

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

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

Delaware has made progress in the agriculture and stormwater sectors to ensure implementation is occurring, even though all of its milestone commitments were not achieved. Delaware will need to place additional emphasis on improving implementation in the agriculture and wastewater 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 Delaware for the 2013 progress run, Delaware nearly achieved its 2013 milestone target for nitrogen. Delaware did not achieve its 2013 milestone target for phosphorus and sediment. While the 2012-2013 sediment targets were not achieved, Delaware has already met its 2025 WIP sediment target.

Delaware did not meet their milestone targets in part because of improved scientific information approved by the Chesapeake Bay Program (CBP) partnership in late 2013 and incorporated into CBP's decision-support tools. The improved information resulted in an increase to Delaware's nitrogen and phosphorus loads, which gave the appearance of a decrease in implementation efforts. Using this updated efficiency in the decision-support tools, Delaware must now address how to implement additional practices to make up the difference based on the updated information.

Based on Delaware's anticipated reductions for phosphorus and sediment during the 2014-2015 milestone period, Delaware will be 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. Additional reductions are needed for nitrogen to ensure the 2017 target will be achieved.

Delaware needs to improve their tracking, verification and reporting of Best Management Practices (BMPs) in order to ensure the practices implemented are achieving the anticipated pollutant load reductions. To ensure the most accurate estimates of load reductions, Delaware included programmatic milestones related to enhancing the state's existing BMP tracking, verification and reporting program that is consistent with the CBP partnership's forthcoming verification framework and guidance.

EPA also strongly encourages Delaware to review and correct its data on BMPs previously reported to CBP across all sectors, including wastewater, by fall 2015 as part of CBP's midpoint assessment of the Bay TMDL in 2017. Delaware included programmatic milestones to address previous data for a few practices during this milestone period.

EPA continues to have concerns with Delaware's high unexpended balance in their Chesapeake Bay Implementation Grant (CBIG) and the Chesapeake Bay Regulatory and Accountability

Program (CBRAP) grant. Delaware should use some of their unexpended CBRAP grant funding to address the items identified in this milestone evaluation.

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

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

- Acquired additional funds necessary to meet implementation goals for cover crops. The policy to require cover crops on public agricultural lands and the efforts to secure additional funding underscores this as a priority practice.
- Drafted Agricultural Certainty legislation that is currently under review by State agencies and the agricultural community.

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

- Did not meet its 2013 milestone targets for nitrogen and phosphorus in agriculture. Examples of agricultural BMP implementation not meeting planned targets after four years (2009 – 2013) are grass buffers (1% implementation), forest buffers (0% implementation), and decision agriculture (0% implementation). Delaware is relying on these practices to meet its nutrient and sediment reduction targets. EPA expects the state to detail how it will get back on track with these practices or articulate a revised plan for how to reach these reduction targets in a different way.
- Disinvested in some of the initiatives identified in the milestones because research did not demonstrate necessary pollution reductions. These include eliminating outreach efforts and manure-to-energy research and not pursuing innovative poultry flooring technology based on unfavorable data. Future milestone initiatives should be quantifiable.
- Delaware did not complete three milestones and are carrying them into 2014-2015. These include two milestones focused on poultry litter content and decision agriculture due to delays in decisions by the CBP partnership that were out of Delaware's control. The third milestone memorialized a collaborative partnership for which a specific output/outcome was not established. Future milestone commitments should include a clearly defined and measurable deliverable.

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

- Commits to issue a general permit covering 150 concentrated animal feeding operations (CAFOs) or 100 individual CAFO permits under the National Pollutant Discharge Elimination System (NPDES) program in the Bay watershed, which is a major step toward addressing their NPDES permit backlog.
- Commits to develop a method of tracking and reporting one of their top BMPs, conservation tillage.
- Includes a quantitative goal for developing Erosion and Sediment Control (E&S) plans for new poultry houses.
- Includes a pilot watershed assessment to assess the status of small, agriculture-impaired watersheds.

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

- Increase progress during the 2014-2015 milestone period that will get Delaware back on track to meet the nitrogen targets for 2015, with a focus on ramping up implementation of the

highest priority water quality BMPs (e.g., cover crops, grass buffers, animal waste management and decision agriculture).

- Increase the compliance monitoring program for nutrient management plans and develop a tracking system to track and verify practices such as nutrient management and conservation plans that are reported for progress.
  - Document changes in reporting of “standard” nutrient management to a higher efficiency form of nutrient management such as decision agriculture.
- E&S plans for poultry house construction should describe how new or increased loads will be offset.

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

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

- Promulgated the revised sediment and stormwater regulations in July 2013 and held trainings in each county.
- Completed a draft BMP manual for industrial stormwater sites in July 2012.
- Expects to finalize the BMP tracking database in April 2014. Sufficient progress was made although this milestone was not met. This effort is being carried forward into 2014-2015.

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

- Did not complete the milestones for stormwater retrofits, but progress was made and these milestones were carried forward into 2014-2015.
- Has not yet reissued their final Phase II Municipal Separate Storm Sewer System (MS4) general permit; however a draft was submitted to EPA in September 2013 and Delaware included a milestone for this in 2014-2015.

