EPA EVALUATION OF MARYLAND'S 2014-2015 AND 2016-2017 MILESTONES

The U.S. Environmental Protection Agency (EPA) is providing this evaluation of Maryland's progress toward meeting its 2014-2015 milestones and its sector-specific commitments for the 2016-2017 milestone period.

Load Reduction Review

When evaluating 2014-2015 milestone implementation and the 2016-2017 commitments, EPA is comparing progress and commitments to expected pollutant reduction targets to assess whether statewide and sector load reductions are on track to have practices in place by 2017 that will achieve 60 percent of necessary reductions compared to 2009.

According to the data provided by Maryland for the 2015 progress run[1], Maryland achieved its state-wide 2015 targets for phosphorus and sediment but missed its state-wide nitrogen target. For nitrogen, Maryland is off target in all source sectors except for wastewater.

Based on Maryland's anticipated reductions for nitrogen, phosphorus and sediment during the 2016-2017 milestone period, Maryland is on track to meet all of its statewide 2017 targets. Although current data shows that Maryland is on track to meet its statewide 2025 targets for phosphorus and sediment, data that is being gathered for the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) midpoint assessment could show that changes in levels of effort may be necessary in order to achieve the 2025 targets for all three pollutants.

However, Maryland is not on track to meet its 2017 targets for the urban sector for any of the three pollutants. In Maryland's Phase I and II Watershed Implementation Plans (WIP), Maryland recognized that "progress is not the same for each pollutant because they may be reduced at different rates by each sector" and stated that "the rapid progress in the wastewater sector will balance a slower start in other sectors". Maryland will need to place additional emphasis on increasing implementation in the urban sector in order to meet its WIP and Bay TMDL commitments by 2025.

EPA recognizes that Maryland is working with Exelon on a $3.5 million enhanced monitoring and modeling study that will be integrated into the midpoint assessment decision making process. EPA recommends Maryland continues with these efforts and, along with all Susquehanna River states, begins to develop a strategy to further reduce nutrient and sediment loads to the Chesapeake Bay given that a greater portion of pollutants than previously anticipated is passing through the Conowingo Dam and into the Chesapeake Bay as a result of the reservoirs filling up and losing their trapping capacity.

In light of recent EPA approval of Maryland's best management practice (BMP) verification plan, EPA recommends that Maryland include a milestone in the agriculture and urban stormwater sectors to implement its BMP verification program and provide training to relevant partners on its verification protocols.

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[1] Loads simulated using 5.3.2 version of the Chesapeake Bay Watershed Model and wastewater discharge data reported by the Bay jurisdictions.

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Agriculture – Maintain Ongoing Oversight

2014-2015 Milestone Achievements

- Concentrated Animal Feeding Operations (CAFO) General Permit (GP) was renewed and became effective on December 1, 2014. EPA approved a modification to the GP on January 29, 2016 to address a challenge by Food and Water Watch and the Assateague Coastal Trust. This modification aligns the GP with federal requirements.
- Phosphorus Management Tool regulations became effective June 8, 2015.

2014-2015 Milestones Missed

- None identified.

2016-2017 Milestones Strengths

- Committed to provide continued service in Fiscal Years (FY) 2016 and 2017 for the Manure Matching Service in support of the Maryland Phosphorus Initiative.
- Included a milestone for newly registered CAFOs to receive permit coverage by December 2018 and to process all renewal registrations that are administratively extended.

Key Areas to Address in 2016-2017 Milestone Period

- EPA expects Maryland to ensure all new, non-registered CAFOs are identified and required to submit applications for permit coverage, and to assess all previously registered CAFOs in order to determine if they need to apply under the new CAFO GP.
- EPA expects Maryland to 1) define its role in BMP verification at CAFOs, which is a required aspect of its permit compliance inspections and Annual Report reviews, and 2) develop plans to coordinate with Maryland Department of Agriculture.
- EPA expects Maryland Department of Agriculture to receive the remaining phosphorus soils data that is required under Maryland's Phosphorus Management Tool regulations by fall 2016.
- EPA recommends additional milestones to support significant increases in implementation for Animal Waste Management Systems.

Urban/Suburban Stormwater – Maintain Ongoing Oversight

2014-2015 Milestone Achievements

- Completed issuance of Phase I Municipal Separate Storm Sewer System (MS4) permits.
- Completed MS4 geodatabase for Phase I data collection, tracking, and verification.
- Fulfilled obligations from EPA's assessment of Maryland's stormwater program:
    - Completed standard operating procedures (SOP) for reviewing and enforcing the MS4 program. EPA distributed Maryland's SOP to other states in the region as guidance.
    - Provided extensive outreach to Maryland's Phase II community including a two-day conference, with EPA Region III, on program implementation. Conducted field inspections for all Phase I MS4s and 30 percent of all Phase II permittees.
- Finalized the Construction General Permit and the General Permit for Industrial Stormwater Discharge.
- Submitted a FY15 priority request in the amount of $124 million per year for stormwater retrofits.

