

## **EPA EVALUATION OF DELAWARE'S 2014-2015 and 2016-2017 MILESTONES**

The U.S. Environmental Protection Agency (EPA) is providing this evaluation of Delaware'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 Delaware for the 2015 progress run<sup>1</sup>, Delaware achieved its state-wide 2015 targets for phosphorus and sediment, but did not meet its state-wide 2015 target for nitrogen as a result of being off target for nitrogen in all source sectors except for wastewater.

Based on Delaware's anticipated reductions for nitrogen, phosphorus and sediment during the 2016-2017 milestone period, Delaware is on track to meet all of its state-wide targets for 2017. For all three pollutants Delaware is off track for the urban sector to meet its target Watershed Implementation Plan (WIP) and Chesapeake Bay Total Maximum Daily Load (Bay TMDL) targets by 2025. However, data that is being gathered for the 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.

### **Agriculture – Downgrade to Enhanced Oversight**

#### **2014-2015 Milestone Achievements**

- Conducted cropland transect surveys to track and report cover crop and conservation tillage data and will be conducting these surveys annually in the future.
- Increased the acres of cover crops planted in 2015 by 33.8 percent over the 2014 acreage. This is partially attributed to the purchase and use of an air seeder for farmers in Sussex County.
- Continued to promote outreach efforts in collecting poultry litter samples at farm inspections to support the Poultry Litter Subcommittee expert panel.

#### **2014-2015 Milestones Missed**

- Did not issue a Concentrated Animal Feeding Operation (CAFO) General Permit to cover 150 CAFO operations or 100 individual permits during the milestone period. EPA approved the draft CAFO General Permit (GP1) on April 29, 2015 for large and medium poultry operations that do not have any crop production and do not land apply manure but Delaware did not finalize it. This milestone has been moved to the 2016-2017 milestone period.
- Did not commission a pilot watershed assessment to help characterize and assess the status of a small, agriculturally impaired subwatershed. This milestone has been moved to the 2016-2017 milestone period.

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<sup>1</sup> Loads simulated using 5.3.2 version of the Chesapeake Bay Watershed Model and wastewater discharge data reported by the Bay jurisdictions.

- Did not complete the development and implementation of its tracking and reporting system for agricultural non-cost shared Best Management Practices (BMPs) in 2015.
- Did not increase implementation of priority practices to improve water quality such as grass and forest buffers, and animal waste management.

#### **2016-2017 Milestones Strengths**

- Issued the CAFO General Permit 1 (GP1) for large and medium poultry operations that do not have any crop production and do not land apply manure in April 2016.
- Committed to work with Natural Resources Conservation Service (NRCS) to develop a 1619 data sharing agreement between the two agencies to submit NRCS cost shared agricultural practices for inclusion in the Chesapeake Bay Program's (CBP) modeling tools.
- Committed to increase cover crop acres through the use of the Sussex Conservation Districts air seeder and early planting of rye cover crops.
- Committed to purchase mobile technology to improve tracking, reporting and verification of historical BMPs, cover crops, conservation planning and compliance inspections.

#### **Key Areas to Address in 2016-2017 Milestone Period**

- Delaware issued CAFO GP1 in April 2016 and received 167 revised Notices of Intent (NOIs). EPA expects Delaware to include a milestone to issue permit coverage for those 167 non land-applying poultry operations.
- EPA expects Delaware to include milestones for public notice and issuance of CAFO General Permit 2 (GP2) for land-applying poultry operations.
- EPA expects Delaware to include a milestone that by October 31, 2016, Delaware will provide adequate documentation to support its nutrient management compliance levels submitted for the 2015 progress reporting year.
- EPA expects Delaware's Database Correction Plan to include the actions Delaware will take to remedy database issues and to improve agricultural conservation data management and nutrient management compliance tracking and documentation. The plan should include specific milestones with dates.
- EPA expects Delaware to include in the 2016-2017 milestones a plan for revising, as necessary, its forest buffer goals in the Phase III WIP based on the findings from the Riparian Forest Buffer Initiative. If the forest buffer goals are reduced, EPA expects Delaware to identify alternative practices to meet the 2025 target.

