

EPA EVALUATION OF VIRGINIA’S DRAFT PHASE II WIP AND FINAL 2012-2013 MILESTONES

WIP and Milestone Overview

The Phase II WIP provides some updated information on progress since finalizing the Phase I WIP, such as moving forward with agricultural initiatives for animal operations and Resource Management Plans, increased funding and staffing, and strategies to improve tracking of pollutant reduction actions. However, it lacks important detail pending local input submitted on February 1, 2012. EPA requests that Virginia provide some of these local plans prior to the submission of the final Phase II WIP in order to give EPA a sense of the local input. Virginia’s draft Phase II WIP did not include an input deck, and EPA used Phase II WIP “scoping” scenarios for 2025 to assess whether practices would achieve Phase II WIP planning targets. These scenarios approximately meet the Phase II planning targets. EPA expects Virginia to submit 2017 and 2025 input decks in advance of the Final Phase II WIP deadline so that EPA may better assess Virginia’s near- and long-term strategies.

Most of Virginia’s programmatic milestones are in alignment with the Phase I and II WIP commitments. However, Virginia did not address EPA comments on stormwater milestones. Virginia reiterates the WIP commitments for new legislation but notes that a detailed timetable for legislative proposals cannot be incorporated in the milestone document. Virginia did not include a final input deck for the 2012-2013 milestones, but the draft input deck approximately meets 2013 targets for pollutant reductions for nitrogen, phosphorus and sediment.

EPA intends to maintain ongoing oversight of Virginia’s agriculture, wastewater, and offset and trading programs. Because Virginia has not addressed concerns with stormwater strategies that EPA identified in the Phase I WIP and has not met its commitment to reissue Phase I MS4 permits in 2011, EPA will maintain enhanced oversight of this sector.

Local Engagement

- Overall, Virginia did an extensive amount of outreach to the local stakeholders, including maintaining a Stakeholder Advisory Group; holding several rounds of workshops with local governments; and working with Planning District Commissions to engage localities, soil and water conservation districts (SWCDs), and federal agencies.
- Virginia intends to express local area targets as implementation goals (e.g., number of BMPs that need to be implemented or the percent of sources with BMPs) based on local input. If these targets are provided, they should give stakeholders a clear understanding of what actions are needed to implement the WIP and meet the TMDL.
- EPA expects the Final Phase II WIP to explain how Virginia will continue engagement with local partners during WIP implementation.

Agriculture

Key Strengths of Draft Phase II WIP

- Builds off of demonstrated progress on key Phase I AFO/CAFO requirements, Resource Management Plan (RMP) initiatives, securing additional funding and staff, and conducting six pilots with SWCDs to develop methods to track and report voluntary BMPs.

Key Strengths of Milestones

- Address most of the significant Phase I WIP commitments.

Improvements EPA Expects in Final Phase II WIP

- Include 2-year agricultural reduction targets, similar to Phase I WIP (page 61).
- Retain contingency language from Phase I WIP (page 59).
- Include commitment to share with EPA the DEQ-VDACS MOU to ensure reasonable assurance remains strong.
- Include detailed timeline and next steps on how Virginia will implement their Resource Management Plan (RMP) program, including an outreach strategy.
- Provide detailed strategies explaining how will achieve BMP implementation levels identified in Phase II WIP scoping scenarios.

Improvements Virginia Should Consider in Final 2012 – 2013 Milestones

- Add milestone regarding RMP program outreach and implementation.
- Add milestone for addressing staffing needs identified in the Phase I WIP.
- Add milestone for communication and outreach campaign to agriculture producers on WIP expectations.

Potential EPA Actions: Maintain ongoing oversight.

Urban/Suburban Stormwater

Key Strengths of Draft Phase II WIP

- Contract and funding in place for the Enterprise Website to track stormwater practices.

Key Strengths of Milestones

- Includes milestones to address urban nutrient management.

Improvements EPA Expects in Final Phase II WIP

- Include a strategy and schedule for reissuing all expired Phase I MS4 permits in 2012, including time for EPA review. Also include a schedule for reissuance of the Phase II general permit. Permits are expected to include provisions to implement Phase II WIP strategies.
- Include an outreach effort to accompany MS4 permit reissuance to raise local knowledge and technical capacity to meet new requirements.
- Explain how and when will track BMPs associated with MS4 and industrial stormwater permits.
- As recommended in EPA's assessment of Virginia's stormwater program, include a schedule for development of a compliance management strategy for the MS4 program and for modification to the compliance management system for the stormwater construction program.
- Provide strategies to explain how will achieve the substantial increases in BMP implementation levels that are included in the Phase II WIP scoping scenarios.