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2014-2015 Milestones Missed

- Did not issue tentative determinations for the Phase II MS4 permits by the end of 2015.
- Did not complete development of the online BMP reporting tool for non-MS4 local governments and a schedule for completion of the tool.

2016-2017 Milestones Strengths

- Included a milestone for the Phase I MS4 financial assurance plans.
- Implemented the performance standard reporting method for BMP implementation progress.

Key Areas to Address in 2016-2017 Milestone Period

- EPA expects Maryland to issue the tentative determinations for Phase II MS4 permits by September 30, 2016.
- EPA expects Maryland to issue the final determinations for Phase II MS4 permits by March 30, 2017.
- Maryland will review, approve, and/or take appropriate enforcement actions according to established Standard Operating Procedures (SOPs) on Phase I MS4 Restoration Plans submitted during or prior to the 2016/2017 period. Maryland will report to EPA on the status of reviews quarterly towards a target of completing at least 50 percent of the review actions by the end of 2016 and 100 percent by the end of 2017.
- Maryland will develop an MS4 permit template for EPA review that articulates the requirements of the Phase I permits set to expire in 2018. A draft will be shared with the Agency and a final will be developed based on that feedback before the end of the 2016/2017 milestone period.
- EPA expects Maryland to review all Phase I MS4 financial assurance plans and report on the status of those plans by September 2016.
- EPA expects Maryland to address noncompliance issues that have been identified in MS4 permitted communities in a timely and appropriate manner.
- EPA recommends Maryland include a milestone to document use of non-agricultural fertilizer sales in order to continue receiving credit for urban phosphorus fertilizer reductions.

<u>Wastewater Treatment Plants and Onsite Systems – Maintain Ongoing Oversight</u>

2014-2015 Milestone Achievements

- Continued to move forward with upgrades at both minor and major wastewater treatment plants (WWTPs).
- Completed development of the net-based Best Available Technology (BAT) tracking/reporting system.

2014-2015 Milestones Missed

- Did not release its revised septic implementation strategy for public review. However, Maryland did submit to EPA a memorandum titled *Septic System Strategy Options*.

2016-2017 Milestones Strengths

- Included milestones for the continuation of upgrades to major and minor WWTPs.
- Provided to EPA an inventory of WWTPs that have been upgraded and those scheduled for upgrades.

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- Included a milestone to expand the range of new BAT systems for septic system upgrades.
- Committed to facilitate implementation of septic systems to enhanced nutrient removal (ENR) facilities in the Critical Area.

Key Areas to Address in 2016-2017 Milestone Period

- EPA expects a milestone to complete the septic implementation strategy or clarify alternative plans that would replace such a strategy.

Offsets and Trading – Maintain Ongoing Oversight

2014-2015 Milestone Achievements

- Completed development of a tracking system for agriculture and is moving forward with developing a similar tracking system for the urban sector.

2014-2015 Milestones Missed

- Did not provide a schedule or next steps for finalizing the Accounting for Growth regulations.

2016-2017 Milestones Strengths

- Included a milestone to finalize draft agricultural regulations for the generation and certification of nutrient and sediment credits on agricultural land.
- Included a milestone to continue to provide sector growth demonstrations, with a particular focus on offsetting nutrients due to an increase in poultry houses in the Delmarva region.
- Convened a Trading Advisory Committee to discuss and develop the Nutrient Trading and Offset Policy Manual.

Key Areas to Address in 2016-2017 Milestone Period

- EPA expects a milestone to continue policy formulation on Accounting for Growth.
- EPA expects a milestone that tracks the finalization of the Trading and Offset Policy Manual.
- EPA recommends that Maryland take into account all poultry growth beyond just CAFOs/MAFOs and to identify and offset any increase in nutrient loads resulting from increases in poultry operations.
- EPA requests further clarification from Maryland as to whether the Nutrient Trading Policy will be a regulation, policy or guidance document.
- EPA recommends that Maryland continue making improvements to an existing tracking and accountability system for tracking new or increased loads.

Potential Federal Actions and Assistance

- EPA will maintain ongoing oversight for Maryland urban/suburban stormwater. EPA may downgrade this sector to enhanced oversight in subsequent evaluations if Maryland does not make substantial improvements on the following issues:
    - Issues tentative determinations for the Phase II MS4 permits by September 30, 2016 and issues final determinations by March 30, 2017;
    - Reviews, approves, and/or takes appropriate enforcement actions according to established Standard Operating Procedures (SOPs) on Phase I MS4 Restoration Plans submitted during or prior to the 2016-2017 period. Maryland will report to

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EPA on the status of reviews quarterly towards a target of completing at least 50 percent of the review actions by the end of 2016 and 100 percent by the end of 2017;;

- Develops an MS4 permit template for EPA review that articulates the requirements of the Phase I permits set to expire in 2018. A draft will be shared with the Agency and a final will be developed based on that feedback before the end of the 2016-2017 milestone period; and
- Reviews all Phase I MS4 financial assurance plans and report on the status of those plans by September 2016.

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