

## DEP Work Groups Meet To Develop Chesapeake Bay Watershed Implementation Plans (WIPs)

Source: PA Environmental Digest, 7/12/2010

[Work Groups created](#) by the Department of Environmental Protection have been meeting since the end of March to develop the Watershed Implementation Plans needed to meet the [Chesapeake Bay TMDL](#) mandates of the federal Clean Water Act.

Three different Work Groups are focused on the sectors needing nutrient and sediment reductions, reductions which just got 8 percent harder last week as a result of [revised load allocations](#) issued by the U.S. Environmental Protection Agency.

The Point Source Work Group meets on July 12 at 1:00 p.m. at the [PA Municipal Authorities Association](#) Offices in Wormleysburg.

The Urban/Suburban/Rural Work Group meets on July 14 at 10:00 a.m. in the Susquehanna Room of DEP's Harrisburg Regional Office.

The Agriculture Work Group meets next on July 14 at 1:00 p.m. in the Susquehanna Room of DEP's [Harrisburg Regional Office](#).

Draft Implementation Plans are due to EPA on September 1, final Plans are due November 29 and EPA will issue the final Chesapeake Bay TMDL on December 31.

States failing to develop an adequate Implementation Plan and allocate the staff and funding resources to meet the revised Chesapeake Bay nutrient and sediment reduction requirements [will face sanctions](#) from the EPA and risk having that agency take over enforcement of pollution reduction programs.

Visit the DEP [Chesapeake Watershed Implementation Plan](#) webpage for more on this process.

For a more detailed look at what should be included in an Implementation Plan, read through this article (below) from the July/August issue of the [Chesapeake Bay Journal](#)

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### **The Devil Is In The Details Of Chesapeake Bay Watershed Implementation Plans**

By Karl Blankenship, [Chesapeake Bay Journal](#)

The setting of draft Bay cleanup goals July 1 triggers a new, challenging task: Figuring out how to meet them.

Twice before the Bay Program has set cleanup goals and required plans, once known as

tributary strategies, to attain them. But those plans never provided detail about how they would be implemented, and sometimes they literally called for the impossible-such as more runoff control practices than there was land to put them on.

To ensure that the third time is the charm, the EPA, in a series of letters and other guidance over the last two years, has outlined what it expects to see in the next generation of nutrient reduction strategies, now called Watershed Implementation Plans.

The new WIPs (pronounced whips) require unprecedented detail. Instead of merely saying how many runoff control practices must be installed, as in the past, the new plans demand that states show how that will happen-do they have the staff and money to do the job? And if not, where will the needed resources come from?

"This is a whole new ball game," said Rick Parrish, an attorney with the Southern Environmental Law Center, who has extensive experience working with Total Maximum Daily Loads, the kind of pollution control program being established for the Bay. "If they are able to get that kind of information from states, it would really help them evaluate how likely the state plans are to succeed."

The plans, the drafts of which are due Sept. 1, are a key element of the TMDL being developed for the Bay. The TMDL is a calculation of the maximum amount of pollution-in this case nitrogen and phosphorus-that a waterbody may receive and still attain water quality standards.

As with traditional TMDLs, the watershed implementation plans require states to divide the total nutrient goals between point sources-regulated discharges such as wastewater treatment plants, large stormwater systems and large animal feedlots-and unregulated nonpoint sources, such as farm runoff, smaller stormwater systems and septic systems.

And, as is normally the case, the portion of the nutrient reduction assigned to point sources is subdivided to individual facilities or-in the case of smaller facilities and some stormwater systems-groups of facilities. Those limits can be enforced through permits.

But the real change with WIPs comes for unregulated nonpoint sources. Because they have no permits, normal TMDLs are required to provide "reasonable assurance" that nonpoint sources will meet their goals. Often that results in a vague description of available programs to address the problem.