- Add specific commitments and timeline to implement elements of the corrective action plan associated with EPA's assessment of Virginia's stormwater program

Improvements EPA Expects in Final 2012 – 2013 Milestones

- Add a milestone with a strategy and schedule for reissuing all expired Phase I MS4 permits and submitting all Phase I permits including to EPA for review by December 2012.
- Add a milestone for reissuance of the Phase II general MS4 permit.
- Add milestones with specific actions and timeline for implementing stormwater regulations, such as training DCR and local entities on how to review site plans and developing protocols, capacity for inspections and enforcement.
- Add milestones to implement elements of the corrective action plan associated with EPA's assessment of Virginia's stormwater program.
- Add milestones for providing technical assistance and funding to implement stormwater programs, particularly for the Phase II MS4s

Potential EPA Actions: Because Virginia has not addressed concerns with stormwater strategies that EPA identified in the Phase I WIP and has not met the commitment from the Phase I WIP to reissue Phase I MS4 permits in 2011, EPA will maintain enhanced oversight of this sector. If Virginia does not make the improvements to the Final Phase II WIP and amend the 2012-2013 milestones, EPA may initiate the following actions starting in 2012:

- Negotiate grant work plans, add conditions to, and/or redirect grant awards to: eliminate MS4 permit backlog; ensure permits implement the "L2" actions identified in Virginia's WIP; and report the number of inspections completed per year.
- Object to any of the 11 Phase I MS4 permits if they are not consistent with Bay TMDL.
- Object to the General Permit for Phase II MS4s if it is not consistent with Bay TMDL.
- Increase enforcement of NPDES permits.
- Pursue designations, if warranted.
- Extend assistance to Virginia for permit writing and conducting inspections.
- Provide technical training and guidance for Virginia staff and communities that are responsible for implementation, including localities outside of MS4 areas.

Wastewater Treatment Plants and Onsite Systems

Key Strengths of Draft Phase II WIPs

- The Virginia Watershed General Permit was reissued consistent with Bay TMDL wasteload allocations and became effective on January 1, 2012.
- Adopted Department of Health (VDH) amendments to their regulations for alternative onsite systems became effective December 7, 2011, however the nitrogen component of those amendments will not become effective until December 2013.
- Improved tracking and reporting of septic information, including better coordination with VDH on NEIEN submissions and continued refinement of VENIS system.

Key Strengths of Milestones

- Requiring Operation and Management for alternative systems.
- VDH are developing training for their staff.

Improvements EPA Expects in Final Phase II WIP

- Document any differences in annual loads between reissued General Permit and Bay TMDL wasteload allocations and identify how these changes are accounted for.
- Allow EPA to review any regulatory amendments and guidelines for alternative onsite systems that Virginia is proposing.
- Explain how ensuring that nitrogen treatment and alternative systems are properly operating and maintained. Strategies 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".

Improvements Virginia Should Consider in Final 2012 – 2013 Milestones

- Consistent with EPA's comment on draft milestones and as specified in WIP, add a milestone for providing facility permit limits, compliance schedules, compliance, and annual discharge information contained in the Nutrient Watershed General Permit module of DEQ's Comprehensive Environmental Data System (CEDS).

Potential EPA Actions: Maintain ongoing oversight.

Offsets and Trading

Key Strengths of Draft Phase II WIP

- Stormwater offset program became effective in July 2011.
- Recently completed Nutrient Credit Expansion Study includes septic systems.

Key Strengths of Milestones

- Virginia is on schedule, based on its milestones, for the steps needed to expand its Nutrient Credit Exchange program.
- The milestones support increased transparency and accountability for Virginia's Nutrient Credit Exchange program. EPA supports this and encourages Virginia to explore additional means of providing transparency in the program.

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 Agencies

Key Strengths of Draft Phase II WIP

- Coordination with federal agencies.

Key Strengths of Milestones

- Commitment to direct coordination with federal facilities.

Improvements EPA Expects in Final Phase II WIP

- Provide federal agencies with pollutant reduction targets that do not necessarily rely on finer-scale modeling and description of approaches for continued engagement .
Coordinate with federal agencies on a stormwater performance standard consistent with EISA obligations for development and redevelopment and with the EO 13508 strategy for retrofits in developed areas to ensure attainment of relevant WLAs.

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

Potential EPA Actions: Maintain ongoing oversight.

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.