

GUIDE FOR CHESAPEAKE BAY JURISDICTIONS FOR THE DEVELOPMENT OF PHASE II WATERSHED IMPLEMENTATION PLANS

This Guide addresses the development and review of the Chesapeake Bay TMDL Phase II Watershed Implementation Plans (WIPs) to be submitted by Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia (Bay jurisdictions). EPA has compiled this Guide in response to requests for information on what EPA requests that Bay jurisdictions include in their draft and final Phase II WIPs. EPA expects the seven Bay jurisdictions to develop Phase II WIPs with more specific information that facilitates actions by local partners to control nitrogen, phosphorus and sediment to achieve the allocations. Phase II WIPs also provide Bay jurisdictions with an opportunity to further demonstrate reasonable assurance that TMDL allocations will be achieved and maintained, particularly in sectors receiving enhanced oversight or backstop actions in the December 2010 Chesapeake Bay TMDL (Bay TMDL).¹

EPA previously stated its expectations for WIPs in the Bay TMDL and in communications to the Chesapeake Bay Program Principals' Staff Committee (PSC) since 2008.² This Guide builds upon and further explains EPA's expectations for Phase II WIPs. EPA's role is to provide support and technical guidance, ensure that the Phase II WIPs provide at least as strong a demonstration of reasonable assurance as in the Phase I WIPs, and assess whether any refinements to the Bay TMDL are necessary.

Overview of Chesapeake Bay TMDL Accountability Framework

The Phase II WIPs are a critical component of the multi-part accountability framework for the Chesapeake Bay TMDL. The full accountability framework includes:

- **Phase I WIPs**, in which Bay jurisdictions were expected to propose Bay TMDL allocations and demonstrate reasonable assurance that Bay TMDL allocations will be achieved and maintained;
- **Phase II WIPs**, as described in this Guide;
- **Phase III WIPs**, to be submitted in 2017, in which Bay jurisdictions are expected to make any mid-course adjustments to their nitrogen, phosphorus and sediment reduction

¹ USEPA (2010), *Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment*, December 29, accessed at <<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html>>;

² USEPA (2008), letter from Region III Administrator Donald S. Welsh to Secretary John Griffin, Maryland Department of Natural Resources, September 11, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/EPARegionIIIlettertoPSC091108.pdf>; USEPA (2009), letter from Region III Acting Administrator William C. Early to Secretary L. Preston Bryant, Virginia Department of Natural Resources, November 4, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf>; USEPA (2009), letter from Region III Administrator Shawn M. Garvin to Secretary L. Preston Bryant, Virginia Department of Natural Resources, December 29, accessed at <http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf>; U.S. EPA (2010), *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*, April 2, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/GuideforEPAWIPEvaluation4-2-10.pdf>; USEPA (2010), letter from Region III Administrator Shawn M. Garvin to Chesapeake Bay Program Principals' Staff Committee Members, June 11, accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/TMDLScheduleLetter.pdf>; USEPA (2011), *EPA Expectations & Draft Schedule for Phase II Watershed Implementation Plans: Fact Sheet*, January 12, accessed at <http://archive.chesapeakebay.net/pubs/calendar/PSC_02-17-11_Handout_3_11177.pdf>.

strategies, provide additional detail with respect to implementation actions in the 2018-2025 timeframe, and propose any refinements to the Bay TMDL allocations;

- **Two-year milestones**, in which Bay jurisdictions, EPA, and other federal agencies are expected to set incremental commitments for specific practices to be implemented and pounds of pollutants reduced;
- EPA's commitment to work with Bay jurisdictions and federal agencies **to track, verify, report and assess progress**; and
- EPA's commitment to ensure that restoration efforts continue on schedule by maintaining oversight and taking federal actions as necessary and appropriate if Bay jurisdictions do not implement commitments and fulfill EPA's expectations under the Chesapeake Bay TMDL accountability framework.

Purpose of Phase II Watershed Implementation Plans

A substantial portion of the nitrogen, phosphorus and sediment controls necessary to meet the Bay TMDL allocations will be implemented at the local level by partners including conservation districts, local governments, planning commissions, utilities and watershed associations. EPA sees the Phase II WIPs as a valuable opportunity for Bay jurisdictions to refine their Phase I WIPs in collaboration with these key local partners. Specifically, the purposes of the Phase II WIPs are to:

