



Final Phase III WIPs Maryland and Virginia Response to COG Comments

COG staff document
Sept. 12, 2019

1. Preserving Wastewater Capacity

COG comment: The Maryland and Virginia WIPs should explicitly note that the wastewater sector's waste load allocations are capped and that the major plants in the region are at their limits of technology. Their capacity must be maintained for growth beyond 2025. The states should have plans in place for continuing to meet their Bay reduction targets with a range of approaches as the POTWs' overperformance will narrow over time due to increased growth (a.k.a., nutrient loads).

Maryland – In response to a similar comment, the state responded (Response to Comments document page 90): “Preserving wastewater capacity for future growth is critical.” The state also noted (Response to Comments document page 24): “Maryland's Phase III WIP strategy demonstrates that the State can achieve its Phase III WIP targets and stay under the cap until 2045. This is done by continuing implementation in the stormwater and septic sectors beyond 2025.”

Virginia – Did not explicitly address this comment. However, in the Potomac basin section of the plan, it notes (Final WIP page 89): “The expectation through 2025 is that these (current wastewater plant) loads will generally be maintained at those levels, but will slowly increase beyond 2025 as population increases continue in the Potomac River Basin. Regulations have been issued to ensure that these loads are maintained at or below the WLA (wasteload allocation) limits set by the TMDL.”

2. Prioritizing Local Water Quality Focus and Co-benefits of Stormwater Efforts

COG comment: Addressing climate-related volume impacts and local concerns, including flooding, trash, bacteria and stream health, should be the main drivers for federal-state MS4 permits for urban stormwater systems and doing so also benefits the Bay. Progress in reducing nutrients and sediment under the Bay TMDL should derive from achieving these local goals, not the other way around.

Maryland - Did not explicitly address this comment. However, in response to a similar comment, the state wrote (Response to Comments document page 70): “One of the major themes of the Phase III WIP has been the idea of co-benefits, meaning that value that a BMP provides beyond nitrogen and phosphorus reductions, including water quality in Maryland's lakes and streams. Through the upcoming revision to the MS4 Accounting Guidance, and the Stormwater Wasteload Allocation Implementation Guidance documents, the State will work to further incorporate local water quality benefits into the stormwater restoration accounting.”

Virginia – Did not explicitly address this comment. Virginia maintained its stormwater focus on meeting nutrient reduction targets that were set originally by the Phase II WIP.

3. Supporting Agriculture's Role in the WIPs

COG comment: COG supports the expansion of federal (such as the Conservation Reserve Enhancement Program or CREP) and state programs for cost-sharing funding, technical assistance and other efforts to boost the implementation of agricultural BMPs to benefit Bay restoration. COG recognizes that without this increase in funding, farmers will be unable to achieve the ambitious agricultural nutrient reductions targets that states are promising in their WIPs. These programs should be integrated with efforts to maintain the region's agricultural land base and increase the supply of local farm products to the Bay region's population.

Maryland – Did not explicitly address this comment. However, in response to a similar comment, MDE wrote (Response to Comments document page 22): “Maryland is committed to ensuring that the agricultural practices described in the Phase III WIP are put in place by 2025. The state will consider a full range of funding mechanisms and other approaches to ensure that local practitioners have the resources they need for both practices that the state is looking to accelerate, and practices that the state has not yet started reporting.”

Virginia – Both the draft and final WIPs proposed a number of enhancements to Virginia's support for technical and cost-share assistance to Virginia's agricultural sector. The final WIP noted the need for more precisely quantifying the amount of funds needed (Final WIP page 63): “WIP III will be used to update the Agricultural Needs Assessment and the Budget Template submissions of applicable SWCDs. This assessment will be used to quantify the level of funding needed to achieve year 2025 reduction target. Virginia will continue to pursue funding from federal, state and private sources to meet nutrient and sediment reduction goals”

4. Maintaining Regional Equity on a Long-term Basis

COG comment: The COG region's combined wastewater and stormwater nutrient reduction performance should exceed respective combined WIP targets in 2025. This success in meeting the combined WIP targets of these two sectors should give us more time to make additional stormwater progress while using our reserve wastewater capacity to accommodate growth within our cap loads. Continue to recognize this success and do not penalize this region with additional requirements before or after 2025 to offset shortfalls from other sectors or regions.

