

## **EPA EVALUATION OF MARYLAND'S 2012-2013 and 2014-2015 MILESTONES**

The U.S. Environmental Protection Agency (EPA) is providing this evaluation of Maryland's progress towards meeting its 2012-2013 milestones and its sector-specific commitments for the 2014-2015 milestone period.

### **Load Reduction Review**

According to the data provided by Maryland for the 2013 progress run, Maryland achieved its 2013 milestone targets for nitrogen, phosphorus and sediment. Maryland met their milestone targets in large part due to record cover crops planted, wastewater treatment plant upgrades completed on schedule and implementation of the Fertilizer Use Act of 2011. Additionally, improved scientific information, as approved by the Chesapeake Bay Program (CBP) partnership in late 2013, indicated that agricultural Best Management Practices (BMPs) installed in Maryland were more effective than previously estimated.

Maryland's anticipated reductions for nitrogen, phosphorus and sediment during the 2014-2015 milestone period should put Maryland on track to meet the 2017 target of having practices in place to achieve 60% of the reductions necessary to obtain water quality standards in the Chesapeake Bay. Maryland will need to continue to advance implementation in all sectors to stay on track to meet its Watershed Implementation Plan (WIP) and Chesapeake Bay Total Maximum Daily Load (Bay TMDL) commitments by 2025.

Maryland needs to improve their tracking, verification and reporting of BMPs in order to ensure the practices implemented are achieving the anticipated pollutant load reductions. To ensure the most accurate estimates of load reductions, EPA strongly encourages Maryland to enhance the state's existing BMP tracking, verification and reporting program so that it is consistent with the CBP partnership's forthcoming verification framework and guidance and to begin implementing the state's enhanced program in 2015 upon review and approval.

EPA applauds Maryland's milestones to review and correct its data on BMPs reported to CBP. This effort is a key step within the Chesapeake Bay Program's midpoint assessment, and EPA expects other jurisdictions to conduct this review as well.

### **Agriculture – Maintain Ongoing Oversight**

#### **2012-2013 Milestone Achievements**

- Maryland Department of Agriculture's (MDA) revised nutrient management regulations became effective October 15, 2012.
- Regulations to implement Maryland's Fertilizer Act were finalized and published in the Maryland Register in January 2013. Homeowner publications were produced to reflect the new requirements and a training manual and classes were released in spring 2013.

#### **2012-2013 Milestones Missed**

- Although the Phosphorus Management Tool was completed in 2013, the regulations to implement the tool were not completed within the specified timeframe. However, the regulation process has been initiated and is included in Maryland's 2014-2015 milestones.

### **2014-2015 Milestones Strengths**

- Commits to promulgate regulations in 2014 to implement the new Phosphorus Management Tool using a phased-in approach.
- Commits to renew the general discharge permit for animal feeding operations within the 2014-2015 milestone period.
- Commits to investigate various funding mechanisms to support the use of manure-to-energy technologies.
- Commits to develop regulations to implement the Agricultural Certainty Program.

### **Key Areas to Address in 2014-2015 Milestone Period**

- Identify specific deliverables that support implementation of the new nutrient management regulations.
- EPA commends Maryland for developing regulations by spring of 2014 to implement the Agricultural Certainty Program. However, EPA expects additional detail on plans for conducting public reviews, finalizing the regulations, developing an outreach strategy, and launching the program.

### **Urban/Suburban Stormwater – Maintain Ongoing Oversight**

#### **2012-2013 Milestone Achievements**

- Submitted all draft Phase I MS4 permits to EPA by July 12, 2012.
- Issued the final General Permit for Stormwater Discharges Associated with Industrial Activity, which became effective January 1, 2014.
- Secured a Chesapeake Bay Trust grant to establish a training program and develop a database to track urban progress under the Fertilizer Use Act.
- Reviewed and corrected previously reported implementation data for many stormwater management BMPs, and reported this data for 2013 Progress.
- Worked with Maryland's Congressional delegation to pursue authorization of additional federal funding for Chesapeake Bay cleanup.

