

EPA EVALUATION OF PENNSYLVANIA DRAFT PHASE II WIPs AND 2012-2013 MILESTONES

Overview

Pennsylvania did an extensive amount of outreach for the development of the Phase II WIP. Pennsylvania is progressing on several commitments from the Phase I WIP that are reflected in the Phase II WIP. The 2025 WIP model input deck submitted on January 25 approximately meets the Phase II WIP planning targets for nitrogen, phosphorus and sediment, although nitrogen loads have increased slightly compared to the Phase I WIP. Pennsylvania has advised EPA to anticipate a linear projection of load reductions and the 2017 WIP input deck will be 60 percent of the 2025 input deck.

Pennsylvania's draft Phase II WIP provides updated information for activities since the Phase I WIP, but it does not address EPA's concerns regarding how Pennsylvania will assure compliance with the existing state regulations. EPA is also looking for additional clarity from Pennsylvania on the process for on-going local engagement. The Phase II WIP also does not address how Pennsylvania will track or report on BMPs across the various sectors, and it does not detail next steps toward advancing manure to energy technologies in light of an apparent change in the financing approach from Phase I.

Pennsylvania responded to some of EPA's comments on the two-year milestones, and the milestone input deck meets the 2013 targets. Milestones for agriculture and wastewater generally align with activities identified in the WIP. However, agricultural milestones do not include next steps to advance technologies and the stormwater milestones still do not fully support WIP commitments.

This evaluation identifies improvements that EPA expects Pennsylvania to make to its Final Phase II WIP and 2012-2013 milestones for the agricultural, stormwater and wastewater sectors and Pennsylvania's trading program in order to avoid federal actions.

Local Engagement

- Pennsylvania maintained its WIP Management Team, with representation from stakeholders. It also hosted public meetings and a series of 8 workshops throughout the watershed.
- Pennsylvania is working with Lancaster, Lycoming, and York counties to develop model local strategies to implement Phase II WIP commitments.
- EPA expects the Final Phase II WIP to explain how Pennsylvania will continue engagement with local partners and identify "targets" or actions that local partners would take to fulfill their contribution toward meeting the Chesapeake Bay TMDL allocations, such as implementation, programmatic, or pollutant reduction goals by county.
- Compliance visit goals and work plan revisions are good examples of programmatic local area targets for conservation districts.

Agriculture

Key Strengths of Draft Phase II WIP

- Pennsylvania is progressing on efforts to educate stakeholders about regulations, including drafting a Model Agricultural Compliance Policy document for Conservation Districts.

Key Strengths of Milestones

- Commitment for Pennsylvania to perform compliance inspections as identified in the Phase I WIP.
- Commitment for Conservation Districts to perform on-farm visits to ensure awareness of the updated PA regulations for Erosion Control and the Manure Management Manual.

Improvements EPA Expects in Final Phase II WIP

- Include detailed next steps and timeline to advance manure technologies in light of apparent changes in the financing approach from a technology fund proposed in Phase I. This documentation may include use of crediting technologies, the State Revolving Fund Program funding, and identifying additional technologies to implement on the ground projects to meet the load reductions.
- The success of the compliance initiative hinges on the Conservation Districts willingness to take a more active role in compliance activities. EPA expects Pennsylvania's final Phase II WIP to provide additional assurance that the Conservation Districts are willing to take on the compliance role articulated in the WIP.
- The proposed timeframe of 2013 is a prolonged time for Pennsylvania's CAFO program to be consistent with the EPA 2008 CAFO Rule. Identify interim steps and a timeline to work with EPA to expedite Pennsylvania's CAFO program's consistency with current federal regulations.
- Provide additional detail on Pennsylvania's process and schedule for developing a methodology for tracking and verifying un-reported or under reported practices.

Improvements EPA Expects in Final 2012-2013 Milestones

- Add milestones with interim steps for the CAFO program to comport with federal regulations. For example, draft program due summer of 2012.
- Add milestones detailing how Pennsylvania will implement additional projects, and quantify the nutrient reduction benefits of the technologies.

Potential EPA Actions: The findings above indicate that reasonable assurance in this sector is less than that demonstrated in the Phase I WIP. EPA will maintain enhanced oversight and if Pennsylvania does not make the improvements to the Final Phase II WIP and amend the 2012-2013 milestones, EPA may initiate the following potential actions starting in 2012:

- Conduct an assessment of Pennsylvania's agricultural programs to determine their effectiveness in meeting the WIP commitments.
- Negotiate grant work plans, add conditions to, and/or redirect grant awards.
- Object to CAFO permits that are not consistent with Bay TMDL.
- Increase enforcement of CAFO permits.
- Pursue CAFO designations.
- Continue to explore federal role in promoting manure technologies.

Urban/Suburban Stormwater

Key Strengths of Draft Phase II WIP

- Issued PAG-13 General Permit for stormwater discharges from Phase II small MS4s in 2011.

- Providing statewide training for the MS4s covered under PAG-13.

Key Strengths of Milestones

- Developing guidance for the Chesapeake Bay Pollutant Reduction Plan.
- Training staff and the regulated community for the new Chapter 102 revisions/PAG-2 permit.

