

On December 29, 2010, the U.S. Environmental Protection Agency (EPA) established the Chesapeake Bay Total Maximum Daily Load (TMDL), a “pollution diet” to initiate actions to restore water quality in the Chesapeake Bay and the region’s streams, creeks and rivers. This FAQ and Fact sheet is the compilation of information adapted from the EPA and the Virginia Department of Conservation and Recreation.



PHASE II WIP SIGNIFICANT DATES

2011

- June – Draft Local Goals to Localities
- July – EPA delivers Phase 5.3.2 Model
- TBA – Final Local Goals to Localities
- October – Initial Local Conservation Information to DCR

- December – Draft Phase II WIP to EPA

2012

- February – Final Local Conservation Strategies to DCR
- March – Final Phase II WIP to EPA

CHESAPEAKE BAY TMDL PHASE II WIP FACT SHEET

On August 1, 2011, EPA announced Phase II WIP planning targets for reducing nitrogen (191.51 million pounds), phosphorus (14.55 million pounds), and sediment (7,341 million pounds) pollution to restore the Chesapeake Bay and its local waterways, as part of the Chesapeake Bay TMDL.

EPA is asking the Bay States to use these planning targets, along with the December 2010 TMDL, when developing their Phase II WIPs. The Phase II WIPs are expected to provide the strategies necessary to have practices in place by 2017 that would result in 60 percent of the necessary nitrogen, phosphorus, and sediment reductions needed by 2025 based on the 2010 final TMDL. EPA will use these planning targets when assessing 2-year milestone progress toward meeting the 2017 interim goal.

This approach will build upon the work the States have already committed to and begun to implement in their Phase I WIPs, and it represents the actions, assumptions, and “level of effort” necessary to meet the final allocations in the 2010 Bay TMDL.

The Phase II WIP planning targets are the result of the following changes requested by the Bay States for the Chesapeake Bay Program Watershed Model.

- Refine the urban land use data to better represent the total amount of urban and suburban developed land in the watershed, and
- The effectiveness of management practices by farmers to control pollution on agricultural lands in the watershed.

EPA arrived at these planning targets by running the proposed reduction strategies in the Phase I WIPs and any backstop allocations or adjustments necessary to meet the 2010 Bay TMDL, through the updated Watershed Model.

There is a difference of approximately 2 to 3 percent watershed wide between the draft target allocations distributed to the jurisdictions on June 30, 2011 that meet applicable water quality standards and the Phase II WIP planning targets. EPA may modify the Bay TMDL in 2012 based on the Phase II WIPs, the two updates to the Watershed Model, or other considerations. Any modifications to the Bay TMDL would meet applicable water quality standards in the Bay and its tidal tributaries that are in place at that time.

The 2017 Phase III WIPs are expected to address any needed modifications to ensure that actions are in place by 2025 to achieve full restoration of the Chesapeake Bay and its tidal tributaries to meet applicable water quality standards.

Commonly Asked Questions: Answers from Virginia

Q: Are there mandates? Is the TMDL regulatory? We've heard it is voluntary.

A: Virginia is obligated under the Clean Water Act to meet the "waste load allocations" contained in the Chesapeake Bay TMDL. Virginia will use a variety of programs to meet the reductions called for in the TMDL. Some programs, such as permits issued to wastewater treatment plants, are regulatory. However, some programs, such as Virginia's agricultural BMP cost-share program, are voluntary. Those loads have to be met or EPA has threatened to take regulatory consequences in the form of "backstops." However, in this process, rather than immediately taking regulatory actions to meet the allocations, EPA is requesting that the states work with localities to develop strategies that will help ensure that the actions proposed in the Phase I and II Watershed Implementation Plans are realized. Localities are obligated to meet any regulatory requirements contained in permits they are issued, but for the sake of the TMDL, the allocations are given to the state and localities are given non-regulatory reduction goals. There is no mandate for localities to participate in the Phase II planning process, or to develop or implement strategies. However, if they do not, Virginia will have difficulty showing how it will meet its allocations and EPA may use regulatory tools at their disposal to ensure the allocations are met, which may adversely affect a locality.

Q: What benefits are there for a locality to participate in this effort?

A: Participation does give localities some measure of control. If statewide allocations are not met, EPA may take regulatory actions, many of which will potentially have large, costly impacts for local governments, developers and farmers. But rather than taking immediate action, the watershed implementation planning process gives localities an opportunity to self-determine how they want to meet their reduction goal.

The local goals were developed using data produced by the EPA Watershed Model. The community conservation information process proposed by DCR also provides localities with the opportunity to use their own data to help determine the accuracy of the model derived information. It will also help initiate the process to add other practices into the model for future reduction credit.

Q: Assuming a PDC wants to play a role in pulling together localities to develop strategies and reach reduction goals, who are we asking them to bring to the table?

A: At a minimum we would ask the PDCs to bring together the local governments in their coverage area (cities and counties) and the soil and water conservation districts. Beyond that we would encourage them to invite other stakeholders they feel appropriate. This might mean representatives from the towns in their areas. It might also mean conservation groups, farm organizations, builders, professional organizations, federal land holders, watershed roundtables or other stakeholders. State staff can suggest relevant stakeholders to include and facilitate contact as needed.