#### **2012-2013 Milestones Missed**

- Did not submit all draft Phase II Municipal Separate Storm Sewer System (MS4) permits to EPA as specified in this milestone period.
- Did not issue tentative determinations for remaining, expired Phase I MS4 permits as specified in this milestone period.
- Did not finalize the revised stormwater retrofit guidance in 2013. However, the guidance is currently being drafted and will include all of the recently updated stormwater BMP efficiencies from CBP. A schedule has been established for completing this guidance document in Maryland's 2014-2015 milestones.

#### **2014-2015 Milestones Strengths**

- Will develop an online BMP Reporting Tool for non-MS4 local governments.
- Will complete an MS4 geodatabase that will aid Maryland in the assessment of management programs and improve data collection and validation of BMPs for submittal to CBP.

### **Key Areas to Address in 2014-2015 Milestone Period**

- The urban/suburban stormwater sector is not on track to have practices in place by 2017 that will achieve 60% of the expected nutrient and sediment reductions.
- Adhere to the following schedule of when to issue expired NPDES permits as agreed to by Maryland and EPA:
  - Phase I MS4 permits: tentative determinations for remaining, expired National Pollutant Discharge Elimination System (NPDES) permits by June 30, 2014 and State Highway Administration (SHA) by December 2014; final determinations for the remaining Phase I county permits by December 31, 2014.
  - Phase II MS4 permits: tentative determinations by December 31, 2014; final determinations by June 15, 2015.
  - Construction General Permit: final determination by December 31, 2014.
- Sign Letter of Agreement with EPA by June 30, 2014, responding to EPA's assessment of Maryland's stormwater program.
- Finalize revised stormwater retrofit guidance under the MS4 permit by September 30, 2014.
- EPA encourages implementation of Maryland's stormwater fee program.
- EPA encourages implementation of the urban nutrient management legislation, including a demonstration of trends in nutrient loads associated with urban nutrient management. An example of such a demonstration could include statistics on non-farm fertilizer sales to substantiate reduction in fertilizer application.
- EPA encourages submission of stormwater management progress to CBP for 2014 using the performance standard and retrofit methods approved by CBP to more accurately reflect the state's stormwater treatment requirements for new urban construction.
- EPA encourages clarification as to why key BMPs in the 2015 numeric milestones are identical to 2013 progress, suggesting no additional implementation during the milestone period. EPA expects additional implementation.

### **Wastewater Treatment Plants and Onsite Systems – Maintain Ongoing Oversight**

#### **2012-2013 Milestone Achievements**

- The Maryland General Assembly approved legislation to double the Bay Restoration Fund (BRF) fee starting July 1, 2012. With the increased fee, sufficient grant funds are available to complete Enhanced Nutrient Removal (ENR) upgrades at the 67 major Wastewater Treatment Plants (WWTPs) and 5 to 10 minor WWTPs by 2017.
- New regulations effective January 1, 2013 require best available technology (BAT) septic denitrification systems for new construction in the Chesapeake Bay and Coastal Bays watersheds.
- Regulations also require BAT for all repair or replacement of onsite sewage disposal systems in either the Chesapeake Bay critical area or the Atlantic Coastal Bays critical area.
- Developed a list that ranks minor plants for ENR upgrades.
- Completed a draft survey of the nature and quantity of the nutrient loads from all individually permitted industrial wastewater facilities. The survey led to a strategy to refine the results, including identification of new or expanding loads needing to be offset and increased monitoring in the next permit cycle.

#### **2012-2013 Milestones Missed**

- Met all wastewater treatment plant milestone commitments.

- Did not complete the development of a detailed strategy to upgrade 60% of septic systems in the Critical Area by 2017. However, Maryland included a commitment to revise the septic strategy to increase implementation and load reductions from the septic sector in the 2014-2015 milestone period.

