



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

MAY 30 2012

The Honorable Michael L. Krancer, Secretary  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, Pennsylvania 17101

Dear Secretary ~~Krancer~~ *Mike*:

Thank you for submitting Pennsylvania's final Phase II Watershed Implementation Plan (WIP) and amended 2012-2013 milestones to the U.S. Environmental Protection Agency (EPA). I greatly appreciate the efforts of you and your partners to respond to EPA's evaluation of the draft WIP and milestones that was provided on February 15, 2012. Pennsylvania has made significant progress reducing pollution and moving forward with Phase I WIP commitments. The completion of the Phase II WIPs represents a transition from planning to accelerating the implementation of practices that will clean up the thousands of streams and rivers that make up the Chesapeake Bay watershed.

I am enclosing EPA's evaluation of Pennsylvania's final Phase II WIP and 2012-2013 milestones. The improvements noted in the enclosed evaluation increase EPA's confidence that Pennsylvania will meet its pollution reduction goals. The evaluation also identifies key areas that EPA expects Pennsylvania to address in the next milestone period and through 2017 in order to fully succeed in this effort.

EPA appreciates the steps that Pennsylvania will take to continue working with local partners, including providing local area implementation targets, working with communities who choose to refine these targets, and collaborating with Lancaster, Lycoming, and York Counties on local strategies. EPA is also pleased to upgrade the wastewater sector from "enhanced" to "ongoing" oversight based on additional information in the final Phase II WIP and milestones.

The proposed resolution in support of the Model Agriculture Compliance Policy from the Pennsylvania Association of Conservation Districts and Pennsylvania's work with USDA Natural Resources Conservation Service (NRCS) on advanced manure technologies both show promise that the Commonwealth's agricultural strategies will be successful. However, EPA will maintain enhanced oversight for the agriculture sector until Pennsylvania more fully addresses the issues in the attached evaluation. EPA will also maintain enhanced oversight for Pennsylvania's trading program until recommendations from the recent offset and trading program assessment are addressed, most notably EPA's concerns with the baseline for credit generation.

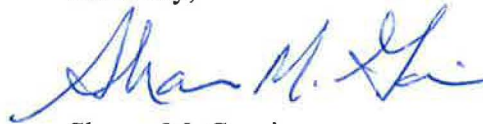
EPA is maintaining backstop actions for the urban stormwater sector given that the final Phase II WIP and milestones do not provide clear strategies for how the Commonwealth will achieve 40 to 50 percent reductions in nutrient and sediment pollution from existing urban lands. On an annual basis, EPA will consider upgrading the urban sector to enhanced oversight if Pennsylvania demonstrates sufficient progress toward addressing the recommendations from EPA's stormwater assessment and either achieves substantial pollutant reductions from the urban sector or secures additional reductions from other sectors.

The enclosed evaluation identifies proposed federal actions that EPA is prepared to take if key issues are not addressed. It is EPA's desire to avoid these actions if possible, and we will work with you through our regular discussions the two-year milestone process to assess progress.

I look forward to our continued dialogue as we work toward implementing the practices necessary to achieve our shared goals for a restored Chesapeake Bay.

If you have any questions or comments, please do not hesitate to contact me or have your staff contact Mr. Jon Capacasa at (215) 814-5422.

Sincerely,



Shawn M. Garvin  
Regional Administrator

Enclosure

cc: Ms. Kelly Heffner, PADEP

**EPA EVALUATION OF PENNSYLVANIA'S FINAL PHASE II WATERSHED IMPLEMENTATION PLAN  
AND 2012-2013 MILESTONES**

**Overview**

Pennsylvania's final Phase II Watershed Implementation Plan (WIP) addresses many of the items in the U.S. Environmental Protection Agency's (EPA's) February 15 evaluation of the draft WIP and final milestones and responds to public comments. Pennsylvania will provide revised county level targets and has committed to work with local governments and other partners who elect to further refine local targets. Pennsylvania has strengthened their wastewater section of the WIP and will be moving from enhanced oversight to ongoing oversight.

The nutrient and sediment controls included in the 2012-2013 milestone and 2025 WIP model input decks approximately meet the planning targets for nitrogen, phosphorus and sediment, although the 2025 nitrogen loads have increased slightly compared to the Phase I WIP. EPA assumes that this excess nitrogen load will decrease when the benefits of manure technologies are incorporated into the model inputs. EPA appreciates Pennsylvania's commitment to work together to determine appropriate nutrient reductions associated with manure technologies. At Pennsylvania's request, EPA created a 2017 input deck that includes the same wastewater loads as the 2025 WIP input deck for all facilities except significant facilities that do not have permit limits in effect by 2017, and 60 percent of the increase in implementation from 2009 to 2025 for all other sources. This scenario meets the 2017 interim planning target.