- **Facilitate implementation** first by dividing the Bay TMDL allocations into local area targets as appropriate. These local area targets are not finer scale wasteload and load allocations in the Bay TMDL but, when added together, are expected to equal the relevant state-basin TMDL allocation caps. These local area targets will help partners better understand their expected contribution to meet the TMDL allocations and assumptions. Jurisdictions, working with partners, may choose the appropriate scale for local area targets based on what makes sense to partners (e.g., county boundaries; sub-watersheds, federal facility boundaries). Second, EPA expects the Phase II WIPs to describe how partners are going to reduce loads delivered to the Bay. Third, the Phase II WIPs provide an opportunity for partners to identify what resources, authorities and assistance they need to implement actions that achieve their respective share of the Bay jurisdictions' WIP strategies and TMDL allocations;
- **Propose refinements as necessary to the Bay TMDL allocations**, including refinements resulting from the agreed-upon land use and nutrient management updates to Scenario Builder and the Chesapeake Bay Program Watershed Model; and
- **Provide an additional opportunity for Bay jurisdictions to demonstrate reasonable assurance** that Bay TMDL allocations will be achieved and maintained and the means by which any new or increased pollutant loadings not accommodated in the TMDL allocations will be offset. For Bay jurisdictions' pollutant source sectors that received "enhanced oversight" or "backstop allocations or adjustments" in the final Bay TMDL, the Phase II WIPs provide an opportunity to more clearly demonstrate reasonable assurance and reduce the level of EPA oversight.

Elements EPA Expects in Phase II WIPs

In order to fulfill their purpose, EPA expects the Phase II WIPs to clearly identify:

- **Key local, state and federal partners** who will be involved in reducing nitrogen, phosphorus and sediment loads to meet Bay TMDL allocations;

- **How each jurisdiction is working with its key partners** to a) raise awareness of the level of effort that is expected to meet Bay TMDL allocations; b) define local partners' roles in implementing WIP strategies; and c) document the process by which local partners' contributed to the development and will contribute to the implementation of WIPs;
- **Bay jurisdictions' strategies to help facilitate implementation** by local partners. EPA expects the Phase II WIPs to include how and when strategies will be implemented to fill any capacity gaps. Strategies could include but are not limited to regulations, permits, technical assistance, and grant programs with specific provisions for local partners to reduce nitrogen, phosphorus and sediment loads. Jurisdictions are not expected to repeat descriptions of strategies included in the Phase I WIPs that have not been modified since 2010;
- **Clear, quantitative goals** such as local area nitrogen, phosphorus and sediment targets, BMP implementation levels, and/or programmatic milestones;
 - When actions by state and local partners to control nitrogen, phosphorus and sediment loads are combined, they are expected to result in reductions necessary to meet Bay TMDL wasteload and load allocations;
 - As part of the Phase II WIPs, EPA expects Bay jurisdictions to work with local partners and federal agencies to submit input decks for Scenario Builder and Chesapeake Bay Watershed Model³ that include the level and location of controls which will be in place by 2017 and 2025. EPA will use this information to translate BMP implementation levels into pounds of nitrogen, phosphorus and sediment delivered to the Chesapeake Bay and its tidal tributaries. As further discussed in the *Guide for Federal Lands and Facilities' Role in Chesapeake Bay Jurisdictions' Phase II Watershed Implementation Plans*, EPA expects input decks only from the seven Bay jurisdictions. EPA encourages jurisdictions to submit early drafts of input decks so that EPA may provide results within a week and jurisdictions have an opportunity to assess multiple scenarios. EPA expects federal agencies to work with jurisdictions to create these input decks and targets for reducing loads from federal lands and facilities.
- **How progress by local partners will be tracked, verified, and reported** to EPA and incorporated into Bay jurisdictions' two-year milestones. EPA expects nutrient and sediment controls will be reported through the National Environmental Information Exchange Network (NEIEN); and
- **How Bay jurisdictions are working with federal agencies** to meet Bay TMDL allocations by: a) documenting nitrogen, phosphorus and sediment reductions from federal lands and facilities to meet target loads and TMDL allocations; and b) garnering federal support to help implement Bay jurisdictions' WIP strategies.⁴ As discussed below, EPA will provide a separate guide for the Phase II process for federal agencies.

³ Scenario Builder is a database application used to process the BMP and other data into a form useable by the Watershed Model. The Chesapeake Bay Watershed Model produces an estimate of the real world benefits of practices implemented within the watershed.

⁴ USEPA (2010), *Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment*, December 29, p. 10-6, accessed at <<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html>>; Federal Leadership Committee for the Chesapeake Bay (2010) *Strategy for Protecting and Restoring the Chesapeake Bay Watershed*, pursuant to Executive Order 13508, pp. 24-26, accessed at <<http://executiveorder.chesapeakebay.net>>.

EPA is emphasizing flexibility and collaboration as Chesapeake Bay Program partners develop Phase II WIPs that identify these components. Bay jurisdictions are encouraged to work closely with EPA managers and staff to meet EPA's expectations and respond to unique opportunities in each jurisdiction.