Q: If our locality is an MS4 and we are given a waste load allocation in our permit, do we still have to meet the local target goals? Can practices to meet the target goals be used to meet the waste load allocation in the permit?

A: Within the jurisdictional area of a locality that has coverage under an MS4 permit, there will be lands regulated under that permit and other lands outside of the MS4 area that are not regulated under the permit. The local target load will include both of these lands. Localities can utilize the WIP II process to begin developing proposed strategies and practices to meet the overall target goals as well as those reductions required under the MS4 permitting program. However, the MS4 permit will establish the schedule and requirements for measures to meet the waste load allocation and the associated regulated land reductions.

Practices implemented in order to meet the required MS4 waste load reduction will count toward meeting the overall locality goal. However, at this time, reductions on unregulated lands outside the MS4 may only be applied towards meeting the overall local reduction goal and not to the required reductions on the regulated urban lands established by the waste load allocation. DCR is working with DEQ and EPA to determine the regulatory mechanisms (i.e., trading, offsets) necessary to allow reduction practices implemented outside of MS4 service areas to be applied towards meeting portions of a locality's regulated lands waste load.

Q: How does the Commonwealth intend to transfer waste load allocations from Phase I MS4 jurisdictions to Phase II MS4 permit holders which are currently not assigned any waste loads (some towns, VDOT, universities, federal facilities are not assigned waste loads at this time). What mechanisms are being discussed for this issue?

A: DCR is working with EPA on assuring that waste loads are available for the Phase II permit holders that are located within



Northern Virginia Regional Commission

Phase I jurisdictions. The MS4 General Permit will include a list of permit conditions applicable to the Chesapeake Bay TMDL that the MS4 Phase II permittees will be required to implement. Under the Clean Water Act, compliance is measured by compliance under the permit. Thus, if the permit holder meets the conditions established by the permit, the permit holder is in compliance. The permit conditions will be based on the WIP I reductions.

Q: Localities do not currently have the authority to require retrofits for existing urban areas. How does the state expect us to meet the allocations for that component of the urban source sector?

A: While it is correct that local governments do not have the authority to require retrofits on private lands that are already developed and not currently subject to any local approvals; there are a variety of economical best management practices that can be used on public lands to address reductions for the urban source sector. Also, local government can look at any number of incentives for achieving reductions on existing privately held urban lands.

Q: If and when the local government identifies practices and land uses that are in addition to or different from what's in the model, will the model be updated with that better information? If so, when?

A: EPA would prefer that local governments focus on those practices that have reduction efficiencies identified in the model. However, everyone, including EPA, recognizes that there are other practices being developed or implemented that have beneficial effects on water quality as well. As all localities start to identify new practices, DCR will look at all strategies and practices to determine which ones should be further explored for potential inclusion in the model. There is a precedent for adding new practices (street sweeping was recently added) but it is a 2-3 year process. It is also important to note that EPA approved practices that are currently on the ground, but not yet reported in the model, can be reported now and counted as progress toward meeting the local reduction goal. In the case of differences in land use data, the local data will not immediately affect the goals or the model, but will be used to influence EPA regarding land use issues in future versions of the model.

Q: Will the state provide examples of local strategies, etc.?

A: In working with the localities it is expected that DCR staff can provide some strategy examples and share what other similar localities are proposing.

Q: How is Virginia dealing with federal lands? Will allocations/reductions assigned to federal installations included in local goals?

A: Initially, yes, the federal reductions are included in the local goals. After the new bay model is up and running in July the federal reductions will be separated. Virginia has proposed that federal facilities be dealt with by EPA, much like they will deal with air deposition. As of June 2011, it is not known if this approach will be approved.

Q: What if a locality's voluntary strategies don't meet their reduction goal?

A: First priority is to encourage localities to participate. If Virginia can show that most of its localities are making an effort to develop and implement reduction strategies, it is expected that EPA will approve the WIP and allow localities to adaptively manage, continuing to develop strategies and scenarios even if their initial efforts fall short. This is a 15 year, iterative process. Technologies, funding and other variables will change. It is important that we show effort and progress toward meeting the goals when the Phase II WIP is submitted in 2012.

