



EPA Issues Phase III WIP Expectations September 2018

On June 20, 2018, EPA issued its Phase III WIP Expectations document, explaining how it will review each of the Bay jurisdiction's April, 2019 draft WIPs. VAMWA Members may recall that EPA issued similar expectations documents back in April 2009 (for Phase I WIPs) and in March 2011 (for Phase II WIPs).

Based upon our initial review of the Expectations document, and our knowledge of the previous similar documents, here are thoughts on potential impacts on VAMWA Members and regulated sector generally during the upcoming WIP development process:

Phase III WIP Implementation Schedule – EPA strikes a strong tone on expecting full implementation by 2025, although it does not come right out and clearly state that all work must be completed by 2025. EPA's strong tone will be viewed as good news by some stakeholders; they will likely continue to push for Bay jurisdictions to make Bay TMDL-related reductions *and* address new policy issues raised during the MPA by 2025.

Of course, POTWs must object to adding more reductions to an already aggressive implementation schedule. Virginia will already be challenged to hit Bay TMDL goals within the 2025 target date. VAMWA continues to promote a policy of regulatory stability related to the nutrient allocations for the wastewater sector, as well as other sectors generally. In addition to POTWs, Virginia should be particularly concerned with adding reductions for MS4s. Complying with the current Phase I and II MS4 permits will require many millions of dollars of local investments to construct expensive best management practices (BMPs), and these projects take time to design and construct.

On July 12, 2018, VAMWA circulated a joint recommendations document along with Virginia's sister association, VAMSA (municipal stormwater). VAMWA/VAMSA have suggested that the Commonwealth stay the course and keep efforts focused on meeting the 2010 level of effort by 2025. Virginia should only consider tacking on additional reductions that prove necessary (e.g., climate change related changes) after 2025 and after Virginia has completed all other work and the state has financial capacity to then do more. Funding is currently inadequate, leading VAMWA/VAMSA to advocate for additional WQIF and SLAF funding.

Specific to wastewater, VAMWA argues the Commonwealth should make regulatory stability a top priority, given the cost of upgrades and the associated 20-30 useful lives for upgraded plants. Wastewater plant allocations should not be reduced for any reason. For the James River, VAMWA recommends that the Commonwealth finalize the pending chlorophyll-a study to retain existing wasteload allocations based on the first three regulatory phases of reductions (now represented by the 2010 TMDL's Stage 1B level of



control), and not require the 2010 TMDL's Stage 2 (actually fourth reduction phase), which is extremely costly for no substantial water quality benefits. State resources should be invested in the previously planned but not yet completed agricultural and stormwater reductions.

VAMWA is also recommending legislative initiatives, which we will discuss at the upcoming September Member meeting.

Enhanced Detail for Lagging Implementation – EPA's Expectations document includes a new detail: EPA wants more detailed plans for jurisdictions that have source sectors under "enhanced oversight" or "backstops" or that have source sectors that are not on a trajectory to reach planning targets by 2025. This will not be an issue for POTWs, but it may be an issue for MS4s if model runs suggest that the stormwater sector is off-trajectory for reduction goals.

Cooperative Federalism – EPA added a paragraph in the final Expectations document emphasizing cooperative federalism. Although the language is broad, this could signal that EPA under the new Administration does not intend to involve itself in the details of future implementation at the state level. Arguably, this is a positive for VAMWA and Virginia, which has a good history of resolving local and state issues successfully without EPA involvement.

EPA Funding – New language in the final document states that EPA will evaluate and perhaps redirect resources to jurisdictions that are seeing an increased effort from Phase II to Phase III WIPs if those jurisdictions commit to "achieving those additional pollutant load reductions by 2025." In contrast, states that have not achieved reductions under Phase II WIPs by 2017 will not receive additional funding to do so. This could be a problem for Virginia; earlier model runs suggested Virginia was a "winner" when comparing level of effort for WIP II to WIP III, and Virginia appears to be off trajectory to achieve Phase II WIP goals for sediment. In this regard, only the District of Columbia and West Virginia achieved 2017 goals for all pollutants; Delaware and Maryland fell short for nitrogen, New York fell short on nitrogen and sediment, and Pennsylvania for all three. Any reduction in federal funding puts additional pressure on state funding efforts; state budgeting is always a challenge given competing interests at the General Assembly and the requirement for a balanced budget at the state level.

Targeting of Higher Loading Watersheds – EPA wants to see all Bay states target management measures in higher-loading areas. VAMWA should carefully monitor this issue for potential impacts on permittees in high-loading areas. On a similar note, EPA wants to see Virginia and other tidal jurisdictions carefully review and target management measures at "those Bay segments significantly out of attainment."