Despite these improvements, many of EPA's concerns with the draft Phase II WIP remain. The final Phase II WIP lacks clear strategies on how Pennsylvania will achieve the urban stormwater load reductions, and Pennsylvania will not know the level of commitment for the agricultural compliance strategy until July 2012. Although Pennsylvania is initiating a stakeholder process to consider EPA's recommendations from its offsets and trading program assessment, Pennsylvania has not committed to address all of these recommendations by December 31, 2012. Based on these findings, EPA will maintain enhanced oversight for agriculture and offsets and trading, and maintain backstop actions for the urban stormwater sector.

**Local Engagement**

**Improvements made since draft Phase II WIP and final 2012-2013 milestone submission**

- Pennsylvania will be providing revised county-level targets and has committed to work with local governments and other partners who elect to further refine local targets.
- Pennsylvania will continue to convene the Management Team, which will provide input on the two-year milestones, review annual progress and recommend adaptive management steps.
- Pennsylvania is working with Lancaster, Lycoming, and York counties to develop model local strategies to implement Phase II WIP commitments.
- Pennsylvania's efforts to track unreported practices could also be an opportunity to provide key outreach to farmers on the importance of taking conservation actions to meet the Chesapeake Bay Total Maximum Daily Load (Bay TMDL).
- The Phase II WIP outlines a significant role for conservation district and Pennsylvania staff to continue to educate farmers on regulatory requirements and to assist them in coming into compliance.

**Key areas to address in 2012-2013 milestone period and through 2017**

- Continue to clarify the role of local partners in reducing nitrogen, phosphorus and sediment to the Bay.

**Agriculture**

**Key improvements since draft Phase II WIP and final 2012-2013 milestone submission**

- Pennsylvania adequately addressed EPA concerns regarding current manure technology projects and plans by providing details for how to finance future projects, demonstrating coordination with USDA Natural Resources Conservation Service (NRCS) on advanced manure technologies, and committing to work with EPA and the Chesapeake Bay Program partnership to credit these technologies in the Chesapeake Bay Program models.
- Pennsylvania added a milestone to work with PennVest to advance implementation of manure technologies.
- Pennsylvania is committed to working with EPA to identify interim steps to come into compliance with the 2008 federal Concentrated Animal Feeding Operation (CAFO) regulations and included a new milestone to revise the current CAFO general permit by March 2013.
- EPA supports Pennsylvania's plan to build compliance with state regulations. The Pennsylvania Association of Conservation Districts' (PACD's) proposed resolution in support of the Model Agriculture Compliance Policy increases assurance that the Commonwealth's strategies will be successful.

**Key areas to address in 2012-2013 milestone period and through 2017**

- Although PACD's proposed resolution is a positive step forward, Pennsylvania will not fully know the level of willingness for the conservation districts to accept a compliance role articulated in the Phase II WIP until July 2012. If conservation districts do not accept the compliance role, then EPA will be looking for a well-articulated contingency plan for how the Commonwealth will achieve goals identified in the WIP.
- Pennsylvania provided some detail to address EPA's comments on tracking and verifying unreported and under-reported best management practices (BMPs). EPA would like to continue discussions with Pennsylvania as it further develops its verification protocols.
- Continue to work with EPA to quantify the reductions associated with manure technologies.

**Potential EPA Actions:** Maintain enhanced oversight of Pennsylvania agriculture to ensure progress is made on the key initiatives outlined in the final Phase II WIP and milestones.

EPA may initiate the following potential actions if adequate progress is not made:

- Negotiate Chesapeake Bay Implementation Grant and Regulatory and Accountability Program (CBIG and CBRAP) grant work plans and/or add conditions to CBRAP grants to ensure grants are being used for implementing highest priority strategies articulated in the WIP and milestones.
- Increase enforcement of CAFO permits.
- Pursue CAFO designations.

## **Urban Stormwater**

### **Key improvements since draft Phase II WIP and final 2012-2013 milestone submission**

- Pennsylvania committed in the final Phase II WIP to provide training on the development of the Chesapeake Bay Pollutant Reduction Plans, as required under PAG-13.
- Pennsylvania included additional milestones for developing guidance, training and a template for municipal separate storm sewer systems (MS4s) for the Chesapeake Bay Pollutant Reduction Plans.

### **Key areas to address in 2012-2013 milestone period and through 2017**

- Provide information on the strategies for how Pennsylvania will achieve the anticipated reductions in urban loads from 2009 that are included in the Draft Phase II WIP input deck. Pennsylvania's input deck reflects that there would be reductions in stormwater from 2009 to 2025 of 41% for nitrogen, 44% for phosphorus and 50% for sediment.
- Demonstrate the enforcement and compliance of permits and regulations in place for the stormwater program.
- Continue developing a performance standard to account for stormwater implementation and a system to track a performance standard consistent with standards adopted through the Chesapeake Bay Program partnership's verification protocol and expert BMP panels. EPA appreciates Pennsylvania's participation to date in these BMP reviews and verification efforts.
- Identify a strategy and timeline to evaluate resource needs.

