

EPA EVALUATION OF VIRGINIA'S 2012-2013 and 2014-2015 MILESTONES

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

Virginia made progress on many of its programmatic commitments and achieved most of its numeric milestone goals for 2012-2013 milestone period. Virginia will need to place additional emphasis on improving implementation in agriculture, stormwater and septic sectors to stay on track to meet its Watershed Implementation Plan (WIP) and Chesapeake Bay Total Maximum Daily Load (Bay TMDL) commitments by 2025.

Load Reduction Review

According to the data provided by Virginia for the 2013 progress run, Virginia achieved its 2013 overall milestone targets for nitrogen, phosphorus and sediment. Virginia met the targets, in part, because of greater than expected wastewater reductions.

Virginia's anticipated reductions for nitrogen, phosphorus and sediment during the 2014-2015 milestone period should put Virginia on track to meet the 2017 target of having all practices in place to achieve 60% of the reductions necessary to obtain water quality standards in the Chesapeake Bay. Reductions in the wastewater sector exceeded expected targets, but additional implementation to meet more aggressive numeric milestones within the agriculture, urban and septic sectors will be necessary for those sectors to stay on track. EPA expects additional programmatic actions to build the capacity to achieve further reductions from these sectors.

EPA expects Virginia to improve tracking, verification and reporting of Best Management Practices (BMPs) in order to ensure practices implemented are achieving the anticipated pollutant load reductions. To ensure the most accurate estimates of load reductions, EPA strongly encourages Virginia to enhance the Commonwealth's existing BMP tracking, verification and reporting program so that it is consistent with the Chesapeake Bay Program (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 Virginia's milestone to review and correct its data on BMPs reported to CBP. This is a key step within CBP's midpoint assessment of the Bay TMDL, and EPA expects other jurisdictions to conduct this review as well.

Agriculture – Maintain Ongoing Oversight **2012-2013 Milestone Achievements**

- Launched a new Virginia Enhanced Conservation Initiative, providing \$4.8 million in cost-share funds and reimbursing farmers up to 100% to install systems that manage grazing and keep livestock out of nearby waterways.
- Completed its voluntary BMP reporting program in six pilot soil and water conservation districts (SWCDs) and is rolling out the program to all 47 SWCDs.

- Made progress on its Small Animal Feeding Operation (AFO) Strategy by evaluating 42% of the identified 800 small AFOs (exceeding target of 35%). Virginia also assessed 202 additional operations that were not included in the 800 farms identified in the WIP.

2012-2013 Milestones Missed

- Did not issue any Virginia Pollutant Discharge Elimination System (VPDES) Concentrated Animal Feeding Operations (CAFO) permits. Virginia originally committed to have these permits issued by September 1, 2012 and later delayed the target date to December 31, 2013.
- Delayed the launch and implementation of the Resource Management Plan (RMP) program. These milestone commitments are carried forward in the 2014-2015 milestones.
- Did not achieve target of nutrient management plans (NMPs) for 75% of unpermitted dairies. This milestone commitment is carried forward in the 2014-2015 milestones.
- Did not finalize educational program for unpermitted dairies. This milestone commitment is carried forward in the 2014-2015 milestones.

2014-2015 Milestones Strengths

- Commits to complete evaluations of the remaining small AFOs in accordance with its Small AFO Strategy by assessing approximately 460 remaining AFOs by 2015. EPA recommends that Virginia provide a summary report that identifies the number of BMPs implemented by farmers as a result of the assessments.
- Continues its 2012-2013 milestone to increase funding for stream exclusion by committing to fund qualified stream exclusion practices at 100% through Fiscal Year 2015. Virginia should identify how much total funding is being committed to this effort.
- Commits to having RMPs on at least 40 operations by the end of 2015.
- Builds upon its 2012-2013 milestones by committing to achieve 45,000 acres of precision agriculture annually (an increase from its 2012-2013 milestone of 12,500 acres annually) and committing to achieve nutrient management planning on 85% of all applicable state-owned lands (an increase from its 2012-2013 milestone of 70% coverage).
- Commits to issuing three VPDES CAFO permits by December 31, 2015.
- Commits to assess the remaining 48 VPA permitted facilities that have applied for VPDES CAFO permits and report whether they require VPDES CAFO permits by October 31, 2014.

