

EPA EVALUATION OF VIRGINIA FINAL PHASE I WATERSHED IMPLEMENTATION PLAN

Overview

Virginia commits to aggressive, additional WWTP upgrades, a more accountable urban stormwater program, and expanded mandatory agricultural programs if voluntary programs are not successful.

Allocations

Virginia meets its nutrient and sediment allocations for each basin in the final TMDL. After adjusting for EPA-approved nitrogen and phosphorus exchanges, Virginia's WIP input deck resulted in statewide loads that are 2% over for nitrogen and phosphorus, and 3% under for sediment. EPA and the Commonwealth have reached agreement on further nonpoint source reductions in order to achieve allocations both statewide and in each basin, as documented in the final TMDL. These further reductions are supported by the contingencies included in the WIP and EPA's commitment to track progress and take any necessary federal actions to ensure these reductions are achieved and maintained.

Agriculture

Key improvements since draft WIP:

- The Commonwealth has shifted the entire animal feeding operation (AFO) load into the wasteload allocation and assumes full implementation of barnyard runoff control, waste management, and mortality composting practices required under a CAFO permit. This change enhances reasonable assurance that nutrient and sediment allocations from animal operations will be achieved and maintained by signaling that many more facilities could potentially be subject to NPDES permits as necessary to protect water quality.
- The WIP includes a plan for addressing water quality concerns in unpermitted AFOs.
- The WIP provides more detail on the type of practices that are likely to be included in Resource Management Plans and mechanisms for promoting these Plans to producers.
- Virginia commits to pursue with the legislature mandatory actions or programs in the event that the Commonwealth does not achieve its agricultural load reduction targets through its 2-year milestones.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- EPA will closely track compliance with the agricultural milestone targets and ensure that appropriate contingency actions are pursued as necessary.
- EPA will use its national review of CAFO State Technical Standards in 2011 and beyond to identify any deficiencies in the State Technical Standards for protecting water quality, including Virginia's phosphorus management program. EPA reserves its authority to object to permits if they are not protective of water quality.

Urban Stormwater

Key improvements since draft WIP:

- The WIP includes much more achievable, yet still aggressive, urban stormwater load reductions.
- The Commonwealth commits to finalize a stormwater rule in 2011 that would improve new and redevelopment performance standards.
- Virginia requests individual wasteload allocations for Phase I MS4s to more explicitly demonstrate the amount of urban runoff load that each permitted jurisdiction is expected to achieve.
- The WIP includes a commitment to implement a Bay-wide and possibly statewide regulatory program to limit fertilizer application on urban lands.

EPA actions: Enhanced oversight and actions

- EPA may shift a greater portion of Virginia's urban stormwater load from the load allocation to the wasteload allocation if the stormwater rule and/or the Phase II WIP do not provide additional reasonable assurance that nutrient and sediment reductions within the TMDL will be achieved. It signals that more discharges could potentially be subject to state permit coverage and/or federal Clean Water Act permit coverage as needed to protect water quality.
- Consistent with other jurisdictions, EPA will maintain close oversight and reserves its authority to object to proposed stormwater regulations, MS4 permits, construction general permits, and industrial stormwater permits that do not include the Bay TMDL allocations and do not require conditions to reduce nutrient and sediment loads to the degree identified in the WIP.

Wastewater

Key improvements since draft WIP:

- Virginia commits to require wastewater plant upgrades in the James River Basin sufficient to achieve 100% of reductions needed to meet DO-based allocations and 60% of reductions needed to meet chlorophyll-a based allocations for wastewater plants by 2017.
- Virginia commits to additional wastewater plant upgrades to achieve 100% of the reductions needed to meet the chlorophyll-a based allocations by 2023, as documented in the Bay TMDL Appendix X - *Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin*.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- EPA will review NPDES permit conditions to ensure that they are consistent with the loads and assumptions of the Chesapeake Bay TMDL.
- If VADEQ and EPA cannot come to agreement on the language of the Watershed General Permit related to combined sewer systems (CSS) by the Phase II WIP process, EPA may reopen wasteload allocations to address remaining concerns.

General Note on EPA Actions

EPA will assess annual progress and track 2-year milestone commitments. EPA may take additional actions beyond those listed above, as described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the WIP and needed to meet TMDL allocations are achieved.