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

##### **2014-2015 Milestone Achievements**

- Published draft Phase II Municipal Separate Storm Sewer Systems (MS4) General Permit for public notice.
- Hosted 20 training sessions on the revised Sediment and Stormwater regulations.
- Implemented BMPs in urbanized areas to address stormwater in the Town of Greenwood and the City of Seaford.
- Notified 15 municipalities that they require coverage under the Phase II MS4 permit based on the 2010 Census data.

- Launched the Livable Lawns program to incentivize homeowners to follow Livable Lawns practices when applying fertilizer.

#### **2014-2015 Milestones Missed**

- Did not issue the Phase II MS4 General Permit; this milestone has been carried forward.
- Did not finalize the draft industrial stormwater permit and BMP manual by the anticipated deadline of June 2016 due to lack of staff and funding.

#### **2016-2017 Milestones Strengths**

- Committed to increase urban tree canopy by 5 acres per year.
- Committed to establishing an updated Industrial Stormwater General Permit.
- The Sussex Conservation District committed to provide assistance to apply for grant funding for implementation of several green infrastructure improvement projects, and will work with the municipalities over the next year to see those projects through completion.
- The Town of Laurel has received funding to implement green infrastructure improvement projects starting in the fall of 2016.
- Committed to provide targeted outreach to high risk lawns in the Chesapeake Bay watershed.

#### **Key Areas to Address in 2016-2017 Milestone Period**

- None identified.

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

##### **2014-2015 Milestone Achievements**

- INVISTA and Seaford's National Pollutant Discharge Elimination System (NPDES) permit renewals went into effect November 1, 2015 and are now current through October 31, 2020.
- Reissued the INVISTA permit which reduces total nitrogen loads by 66% from the previous permit.

##### **2014-2015 Milestones Missed**

- Did not reissue the permit for the Town of Laurel. This may entail the need for the Town of Laurel to develop a Long Term Control Plan until the Combined Sewer Overflow separation can be achieved.
- Did not meet the schedule for development of a database to track septic pump outs. A lack of funding has delayed development and this milestone is carried forward into the 2016-2017 milestone period.
- Did not update permit fee schedules; however, the General Assembly formed a Task Group to review funding for water and wastewater and is scheduled to report back to the General Assembly in 2016.

##### **2016-2017 Milestones Strengths**

- Committed to reissue the permit for the Town of Laurel in August 2016 with a compliance schedule meeting the nutrient requirements of Delaware's WIP.

**Key Areas to Address in 2016-2017 Milestone Period**

- None identified.

**Offsets and Trading – Maintain Ongoing Oversight**

**2014-2015 Milestone Achievements**

- Finalized the Nitrogen-Phosphorus Trade Agreement (NPTA) between INVISTA and the City of Seaford as a companion to the permit renewals of their respective NPDES wastewater permits.
- The Sussex Conservation District staff completed three conservation/maintenance plans for a tax ditch in the Chesapeake Bay watershed, compiled information for the plans on seven tax ditch systems and received interest and requests from three more systems in the watershed, and are in the process of compiling information. These plans may be used to identify potential offsets for new development.

**2014-2015 Milestones Missed**

- Did not refine the Sediment and Stormwater Offset program during the milestone period and the commitment has been moved to the 2016-2017 milestones.
- It is unclear how Delaware will calculate the offset credits needed by poultry house construction and bird population load increases.
- It is unclear how Delaware will calculate credits from tax ditch improvements for use as offsets for new development.

**2016-2017 Milestones Strengths**

- Committed to finalize in 2016 a draft guidance for growth in the Town of Laurel that protects water quality. Land use scenarios were reconsidered and revised to include more realistic growth projections.

**Key Areas to Address in 2016-2017 Milestone Period**

- EPA expects Delaware to include a milestone to address upcoming permits that include offsets.

**Potential Federal Actions and Assistance**

- EPA is downgrading the agriculture sector to enhanced oversight for the reasons described below. EPA will carefully monitor progress on the following priority initiatives:
- Delaware issued a CAFO permit for non-land applying operations, but has not issued permit coverage for the 167 revised NOIs submitted to Delaware.
- Delaware has not issued a CAFO permit for land applying agriculture operations (GP2) nor provided a 2016-2017 milestone to do the same.
- Delaware has not provided adequate documentation to justify the level of nutrient management plan compliance reported for credit in the CBP Watershed Model.
- If Delaware makes substantial improvements on these issues, EPA may upgrade this sector back to ongoing oversight in subsequent evaluations.