Key Areas to Address in 2014-2015 Milestone Period

- Increase implementation of priority agricultural practices that result in greater nitrogen and phosphorous reductions in order for the agriculture sector to stay on track to meet the 2017 interim targets.

Urban/Suburban Stormwater – Maintain Enhanced Oversight

2012-2013 Milestone Achievements

- Significantly increased resources available for local governments to manage stormwater. In 2013, the General Assembly provided \$1 million for local stormwater program development, \$300,000 for locality stormwater training, and passed a bond authorization to capitalize the Water Quality Improvement Fund with \$35 million for urban BMP implementation.
- Issued the Phase I Municipal Separate Storm Sewer System (MS4) permit for Arlington County and the Phase II MS4 general permit in 2013. Virginia is on track to issue the

Construction General Permit (CGP) and the Industrial Stormwater General Permit (ISWGP) in 2014.

- Regulations implementing amendments to Virginia Fertilizer Law have become effective, including zero phosphorus in lawn maintenance fertilizer, and training is underway.
- Met its 2013 milestone nutrient targets for urban and suburban stormwater. EPA expects increases in implementation, in addition to improved reporting, so that future urban reductions are on track to meet the 60% by 2017 interim target.

2012-2013 Milestone Achievements Missed

- Did not issue the 10 remaining, expired Phase I MS4 permits and is therefore not on track to have practices in place by 2025 within the Phase I MS4 localities that would meet the TMDL allocations and Virginia's WIP commitments. Virginia has revised their commitment to issue all permits by December 31, 2015.
- Halted plans to use the Stormwater Management Enterprise and e-Permitting websites to help localities administer local stormwater programs due to technical issues.
- Only implemented urban nutrient management on 2% rather than 5% of available acres.

2014-2015 Milestones Strengths

- Commits to develop the CGP Coverage System as a management tool for the Virginia Stormwater Management Program (VSMP) and the CGP regulations in place of the Stormwater Management Enterprise and e-Permitting websites. Provided select localities with the opportunity to test the tool before it goes live on July 1, 2014.
- Commits to issue Chesapeake Bay TMDL Action Plan Guidance by July 1, 2014. EPA encourages Virginia conduct outreach related to the Guidance.
- Commits to review MS4 program plans and issue permit coverage to the small MS4s newly designated based on the 2010 Census.
- Commits to completing the development of a system to track, verify and report homeowner-installed BMPs. The system will capture and report data in a format suitable for submission to CBP as part of the annual implementation progress assessment.
- Commits to issue compliance strategy and audit and inspection guidance to increase compliance with VSMP and Chesapeake Bay Preservation Act (CBPA) regulations. EPA encourages more specific and measurable deliverables for this milestone in 2015, such as number of inspections completed.
- Commitment to begin effluent monitoring at permitted industrial stormwater facilities in Bay Watershed will increase understanding of nutrient hotspots associated with industrial stormwater activity.
- Commits to engage with federal facilities and local stakeholders in WIP and milestone planning, implementation and reporting efforts.

Key Areas to Address in 2014-2015 Milestone Period

- The milestone to reissue all expired Phase I MS4 permits by December 31, 2015 will not result in practices in place to meet Virginia's WIP commitments until 2030. EPA expects Virginia to issue the remaining MS4 permits to Phase I localities and VDOT in 2014 and fulfill its WIP commitments to have all practices in place by 2025. Virginia could achieve this by issuing permits with more stringent reduction requirements so that all or the vast

majority of necessary practices are in place within two permit terms, or commit to reissue permits after three rather than five years so that three permit terms are complete by 2025.

- Commit to additional implementation of infiltration and filtration practices in particular in order to keep on track to meet the 60% by 2017 goal. EPA encourages Virginia to report implementation progress using the performance standards and retrofit approach approved by the CBP Water Quality Goal Implementation Team.
- Help localities to implement VSMP and CGP regulations which take effect July 1, 2014, and take necessary actions to administer and ensure compliance with these regulations for non-MS4 localities that do not opt in to the program.
- Report measurable results associated with increasing compliance with National Pollutant Discharge Elimination System (NPDES) permits.
- Provide compliance information to substantiate portion of construction lands that have appropriate erosion and sediment controls in place rather than assuming all lands under construction are in compliance with the CGP.
- Implement urban nutrient management on more than 4% of available lands, given the WIP goal of 43% of available lands by 2025. In addition, provide a demonstration of trends in nutrient loads associated with urban nutrient management and fertilizer legislation. An example of such a demonstration could include statistics on non-farm fertilizer sales to substantiate reductions in fertilizer application.