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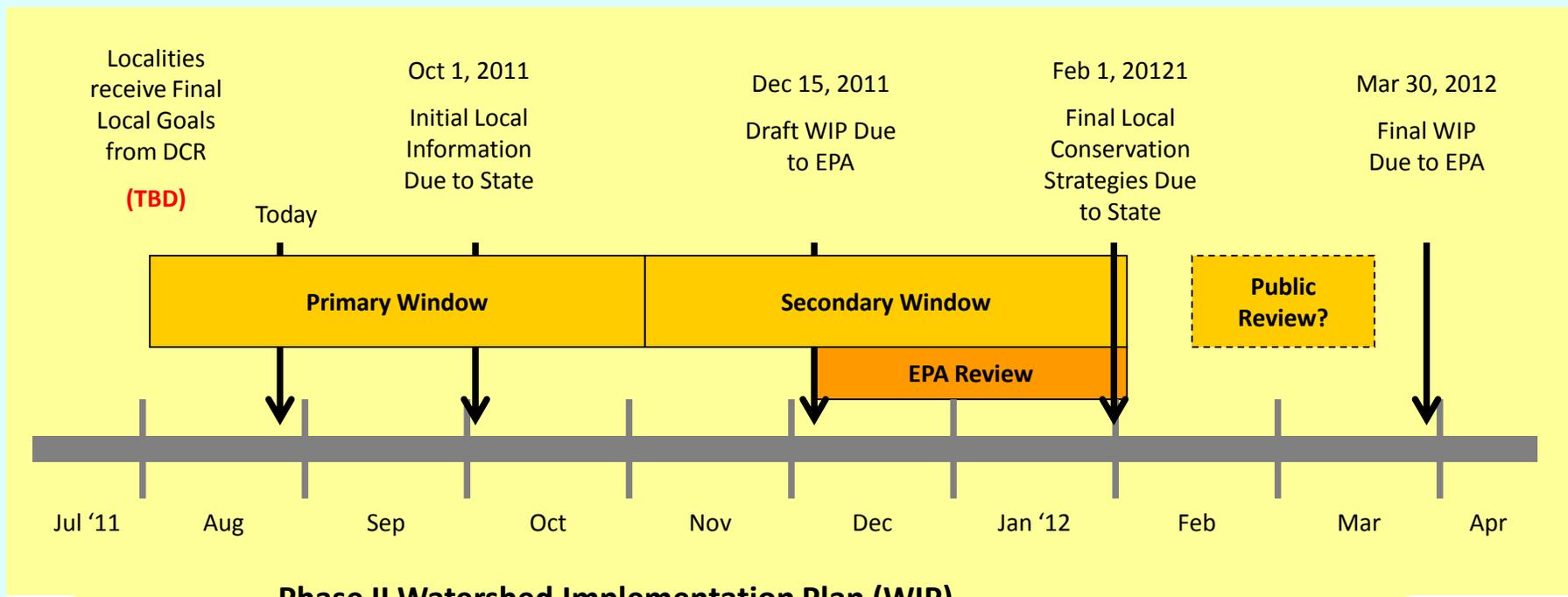
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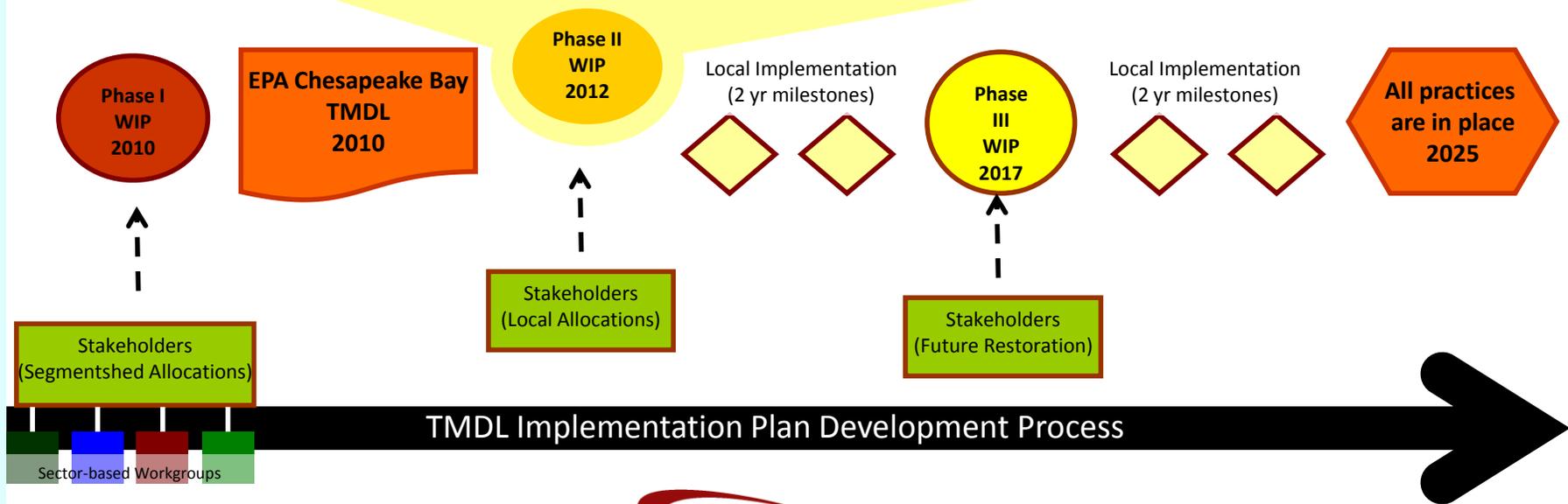
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Phase II Watershed Implementation Plan (WIP) Development Process



Adapted from Maryland DNR