#### **2014-2015 Milestones Strengths**

- Commits to complete ENR upgrades for 51 of 76 Major WWTPs.
- Commits to begin funding the planning, design and construction of ENR upgrades for minor WWTPs.
- For minor municipal and industrial wastewater facilities, Maryland is implementing additional permit requirements as permits are renewed based on strategy developed in the 2012-2013 milestone period.
- Will develop a new net-base Best Available Technology system that will allow for more efficient, comprehensive data collection and the automated tracking and reporting of progress in upgrading septic systems with Best Available Technology.

#### **Key Areas to Address in 2014-2015 Milestone Period**

- Provide additional detail on how to achieve significant increases for septic BMP implementation from 2015-2017, given current implementation levels are low.
- Provide a detailed schedule and plans for education and outreach for the refinement of the septic implementation strategy.
- Submit upgrade and compliance schedules into EPA's Integrated Compliance Information System.

#### **Offsets and Trading – Maintain Ongoing Oversight**

##### **2012-2013 Milestone Achievements**

- Completed research and developed more detailed approaches for offsets in fall 2012.
- Completed stakeholder review of draft growth offset policy and implementation strategy in fall 2013.
- Secured a grant in 2012 to develop a tracking and accounting system for growth and offsets.
- Committed to reevaluate sector growth periodically and submitted an initial sector growth demonstration in February 2013 and August 2013 in response to EPA's trading and offset 2012 program assessment findings.
- Provided a response to the common recommendations that EPA made in its 2012 trading and offset program assessment in December 2013.

##### **2012-2013 Milestones Missed**

- Did not finalize offset policies and procedures due to lack of consensus among stakeholders.

##### **2014-2015 Milestones Strengths**

- Will revise policy documents for trading to harmonize with the Accounting for Growth program.
- Commits to research the possibility of trading among sectors to potentially offset growth and help lower implementation costs.
- Commits to develop a tracking system for accounting for new growth by 2015.

#### **Key Areas to Address in 2014-2015 Milestone Period**

- Develop and submit a detailed schedule for adopting the Accounting for Growth regulations.

**Potential Federal Actions and Assistance**

- EPA may downgrade the urban/suburban stormwater sector from ongoing to enhanced oversight unless Maryland completes the following actions by the agreed-upon deadlines:
  - Issues tentative determinations on remaining, expired Phase I MS4 permits by June 30, 2014 and SHA by December 2014; final determinations for the remaining Phase I county permits by December 31, 2014;
  - Issues tentative determinations for Phase II MS4 permits by December 31, 2014 and final determines by June 15, 2015;
  - Issues final determination for Construction General Permit by December 31, 2014; and
  - Signs Letter of Agreement with EPA by June 30, 2014, responding to EPA's assessment of Maryland's stormwater program.
- EPA will work with Maryland to incorporate more specific grant outputs and deadlines for the issuance of NPDES stormwater permits into the CBRAP work plan. EPA has the authority to not approve the work plan until these objectives and outputs are incorporated. Failure to provide outputs on schedule could affect future grant awards.
- No changes in oversight are recommended for the remaining sectors.
- When evaluating 2014-2015 milestone progress, EPA will assess whether statewide and sector load reductions are on track to have practices in place by 2017 that will achieve 60% of necessary reductions compared to 2009.
- EPA is working with .S. Army Corps of Engineers Baltimore District, other consulting federal agencies, state and local government representatives, NGOs, and stream restoration practitioners to improve the efficiency of the permitting process for stream restoration and address technical issues and concerns, such as developing siting criteria and defining monitoring, assessment and performance parameters.
- EPA is supporting jurisdictions' development or enhancement of trading and offset programs, tracking systems and BMP verification programs through technical assistance and grant resources.
- EPA will work with federal partners to provide leadership and coordinate with the jurisdictions on WIP and milestone implementation to reduce pollution from federal lands and meet the Bay TMDL, consistent with the Chesapeake Bay Executive Order 13508 Strategy.