EPA's Role in the Phase II WIP Process

As Bay jurisdictions develop Phase II WIPs, EPA intends to:

- **Continue support for WIP development** and implementation through EPA contractor support, implementation grants, coordination and resources for on-the-ground circuit riders and service providers, and technical assistance, including Scenario Builder analysis and webinars to help partners estimate nitrogen, phosphorus and sediment reductions associated with proposed management actions. Support is subject to the availability of federal appropriations;
- **Help coordinate with federal agencies** to provide input to Phase II WIPs including commitments to federal actions on federal lands and facilities, develop Federal Facility Implementation Plans (FFIPs) where appropriate, and two-year milestones. EPA also will assist with the resolution of any disputes among federal agencies and jurisdictions when requested;
- **Partner with Bay jurisdictions and local entities, as requested, in outreach efforts.** EPA will make information such as presentations, fact sheets and talking points available for partners to share with their audiences and will maintain an up-to-date website on the Bay TMDL and Phase II WIPs;
- **Conduct a targeted reasonable assurance review** focused on: a) whether Bay jurisdictions provide at least the same level of reasonable assurance as demonstrated in Phase I that sources will meet nitrogen, phosphorus and sediment allocations, offset or accommodate within the TMDL any new or increased loadings, and that any trading mechanisms meet EPA's expectations as set forth in Appendix S of the Bay TMDL; b) whether state-basin and sector-specific strategies differ from the Phase I WIPs due in part to changes resulting from the two agreed-upon Scenario Builder and Watershed Model updates; and c) whether Bay jurisdictions have more clearly demonstrated reasonable assurance for pollutant source sectors receiving enhanced oversight or backstop actions in the 2010 Bay TMDL;
- **Provide comments** on the draft Phase II WIPs and allow Bay jurisdictions to submit final Phase II WIPs before EPA proposes any refinements to the Bay TMDL;
- **Review any refinements to Bay TMDL allocations** proposed in Phase II WIPs, including any modifications resulting from the two agreed-upon Scenario Builder and Watershed Model changes, to ensure water quality standards in all 92 segments of the Chesapeake Bay and its tidal tributaries are attained. EPA reserves the authority to refine the Bay TMDL as necessary and appropriate; and
- **Take appropriate federal actions** if a jurisdiction's Phase II WIP does not meet EPA expectations, particularly as it relates to state-basin and sector strategies that will rely on local partners for implementation.⁵

⁵ Potential federal actions are described in USEPA (2009), letter from Region III Administrator Shawn M. Garvin to Secretary L. Preston Bryant, Virginia Department of Natural Resources, December 29, accessed at <http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf>.

Forthcoming Guides: Expectations for Federal Agencies and Two-Year Milestones

Chesapeake Bay Program partners have requested additional information on the role of federal agencies in meeting Bay TMDL allocations through reductions in nitrogen, phosphorus and sediment from federal lands and facilities and through federal support for Bay jurisdictions' efforts to meet TMDL allocations. Bay jurisdictions have also requested EPA's expectations for the development and assessment of two-year milestones. EPA will provide two short guides that address these requests in spring 2011. Bay jurisdictions and federal agencies will have the opportunity to review and comment on draft versions of these guides.

Schedule

The enclosure provides the schedule for the timely completion of the Phase II WIPs. EPA worked in close cooperation with the PSC and parties to the May 2010 settlement agreement in the development of this schedule.

Closing

The shared goal of protecting local waters and restoring the Chesapeake Bay will only be achieved if federal, state and local partners work together. EPA is committed to supporting Bay jurisdictions and local partners in the development of Phase II WIPs that will guide watershed restoration efforts through 2025. Bay jurisdictions and local partners should not hesitate to contact EPA for additional clarification about how Phase II WIP components can meet EPA's expectations under the Chesapeake Bay TMDL.

**ENCLOSURE: SCHEDULE FOR PHASE II WATERSHED IMPLEMENTATION PLANS
AND TWO-YEAR MILESTONES**

EPA has developed the following schedule in consultation with the Bay jurisdictions to provide time for engagement of local partners in the Chesapeake Bay watershed in the important development and implementation of the Watershed Implementation Plans (WIPs).

Key dates in 2011 and 2012 for the Phase II WIPs and two-year milestones are:

- EPA distribution of the *Guide for Federal Lands and Facilities' Role in Chesapeake Bay Jurisdictions' Phase II Watershed Implementation Plans* by April 30, 2011;
- EPA distribution of the 2-Year Milestone Guide to the jurisdictions and federal agencies by May 9, 2011;
- EPA completes two agreed-upon changes to Watershed Model, provides results of key scenarios run through the updated Watershed Model, and proposes nitrogen, phosphorus and sediment allocations for the 19 state-basins by June 30, 2011;
- Based on jurisdictional review, EPA finalizes nitrogen, phosphorus and sediment allocations for the 19 state-basins by July 15, 2011;
- Preliminary 2012-2013 jurisdiction milestone commitments submitted to EPA for scenario analysis by November 1, 2011. Jurisdictions are encouraged to submit draft milestones before this date so that they may have more time to respond to the Chesapeake Bay Watershed Model estimates of how much milestone commitments would reduce loads.
- Draft Phase II WIPs submitted to EPA by December 1, 2011;
- 2012-2013 jurisdiction milestone commitments submitted to EPA by January 3, 2012;
- Formal EPA comments on draft Phase II WIPs by January 31, 2012; and
- Final Phase II WIPs submitted to EPA by March 30, 2012