

I. E. EPA Expectations Letter - Summary

Background and Overview: On November 4, 2009, EPA provided a letter to the Bay states that provided its expectations for developing watershed implementation plans (WIPs) in support of the Chesapeake Bay TMDLs for nutrients and sediments. Although parts of the letter are outdated, it still contains useful information.

The letter provides historical background leading up to the development of the Bay TMDLs and WIPs. Bay intensified efforts are justified by seeking “a sharper emphasis on explicit actions, and greater transparency and accountability.”

It explains the general purpose of the WIPs, and EPA’s commitments. The essence of EPA’s commitments is to say that if the States don’t produce an adequate WIP, the EPA will use its authority to enhance the WIP, and take other actions, to meet its expectations. These “consequences” are described in a separate letter dated December 29, 2009 (A summary is provided as part Maryland’s Phase II WIP Guidance Binder materials).

The Expectations Letter Attachments:

The EPA Expectations Letter includes the following attachments (these are not included in Maryland’s Guidance. See web link to EPA’s full letter and attachments).

Attachment A: Description of Spatial Resolution of Bay TMDL Allocations.

Attachment B: EPA Expectations for the Development of WIPs

Attachment C: Description of how WIPs and 2-Year Milestones differ from past Tributary Strategies

Attachment D: Schedule for developing Bay TMDL, separate phases of the WIPs, and 2-Year Milestones

The primary guidance of relevance to the Phase II WIP is found in Appendix B, which includes Table B.1 that compares the differences between the Phase I and Phase II WIP. The primary difference is that Phase II are two-fold: 1) inclusion of point and nonpoint source loads by local area¹, and 2) specific controls and actions to be implemented by 2017.

The Elements of a Watershed Implementation Plan are also described in Attachment B on pages 25-30. Although these elements might be modified in Phase II, based on experience in Phase I, they provide a good road map for the Phase II WIP development process. **The 8-Elements:**

1. Interim and Final Nutrient and Sediment Target Loads
2. Current Baseline Loading and Program Capacity
3. Account for Growth in Loads
4. Gap Analysis
5. Commitment & Strategy to Fill Gaps
6. Tracking and Reporting Protocols
7. Contingencies for Slow or Incomplete Implementation
8. Appendix with Detailed Targets and Schedule:

The linear logic of the 8-Elements is a reasonable concept; however, in practice we found that the process is more iterative. Nevertheless, the logic is as follows.

The Interim (2017) and Final (2020) Targets are the ultimate goal. EPA provided the states Final Targets at the beginning of the WIP development Process. In addition, EPA provided *Current Baseline Loading*, which is the starting point from which reductions are to be made; the *Current Baseline Loading* was estimated as of the end of 2009 (This might be revised to 2010 for the Phase II process).

The *Current Program Capacity* analysis is intended to determine the pace of implementation that would occur in the future with current resources and programs. In principle, we can estimate the future reductions that can be achieved with current resources; however, those reductions would be counter-acted by new loads in the future. Consequently, the estimates of future reductions with *Current Program Capacity* must *Account for Growth in Loads*.

It is presumed that the *Current Program Capacity* will be insufficient to achieve the *Target Loads*, thus revealing a loading “Gap” to be closed by making additional *Commitments to Strategies to Fill the Gap*.

Conceptually, if Strategies to Fill the Gap are identified, and implementation begins to occur, then it will be possible to evaluate progress by *Tracking and Reporting* the results of implementing the Strategies. It can be anticipated that some of the initial *Strategies to Fill the Gap* will not work as planned, or will be delayed. With this in mind, EPA calls for identifying *Contingencies for Slow or Incomplete Implementation* in advance so that we can readily switch to “Plan B” if “Plan A” fails.

Finally, the last element is simply a *Detailed Table of Interim and Final Target Loads*.

As noted above, the actual process of addressing the 8-Elements of the WIP was more iterative than would be suggested by the linear logic outlined above. For example, developing a Gap Analysis was challenging to do by source sector, because individual source sector targets changed as strategy options changed; the gap analysis was chasing a moving target.

Accounting for Growth in Loads was similarly difficult to do for all sources due to data limitations and the challenge of predicting future growth. In addition, such an analysis was considered potentially moot if the State were to commit to offsetting future loads on an as-needed basis.

This kind of practical experience gained in developing the Phase I WIP will likely result in refinements to the way the Phase II WIP is developed in Maryland. Those refinements will be provided in additional guidance in support of developing Maryland’s Phase II WIP.

Additional Background and Information:

EPA “Expectations Letter” and attachments, November 4, 2009:

http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf

Notes:

¹ Maryland has chosen the scale, or “local area,” of the Phase II WIP to be the county boundary in part because both county governments and soil conservation districts have programs that function at this scale. Although this is the scale at which the State is obligating itself to report to EPA, we will likely provide finer resolution of target loads for planning purposes. This will promote accountability at the municipal scale and scale of federal lands for example.