

EVALUATION OF WEST VIRGINIA DRAFT PHASE II WIPs AND FINAL 2012-2013 MILESTONES

WIP and Milestone Overview

West Virginia's Draft Phase II WIP demonstrates substantial improvements compared to the Phase I WIP. Overall, it meets the key purposes of Phase II: engaging key local and federal partners, addressing deficiencies from Phase I, and ensuring no backsliding. In addition, the final 2012-2013 milestones closely align with WIP commitments. The 2012-2013 milestone 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 topic areas. The complete rewrite of the agricultural section in the draft 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 CAFO program and demonstrated its ability to move forward with other key commitments. For stormwater, West Virginia has clearly articulated plans for managing stormwater outside of the 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 TMDL allocations, and enacted a dedicated funding source.

Given these improvements, EPA intends to:

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

Local Engagement

- West Virginia conducted a significant amount of outreach to local stakeholders including agricultural producers, federal agencies, and local government officials.
- West Virginia utilized agricultural producers' feedback to identify agricultural conservation practices that will achieve the necessary pollutant reductions.
- West Virginia worked closely with localities to develop and implement stormwater strategies, and includes plans for future engagement contingent on funding.
- Model ordinance for stormwater management is a good example of a programmatic local area target for communities within and outside MS4 areas.
- EPA expects the Final Phase II WIP to further explain how West Virginia will continue engagement with local partners during WIP implementation and ensure that local targets are clear enough so that localities know what needs to be done to implement their share of WIP strategies.

Agriculture

Key Strengths of Draft Phase II WIP

- The draft Phase II WIP represents an improved plan that is directly informed by local agricultural producers and demonstrates stronger reasonable assurance.

- Builds off of significant progress West Virginia has made to meet high priority Phase I WIP commitments.
- Clearly identifies the capacity needs that will be filled by recent staffing increases.
- Includes a very detailed protocol for tracking and verifying un-reported, non-cost shared agricultural conservation practices. EPA will continue to work with West Virginia and the full Chesapeake Bay Program Partnership to insure this protocol meets verification needs.

Key Strengths of Milestones

- Milestones align very well with draft Phase II WIP.

Improvements EPA Expects in Final Phase II WIP

- Revise the WIP narrative and/or input deck to address discrepancies in implementation levels, with a specific focus on decreases in nutrient management and conservation planning from current levels to 2025, and sharp increases between current levels and 2017 for mortality composting and animal waste management systems.
- Further clarify how education and outreach efforts will be coordinated among WVDA, NRCS, conservation districts, and other agencies to focus agricultural producers, the private sector, and other technical assistance providers on WIP BMP priorities.

Improvements EPA Expects in Final 2012-2013 Milestones

- Further clarify milestone on education and outreach to demonstrate coordinated approach to outreach to agricultural producers, private sector, and other technical assistance providers on WIP BMP priorities

Potential EPA Actions: Based on significant improvements since the Phase I WIP and strong 2012-2013 milestones, EPA will shift West Virginia from the “backstop action” to “enhanced oversight” with EPA working closely with West Virginia to ensure commitments are fulfilled.

Urban/Suburban Stormwater

Key Strengths of Draft Phase II WIP

- Reasonable assurance is stronger as West Virginia makes progress toward meeting their stormwater goals.
- Training for MS4 inspectors is a good first step in addressing compliance.
- Clear plans for getting communities outside of MS4 areas to adopt the model stormwater ordinance.
- Identifies stormwater regulations as a contingency if West Virginia’s urban stormwater strategy goals are not achieved.

Key Strengths of Milestones

- Generally address EPA comments on the draft milestones and align with WIP commitments.

Improvements EPA Expects in Final Phase II WIP

- Include a schedule for issuing the draft and final Construction General Permit, with specific details on what this permit will include to be consistent with Bay TMDL.

- Provide clarification on status and provisions of West Virginia’s use of EPA’s compliance monitoring guidance directed towards construction, industrial, and municipal stormwater..
- Revise the WIP input deck to reflect West Virginia’s intention to maintain existing stormwater management implementation levels and see expanded stormwater management implementation on new development from the current baseline to 2017 and 2025 to hold stormwater loads at current loads. Otherwise, stormwater loads will increase if 2017 and 2025 stormwater management implementation levels are set at zero.
- Commitment and schedule to develop and implement a tracking and reporting system for stormwater BMPs within and outside of MS4 areas, particularly for industrial stormwater BMPs.
- To ensure that stormwater targets are met, a commitment to additional training on stormwater BMPs at both the state and local levels is needed. EPA will work with West Virginia on exploring options to secure funding and resources for this training.

Improvements EPA Expects in Final 2012-2013 Milestones

- Add a milestone with a schedule for issuing draft and final Construction General Permit.
- Modify the existing milestone to develop and implement a tracking and reporting system for stormwater BMPs to specifically include stormwater BMPs outside of MS4 areas and industrial stormwater BMPs.
- Add a milestone to develop, document, and implement a detailed compliance monitoring strategy addressing construction, industrial, and municipal stormwater.
- Consider adding a milestone to encourage communities to adopt model ordinance, consistent with WIP.

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 will shift West Virginia from “enhanced” to “ongoing” oversight, including conducting a stormwater assessment.

Wastewater Treatment Plants and Onsite Systems

Key Strengths of Draft Phase II WIP

- Working with Water Development Authority to help communities understand how much support they will receive from new funding sources enacted under SB 245 in 2011.
- Provides more information on when all significant facilities will be compliant with the TMDL waste load allocations.
- Proposes changes to the limits for NPDES permits WV0005525 and WV0005495.

Key Strengths of Milestones

- Tracking of wastewater treatment plant upgrades and permit compliance schedules.

Improvements EPA Expects in Final Phase II WIP

- Where annual loads in the input deck or any proposed reissued permit differ from Bay TMDL wasteload allocations, document these changes in WIP.
- Identify the basis for differences between Bay TMDL wasteload allocations and limits proposed in the Phase II WIP for NPDES permits WV0005525 and WV0005495.

- Where advanced nitrogen removal technology is used, explain how nitrogen treatment and alternative onsite systems are being properly operated, maintained and managed. 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 Treatments Systems".

Improvements EPA Expects in Final 2012-2013 Milestones – none specified

Potential EPA Actions: Based on the improvements since the Phase I WIP and the strong 2012-2013 milestones, EPA will shift West Virginia from “enhanced” to “ongoing” oversight.

Offsets and Trading

Key Strengths of Draft Phase II WIP

- Stakeholders and West Virginia are discussing the potential for trading and offset programs.
- A proposal for both point and nonpoint baseline requirements is contained in the draft Phase II WIP.

Key Strengths of Milestones

- West Virginia has developed a basic framework for an offsets and trading 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 a 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

- Added a section on federal facilities that demonstrates coordination with federal agencies.

Key Strengths of Milestones – none specified

Improvements EPA Expects in Final Phase II WIP

- Fill gaps in the federal permit inventory.
- Explain how West Virginia will continue engagement with federal partners and identify “targets” or actions that federal partners would take to fulfill their contribution toward meeting the Chesapeake Bay TMDL allocations.

Improvements EPA Expects in Final 2012-2013 Milestones – none specified

Potential EPA Actions: Conduct ongoing oversight and encourage working 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.