Wastewater Treatment Plants and Onsite Systems – Maintain Ongoing Oversight **2012-2013 Milestone Achievements**

- In 2012 and 2013, all facilities covered by the Chesapeake Bay Watershed General Permit met their respective wasteload allocations. As allowed under the General Permit, the aggregate nitrogen and phosphorus loads from actual discharges within each sub-basin were well below the aggregated permit requirements.
- The 2013 General Assembly approved in its biennial budget a bond authorization to capitalize the Water Quality Improvement Fund for point source nutrient control programs, including \$101 million to fund grants for wastewater plant upgrades and up to \$75 million for Combined Sewer Overflow control projects in the cities of Richmond and Lynchburg.
- The Regulation for Alternative Onsite Sewage Systems (AOSS) 12 VAC 5-613 became effective December 7, 2011.
- New septic growth impacts will be mitigated by the new nitrogen-reducing requirements of the AOSS Regulations, which became effective December 7, 2011.
- Finalized an implementation manual to improve consistency with the application of the new regulations.
- One hundred fifty-four denitrification systems have been installed, even before the effective date of the regulatory requirement.
- Upgraded the Virginia Environmental Information Systems database to track onsite facilities connections to public sewer when the information is received by Virginia Department of Health (VDH).

2012-2013 Milestones Missed

- Although Virginia revised its tracking system for onsite systems to include information on public sewer connections, capturing these data from local governments remains incomplete.

2014-2015 Milestones Strengths

- Will initiate reissuance of the Watershed General Permit including reduced limits in the James River basin consistent with the Chesapeake Bay TMDL wasteload allocations and Appendix X.

Key Areas to Address in 2014-2015 Milestone Period

- Submit wastewater treatment plant upgrade schedules and nutrient loadings into EPA's Integrated Compliance Information System.
- EPA encourages VDH to develop a requirement for wastewater authorities to inform VDH when onsite facilities are connected to public sewers.

Offsets and Trading – Maintain Ongoing Oversight

2012-2013 Milestone Achievements

- Legislation was passed in 2012 that established a stakeholder process for the development of regulations that govern the certification of nonpoint source nutrient credits. This stakeholder process concluded in July 2013 and regulations have been drafted and approved by the Water Quality Control Board.
- Reissued MS4 permits for Arlington County and small MS4s contain provisions to allow trading to meet WIP commitments for Chesapeake Bay TMDL reductions.
- New septic growth impacts will be mitigated by the new nitrogen-reducing requirements of the AOSS Regulations that became final and effective in December 7, 2011.
- Committed to reevaluate sector growth periodically and submitted initial and final sector growth demonstrations in February 2013 and August 2013, respectively, in response to EPA's 2012 trading and offset program assessment findings.
- Provided a response to the common recommendations that EPA made in its 2012 trading and offset program assessment in November 2013.

2012-2013 Milestone Missed

- All milestones were achieved.

2014-2015 Milestones Strengths

- Commits to develop an online nutrient credit registry by December 31, 2014.
- Will receive public comment on the regulations governing the certification of nonpoint source nutrient credits in 2014. Will finalize regulations by June 30, 2015.
- Will report the results of wastewater nutrient monitoring and credit availability for the prior year's annual loads by April 1, 2014 and April 1, 2015. Reports will be made available on Department of Environmental Quality's (DEQ's) nutrient trading webpage.
- Will publish notice of all nutrient credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges available to any person requesting them. Reports will be made available on DEQ's nutrient trading webpage by July 1, 2014 and July 1, 2015.
- Will initiate the process of developing a tracking and accountability system for new or increased loadings of nitrogen, phosphorus, and sediment in accordance with EPA.

Key Areas to Address in 2014-2015 Milestone Period

- Address delay in issuing MS4 permits and insufficient progress on milestones to accelerate compliance with CGP, VSMP and CBPA requirements so that new or increased loads from development can be offset. As noted, EPA expects reductions to be on track for meeting the 2025 goal and improved compliance with regulations that address growth.

Recommended Federal Actions and Assistance

- EPA will work with Virginia to incorporate more specific grant outputs and deadlines for the issuance of Phase I MS4 permits, CAFO permits and the phased development of the CGP Coverage System into the CBRAP grant 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.
- 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 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.