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

- Commits to provide training on the revised regulations for sediment and stormwater.
- Commits to maintenance and construction inspections.
- Commits to implement stormwater retrofits within the watershed in addition to those carried forward from 2012-2013.
- Commits to evaluate the need for further MS4 coverage within the Chesapeake Bay watershed.
- Commits to revise the regulations for industrial stormwater and to develop an industrial stormwater facility BMP manual by June 2016.
- Commits to new tree canopy goals in this milestone period.

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

- Specify the type and timing of the outreach to MS4 communities.
- Demonstrate how to get back on track to meet the nitrogen targets for 2015, with a focus on ramping up implementation of the highest priority water quality BMPs, such as filtration practices.

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

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

- Revised and updated regulations for onsite wastewater and for spray irrigation.

- Mapped large onsite wastewater systems.

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

- Final permit for Bridgeville wastewater treatment plant (WWTP) was not reissued during the milestone period. The permit was issued March 10, 2014.
- Permits for Seaford and Invista WWTPs were not reissued. Delaware is working on a nutrient trade agreement between Seaford and Invista. Permits are anticipated to be issued in 2014.
- A statewide NPDES permit backlog continues in the state of Delaware.

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

- Commits to hire a part time seasonal engineer to assist with writing and reviewing permits.

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

- The Laurel WWTP permit expires in May 2014. Reissue this permit by December 31, 2014.
- All of the missed 2012-2013 milestones were carried over into 2014-2015. Issue the backlogged permits by December 31, 2014.
- Submit upgrade and compliance schedules into EPA's Integrated Compliance Information System.

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

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

- The newly revised Sediment and Stormwater Regulations and Onsite Wastewater Regulations both have provisions for offsets and/or fee in lieu.
- Committed to reevaluate sector growth periodically and submitted an initial sector growth demonstration in February 2013 in response to EPA's 2012 trading and offset program assessment findings. In December 2013, Delaware provided a response to the common recommendations that EPA made in its 2012 trading and offset program assessment

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

- Did not adopt offset regulations because of delays in the promulgation of the sediment and stormwater regulations and the onsite wastewater regulations.
- Development of a credit registry is on hold.
- Assessment of development projects that could impact Delaware TMDL allocation has been extended to 2016.

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

- Identifies the Invista and Seaford NPDES permitted facilities as engaging in trade agreements in 2014. These agreements will be incorporated into the facilities' permits.
- Commits to refine the Sediment and Stormwater Program (SSP) offset program by December 2015.
- Proposes the development of a nonpoint source (NPS) BMP tracking and restoration database which will be used in conjunction with the National Environmental Information Exchange Network (NEIEN) for future implementation progress submissions to CBP.

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

- Establish adequate systems to determine whether sector loads are increasing or not. Expect that Delaware in Fiscal Year 2014 must, at a minimum, either:
  1. Begin making improvements to an existing tracking and accountability system so that it is operational by December 31, 2015; or
  2. Begin developing a new system that is operational by December 31, 2015.

**Additional Milestones**

**2012-2013 Milestone Achievements**

- Milestone met for communication plan development, and implementation is continued in 2014-2015 milestones.
- Determined that there are no federal facilities in the Chesapeake watershed in Delaware; facilities previously noted in milestones are state facilities. No action was taken on these sites. Encourage BMP implementation on these sites in 2014-2015.

**2012-2013 Milestones Missed**

- Did not complete Master Plan build out scenarios in 2012-2013 and carried this effort into the 2014-2015 milestones.
- Did not finalize the BMP tracking database by April 2014. Sufficient progress was made, and this effort is being carried forward into 2014-2015.
- Did not complete the review of the Section 319 plans for consistency with WIP in 2012-2013, and this effort is carried over into 2014-2015.

**2014-2015 Milestones Strengths**

- Commits to review the Clean Water Act Section 319 nonpoint source (NPS) plans for consistency with the WIP and to develop 4 new NPS plans.
- Commits to hosting a workshop addressing water resources and green infrastructure planning.
- Commits to develop and validate build out scenarios for various regions of the watershed. These plans should help minimize the impact from new development.
- Commits to hosting various outreach opportunities to inform the public of efforts to implement the WIP.

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

- None.

**Potential Federal Actions and Assistance**

- \* EPA may downgrade the agriculture sector from ongoing to enhanced oversight within the 2014-2015 milestone period unless Delaware:
  - Details how it will fund and implement load reductions for highest priority water quality BMPs (buffers, animal waste systems, decision agriculture, cover crops);
  - Shows progress that puts Delaware on track to meet 2017 goal; and
  - Issues CAFO permits to cover 150 animal operations.
- \*\* EPA may downgrade the wastewater sector from ongoing to enhanced oversight in 2015 if permits for expired significant wastewater treatment plants are not reissued prior to December 31, 2014.

- EPA will work with Delaware to incorporate more specific grant outputs and deadlines for the issuance of CAFO and WWTP permits into the CBRAP grant work plan. EPA has the authority to not approve the work plan until these objectives and outputs are incorporated. If Delaware does not provide these outputs on schedule, EPA may not fully fund future grant awards.
- EPA is supporting jurisdictions' development or enhancement of trading and offset programs, tracking systems and BMP verification programs through technical assistance and grant resources.
- Delaware could use EPA grant resources or contractor hours to evaluate whether load reductions that were originally assumed from buffers are still achievable and practical prior to developing the Phase III WIP.
- EPA will work with Delaware to better align funding with WIP priorities for implementation.
- 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 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.