Maryland – Did not explicitly address this comment. However, the final WIP does not impose any additional load reductions on either the wastewater or stormwater sectors beyond what has already been achieved by most wastewater plants (including all of those in the COG region) or will be achieved by meeting current stormwater permits and future stormwater permits under a Maximum Extent Practicable-based approach. MDE assumes it can achieve wastewater reductions below cap loads through voluntary incentives. The state also assumes that future stormwater permits will require additional reductions from this source sector, although it does not quantify these stormwater assumptions.

Virginia – Did not explicitly address this comment. However, the final WIP does not impose any additional load reductions on wastewater plants in the COG region (with the possible exception of the Upper Occoquan Sewage Authority plant) and also extends beyond 2025 the schedule for the regulated stormwater sector to achieve its nutrient reduction targets as originally delineated in the Phase II WIP (Final WIP page 89): “Virginia will honor its commitment to these regulated entities allowing them three full permit cycles to meet their reductions requirements. Any gap in this sector

meeting its permit requirements by 2025 that are due to timing will be offset by the excess capacity achieved in the wastewater sector.”

5. Addressing Climate Change

COG comment: We agree that the Bay Program and the WIPs must begin to address climate change despite the uncertainty associated with BMP performance. We agree there are planning benefits of estimating the level of effort for targets associated with climate change impacts, but we encourage Maryland and Virginia to hold off on explicit target reductions in the Phase III WIP until the Bay Program has finalized its estimate of the impact.

In the meantime, the qualitative approach to climate change in the Phase III WIPs should acknowledge the significant impacts on the Bay of a changing climate and the many efforts that local governments in the COG region are taking to address this issue. The Bay Program should explore the potential to credit local and regional actions that directly address air emissions, as well as other efforts to reduce urban heat island effects and boost carbon sequestration. And the Bay Program and its partners should prioritize the funding of research into BMP siting and design to address climate change.

Maryland – Did not explicitly address this comment. However, the state did not quantify additional reductions needed to address climate change impacts in the WIP, although it acknowledges the need to do so by the Bay Program’s 2022 deadline.

Virginia – Virginia’s final WIP is still designed to meet additional nutrient reductions to address climate change. However, the Climate Change section of the WIP (Final WIP page 24-25) now explicitly acknowledges the interim nature of the nutrient reduction impact: “Additional information on the background and basis for these estimates is on the Bay Program’s Climate Resiliency Workgroup’s website. Additional work is underway by the Bay Program regarding the load changes resulting from climate change. That work is expected to be completed in 2021.”

Both states express support for research on BMP design and effectiveness in response to changing precipitation patterns due to climate change.

6. Addressing Conowingo Dynamic Equilibrium

COG comment: As is planned for the Conowingo WIP, COG encourages early local stakeholder involvement—including COG’s—in the drafting of this separate WIP.

Maryland – Did not explicitly address this comment. However, it has indicated in other forums that local government stakeholders should be included in this process.

Virginia – Did not explicitly address this comment.

7. Planning for Growth

COG comment: We support the Bay Program’s decision to incorporate estimates of future changes in land use and agricultural practices directly into the framework of the Phase III WIPs. We urge the Bay Program partners to work with local governments in holistic land use planning beyond 2025, for example to maintain wastewater performance to continue to meet the Bay TMDL’s cap loads,

preserve natural resource lands, and minimize the increase in impervious surface as population grows.

Maryland – Did not explicitly address this comment. However, in response to another comment, the state wrote(Response to Comments document page 2) : “Maryland’s robust growth and conservation policies serve to limit the nutrient impact of new growth. Analysis done in support of this WIP demonstrates that the State is able to meet and maintain its Phase III WIP goals well past 2025 when accounting for growth. As is discussed in the document, a plan for additional reductions, such as those for climate change, will be necessary in the next several years, and the State will need to reassess the impacts of growth with respect to new loading targets. It is important to note that actions which reduce current loads, such as improved wastewater performance, can also work to mitigate the impacts of growth on nitrogen loads.”

Virginia did not explicitly address this comment. However, it worked with its Planning District Commissions (including the Northern Virginia Regional Commission) during the development of the WIP and plans to continue to work with them through cost-share contracts (Final WIP page 75): “The PDCs will lead efforts to support and encourage implementation of non-agricultural BMPs and strategies to meet local area planning goals based on local conditions, knowledge and needs. DEQ plans to request additional funding from EPA to contract with PDCs for their ongoing partnership and support.”