**Proposed EPA Actions:** Maintain enhanced oversight and TMDL backstop actions. EPA will not reduce its oversight or actions from Phase I levels given that the Phase II WIP and two-year milestones do not include feasible reductions from the urban stormwater sector and do not identify strategies on how Pennsylvania will achieve the level of new implementation and load reductions committed to in the WIP and milestones. EPA may initiate the following proposed actions if adequate progress is not made on the initiatives outlined in the WIP and milestones and EPA's concerns are not addressed:

- Explore the use of residual designation authority to designate additional discharges for regulation in order to implement the backstop. Advise Pennsylvania to notify newly designated MS4s based on the 2010 census to submit notices of intent to file (NOIs) for coverage under PAG-13.
- Negotiate CBIG and CBRAP grant work plans and/or add conditions to CBRAP grants to ensure grants implement the highest priority strategies articulated in the WIP and milestones.
- Target enforcement of National Pollution Discharge Elimination System (NPDES) permits.
- Send waiver letter to require submission of individual Phase II MS4 permits for EPA review.
- Make training available for Pennsylvania staff and, separately, the regulated MS4 community on what EPA expects to see in an acceptable Chesapeake Bay Pollutant Reduction Plan.
- EPA will provide assistance, such as contract dollars as available, to Pennsylvania in their review of MS4 annual reports and Chesapeake Bay Pollutant Reduction Plans.
- If Pennsylvania does not demonstrate adequate progress in addressing EPA's concerns regarding Pennsylvania's stormwater achievements, including setting feasible load reductions, then EPA will consider revising wasteload allocations (WLAs) to require additional reductions from wastewater treatment plants (WWTPs).

### **Wastewater and Onsite Systems**

#### **Key improvements since draft Phase II WIP and final 2012-2013 milestone submission**

- Included additional detail in the Phase II WIP and additional communications with EPA to document the differences in loads between the loads for reissued permits and the Bay TMDL wasteload allocations, and accounted for increases that would come from other sources.
- Included an updated schedule in the WIP and milestones for the issuance of the Phase 2 and 3 permits under the Permitting strategy.

#### **Key areas to address in 2012-2013 milestone period and through 2017**

- EPA will continue to work with Pennsylvania on tracking onsite septic systems through the Chesapeake Bay Program partnership's BMP panel and verification process as well as the EPA model septic program, which is currently under development.
- EPA is recommending that as Pennsylvania moves through the stakeholder process in the development of a plan of action for offsets and trading, Pennsylvania address onsite septic systems as a source of growth in loadings.

**Potential EPA Actions:** Based on improvements since the Phase I WIP including additional information provided by Pennsylvania in the final Phase II WIP and through additional communication, EPA has shifted Pennsylvania's wastewater sector from "enhanced" to "ongoing" oversight.

### **Offsets and Trading**

#### **Key improvements since draft Phase II WIP and final 2012-2013 milestone submission**

- Pennsylvania has initiated a stakeholder process to develop a plan of action to consider how to address Tier 1 and 2 recommendations from the EPA offsets and trading program assessment. Two meetings are planned for May and June of 2012.
- Pennsylvania included a milestone for the development of a stormwater management offset program by December 30, 2013, but did not address growth in other sectors.

#### **Key areas to address in 2012-2013 milestone period and through 2017**

- EPA expects Pennsylvania 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. Having a plan of action in place by the end of 2012 alone does not meet EPA's expectations for responding to the offsets and trading program assessment.
- Develop a fully effective offset program that is in place by December 2013 for sectors with planned new or increased loadings in addition to the urban stormwater sector, or make a demonstration that a specific sector will not experience net growth in loading. EPA also expects Pennsylvania to 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 increase targeted enforcement, including enforcement of permits that rely on trading, if adequate progress is not being made on the initiatives outlined in the WIP and milestones or EPA's concerns are not fully addressed.

### **Federal Facilities**

#### **Key improvements since draft Phase II WIP and final 2012-2013 milestone submission**

- Pennsylvania is providing revised county targets and encourages federal facilities to refer to those targets to gain an understanding of the level of effort for reductions.
- Pennsylvania informed federal facilities of the new requirements under their MS4 stormwater program for the development of a Pollutant Reduction Plan for small MS4 operators.
- Pennsylvania identified that they will continue to engage federal facilities and keep federal facilities informed of pertinent trainings.

#### **Key areas to address in 2012-2013 milestone period and through 2017**

- Identify a replacement lead point of contact for coordination with the Federal Facility Team.

**Potential EPA Actions:** Conduct ongoing oversight. Through the Federal Facilities Team, EPA will assist jurisdictions in coordinating with federal facilities for purposes of WIP implementation.

### **General Note to All Jurisdictions**

- EPA will assess annual progress and track two-year milestone commitments. EPA may take federal actions, including but not limited to actions described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the jurisdictions' individual WIPs and needed to meet Bay TMDL allocations are achieved.
- The Chesapeake Bay Program partnership is developing verification protocols in order for nutrient and sediment controls to be credited by the Chesapeake Bay Program models. These protocols will address unreported and non-cost shared practices and will include guidelines for identifying and removing duplicate records and addressing expired, failed, or removed practices.
- EPA may conduct special studies or program assessments to ensure progress under the WIPs and milestones.

