strengths of Draft Phase II WIP

- Reasonable assurance appears stronger in the draft Phase II WIP based on efforts to engage localities and update stormwater regulations.
- Strong discussion on land use planning and growth.

Key Strengths of Milestones

- New milestones for stormwater retrofit projects show commitment to nutrient reductions in major urban areas outside of MS4 regulated areas.

Improvements EPA Expects in Final Phase II WIP

- Explain how Delaware will get additional funding for program and BMP implementation. This was a gap identified in the Phase I WIP.
- Provide more details on the Livable Lawns strategy to explain how Delaware will achieve the reductions it is seeking by relying on other states' P-bans.
- Provide more details to explain how street sweeping will triple by 2017.
- Either reissue New Castle County MS4 permit in advance of Final Phase II WIP, or include a schedule of when the reissuance is expected to be completed.
- Provide information on how and when Delaware will conduct MS4 permit inspections and construction site erosion and sediment control (E&S) inspections in the final WIP.

Improvements Delaware Should Consider in Final 2012-2013 Milestones

- Include commitment for all delegated agencies responsible for collection, reporting, and verification of stormwater nutrient and sediment controls to develop and use tracking and reporting system identified in Section 7.1.1.2 of Draft Phase II WIP by December 2013.

Potential EPA Actions: Maintain ongoing oversight, including conducting a stormwater assessment.

Wastewater Treatment Plants and Onsite Systems

Key Strengths of Draft Phase II WIP

- Hiring part-time seasonal employee to help address permit backlog.

Key Strengths of Milestones

- In response to EPA comment, added final milestone to address wastewater treatment plant permit backlog.

Improvements EPA Expects in Final Phase II WIP

- Include strategy to eliminate permit backlog, starting with issuing permits for significant facilities. Consistent with Bay TMDL wasteload allocations.
- EPA would the opportunity to review Delaware's updated draft septic regulations before they are finalized.
- Explain how ensuring that nitrogen treatment and alternative systems are properly operating and maintained in onsite systems.
- If possible, strategies for onsite systems should be consistent with EPA management model 3 and/or management model 4 found in the "National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems". It appears that Delaware has already incorporated some of these elements in its strategies outlined in the WIP.

Improvements Delaware Should Consider in Final 2012-2013 Milestones – None specified

Potential EPA Actions: Maintain ongoing oversight.

Offsets and Trading

Key Strengths of Draft Phase II WIP

- Delaware will accommodate new loads through new stormwater regulations, a stormwater in-lieu fee program, and an offset program for residual nutrient loads (including from onsite wastewater disposal) on another site within the same basin.
- Delaware will develop an offsets program for septic systems.

Key Strengths of Milestones

- Increasing the use of offsets and trading will support increased BMP implementation levels by creating an economic incentive for BMP implementation.

Improvements EPA Expects in Final Phase II WIP

- Include a plan of action to address all unresolved, jurisdiction-specific Tier 1 and Tier 2 recommendations from EPA's offsets and trading program assessment by the end of 2012 and to address all unresolved recommendations common to all jurisdictions by the end of 2013.

Improvements EPA Expects in Final 2012-2013 Milestones

- Add milestones to address all unresolved, jurisdiction-specific Tier 1 and Tier 2 issues in EPA's offsets and trading program assessment in 2012 and all unresolved recommendations that are common to all jurisdictions in 2013.
- Add milestone to have a fully effective offset program in place by December 2013 for sectors with planned new or increased loadings, or make a demonstration that a specific sector will not experience net growth in loading. Explain how new or increased loads that occur prior to offset program implementation in 2013 will be addressed.

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 Strengths of Draft Phase II WIP

- Coordination with Army facilities, which are the only federal facilities located within the Chesapeake Bay watershed.
- Public Lands Subcommittee could be good vehicle for multi-agency coordination.

Key Strengths of Milestones

- Added new milestone for evaluating baseline loadings and retrofit opportunities at two Army bases located within the watershed.
- Commitment to continued engagement with Army facilities in support of Phase II WIP.

Improvements EPA Expects in Final Phase II WIP

- Include reduction targets discussed with the federal facilities in the final Phase II WIP.

Improvements Delaware Should Consider in Final 2012-2013 Milestones – none specified

Potential EPA Actions: Conduct ongoing oversight and encourage work with federal facilities to identify specific implementation actions.

General Note to All Jurisdictions on EPA Actions: EPA may take federal actions, as described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the WIP and needed to meet Chesapeake Bay TMDL allocations are achieved.