Improvements EPA Expects in Final Phase II WIP

- Either modify the Phase II WIP input deck or identify clear strategies to achieve the anticipated reductions in urban loads from 2009 that are included in the Draft Phase II WIP input deck. This includes accounting for those practices that were not reported on in 2009.
- Explain Pennsylvania's process for reporting, tracking and verifying stormwater BMPs.
- Identify a strategy and timeline to evaluate resource needs and procure the staff and funding necessary to support enforcement of all urban stormwater programs.
- Correct the Phase II WIP to state that PAG-2 has been extended until December 7, 2012, and include a commitment to issue this permit with provisions necessary to meet the Bay TMDL.
- Explain how the Act 167 program will be funded and specify who is going to ensure that municipalities issue stormwater ordinances as defined by the Act 167 county plans if Pennsylvania is going to cite Act 167 as a strategy to meet its stormwater commitments.
- Provide a schedule and plan, including training for key staff and stakeholders, to ensure that Chesapeake Bay Pollutant Reduction Plans include the necessary provisions to meet the Bay TMDL wasteload allocations.
- Add specific commitments and timeline to implement elements of the management action plan associated with EPA's assessment of Pennsylvania's stormwater program

Improvements EPA Expects in Final 2012-2013 Milestones

- Add a milestone to train key staff and stakeholders on the necessary provisions of the Chesapeake Bay Pollutant Reduction Plans to meet the Bay TMDL wasteload allocations.
- Add milestones to implement elements of the management action plan associated with EPA's assessment of Pennsylvania's stormwater program.
- Add a milestone to develop a reporting, tracking, and verification system for stormwater BMPs.
- Add a milestone to evaluate resource needs and hire additional staff, as needed.

Proposed EPA Actions: Because EPA has not seen enough detail in the Phase II WIP to merit reducing our actions or oversight of the stormwater sector from the Phase I review, EPA may initiate the following actions starting in 2012 if Pennsylvania does not make necessary improvements to the Final Phase II WIP and amend the 2012-2013 milestones:

- Negotiate grant work plans, add conditions to, and/or redirect grant awards to include inspections; enforcement for MS4 areas and construction; technical assistance and outreach for the Chesapeake Bay Pollutant Reduction Plans; guidance to locals on BMP implementation; and implementing strategies articulated in the WIP and milestones.
- Target enforcement of NPDES permits.
- Host training for DEP and, separately, localities on what EPA expects to see in an acceptable Chesapeake Bay Pollutant Reduction Plan.

- Provide assistance, such as contract dollars, for reviewing MS4 annual reports and Chesapeake Bay Pollutant Reduction Plans.

Wastewater Treatment Plants and Onsite Systems

Key Strengths of Draft Phase II WIP

- Number of facilities identified in the WIP is consistent with permit compliance schedules.

Key Strengths of Milestones

- Milestones generally support the information in the Phase II WIP.

Improvements EPA Expects in Final Phase II WIP

- Include additional detail in Pennsylvania's Phase II WIP, Section 7, to document any differences between the loads for reissued permits and the Bay TMDL wasteload allocations, and account for any increases that would come from other sources (e.g. increased loads from retired septic tanks would be transferred from load allocations).
- Explain how Pennsylvania will inventory and track existing and retired onsite septic systems and account for new clustered systems.
- Include a schedule for the issuance of Phase 2 and 3 permits that have not been reissued to include TN and TP effluent limits consistent with the Bay TMDL. The Phase I WIP and the Permitting Strategy stated that these permits were to be issued by December 2010.

Improvements EPA Expects in Final 2012-2013 Milestones

- Add a milestone to reissue all Phase 2 and 3 permits that have not been reissued to include TN and TP effluent limits consistent with the Bay TMDL.

Potential EPA Actions: EPA will maintain enhanced oversight of this sector and if Pennsylvania does not make the improvements to the Final Phase II WIP and amend the 2012-2013 milestones, EPA may initiate the following potential actions starting in 2012:

- Object to permits that are not consistent with Bay TMDL wasteload allocations, including permits that rely on trading if EPA concerns are not addressed.
- Increase targeted enforcement, including enforcement of permits that rely on trading if EPA concerns not addressed.
- Negotiate work plans, add conditions to, and/or redirect grant awards to help eliminate permit backlog.

Offsets and Trading

Key Strengths of Draft Phase II WIP

- Pennsylvania is developing a statewide guidance for addressing stormwater offsets. The guidance should be complete in early 2013.

Key Strengths of Milestones

- Based on EPA comments, added milestones to work with EPA on responding to the results of the offset and trading program assessment.

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. The current trading program is a core initiative of Pennsylvania’s WIP.
- Demonstrate that trading program baseline meets the Bay TMDL requirements. The program was established prior to the Bay TMDL, and as a result the assumptions upon which it was based may have changed. If the baseline does not meet requirements, then Pennsylvania must modify its baseline to bring it into conformity with the Bay TMDL.

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: EPA will conduct enhanced oversight, including NPDES permit reviews, and may initiate the following actions starting in 2012 if Pennsylvania does not make identified improvements to the Final Phase II WIP and amend the 2012-2013 milestones:

- Object to permits that are not consistent with Bay TMDL wasteload allocations, including permits that rely on trading if EPA concerns are not addressed.
- Increase targeted enforcement, including enforcement of permits that rely on trading if EPA concerns not addressed.

Federal Facilities

Key Strengths of Draft Phase II WIP

- Pennsylvania included a section on federal facilities which addresses the 10 facilities that comprise 90% of the federally-owned acres in Pennsylvania’s portion of the watershed.
- Pennsylvania is coordinating with federal agencies to reduce pollutants to the Bay.

Key Strengths of Milestones – none specified

Improvements EPA Expects in Final Phase II WIP

- Explain how Pennsylvania 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, such as implementation, programmatic, or pollutant reduction goals by county.

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

Potential EPA Assistance and Gap-Filling Actions:

EPA is prepared to share examples of federal targets developed without the model.

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.