The Bay TMDL will be the largest, most complex ever completed. Because it covers such a large geographic area, and because of the failure to meet past goals, the WIPs require more evidence to provide reasonable assurance that nonpoint source reductions will be achieved, said Bob Koroncai, the EPA's Bay TMDL manager.

"We have an expectation that the existing nonpoint source programs do not have enough capacity to get the controls that we need, and for that reason, we are being very rigorous of what we expect the states to show us in the watershed implementation plans," he said.

In the new plans, states have to perform a self-evaluation of their programs to determine

whether, and by how much, their nutrient control implementation rates need to increase to meet the goals.

The analysis needs to show how much additional staffing, outreach, funding and other resources are needed to achieve the new goals. The plans must explain how and when additional funding or staffing will be attained.

If states say they are developing new regulations, the EPA wants to know when they would be finalized. If they say they are going to have increased participation in incentive-based programs, the EPA wants to know how much additional funding the programs will get, and when.

States are also expected to establish measurable ways to show those changes are being implemented. For example, if a state says it has adequate regulations but plans to do a better job enforcing them, the EPA wants to know how things will change.

"That could be something like saying they are going to triple their inspections or double the number of inspectors and that they are going to hire those inspectors by the end of the next calendar year," Koroncai said. "We need to see that they are building the program capacity to achieve the loading reductions that we need."

Besides analyzing program gaps, the EPA requires more detail about how nonpoint programs are implemented.

Manure applications are a major source of nutrients from agriculture. In the WIPs, the EPA wants to know whether states are modifying their methodology for calculating the appropriate rate for land applications of manure and biosolids. It also wants states to explain how they will address the long-term buildup of phosphorus that occurs on many croplands where manure is used so it will not pose problems to the Bay in the future.

States could opt to increase program performance by increasing the minimum standards for nutrient management plans that must be implemented before farmers could participate in cost-share programs. But the plans would have to say how those standards would change, and how compliance is ensured.

Some of the stepped-up detail applies to point sources, too. For instance, the EPA wants to know how many are inspected or audited annually and by whom, and the penalties for noncompliance.

Unlike the earlier tributary strategies, the new WIPs require that states track growth and have plans established to offset nutrient increases caused by any new or expanding sources.

The WIPs are a key element of what EPA calls an "accountability framework." While the WIPs provide an overall roadmap for achieving goals, states must also write two-year milestones that establish the amount of nutrient reductions to be achieved during that period, as well as progress in filling program gaps, such as new funding mechanisms, regulations or staffing. States are also to identify backup actions they will take if they are falling short in their milestones.

As part of the accountability framework and the WIPs, the EPA is developing a new, more detailed and complex tracking system to ensure that nutrient control actions are fully implemented and monitored.

If the states fail to achieve two-year milestones or write adequate plans, the states could face what the EPA calls "consequences," such as more strict limits in permits for facilities that discharge nutrients, which could be costly. The first thing that could trigger a consequence is the WIP itself. The EPA could act if states do not submit adequate WIPs by November 29.

WIP work won't be done, though. The EPA is requiring that Phase II WIPs be completed by Nov. 1, 2011. Those plans will provide increased implementation detail down to the county level.

Not everyone is happy about the process. Virginia Gov. Robert McDonnell recently sent a letter to EPA Administrator Lisa Jackson saying the agency was moving too fast, and not allowing states adequate time for their work. Others have questioned whether the EPA has the legal authority it is asserting—something that is almost certain to be challenged in court.

But the debate over how much authority the EPA has to force cleanup actions, especially from unregulated runoff, is long-running.

Parrish noted that the WIPs and reasonable assurance measures developed for the Bay TMDL are in some ways similar to what would have been required under regulations the EPA approved in 2000 to make TMDLs more effective. But those regulations were blocked by Congress and eventually withdrawn.

But if the EPA's plans stand, Parrish said, the odds of success will greatly increase. "This really is a substantial improvement over the conventional TMDL development. This is what we need for these things to have a prayer of succeeding." *Reprinted with permission from the [Chesapeake Bay Journal](#).*

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