Citizen's Engagement Guide for New York's Phase III Watershed Implementation Plan (WIP)

Background: Watershed wide, the Chesapeake Bay restoration effort has celebrated significant successes, yet much work remains to reduce pollution from entering the Bay. The Phase III Watershed Implementation Plans (WIPs) will need to continue and accelerate progress if we are to achieve the 2025 clean-up goals. We must ensure that New York State develops a comprehensive Phase III WIP that continues reducing nitrogen pollution from agriculture, begins tracking and limiting wastewater plant pollution, considering growth and climate change in its projections and BMPs.

How is New York doing?

New York State (NYS) has a mixed record meeting milestones of the Chesapeake Bay Total Maximum Daily Load (TMDL) and improving water quality.

- EPA's evaluation of NY shows the state achieved its 2017 reduction target for phosphorus, but not those for nitrogen and sediment; this is reflective of a larger issue, as the watershed-wide nitrogen pollution goal was missed for 2017.
- NYS was behind Maryland, Pennsylvania, and Virginia for reducing nitrogen and phosphorus pollution from sewage treatment plants.
- NYS missed the 2016-17 milestone of providing monitoring data from available non-significant wastewater treatment plants in 2017.

Nitrogen pollution from agriculture remains one of the largest contributors to eroding water quality in the NYS areas of the Chesapeake watershed.

- According to EPA's Evaluation, the Cohocton monitoring station in the Chemung watershed currently exhibits increasing nitrogen and sediment loads.
- Since the agricultural sector is a prime contributor to GHG emissions, which causes air pollution and accelerates global warming—thereby harming the health of the Bay—implementing agriculture BMPs needs to remain a focus in the Phase III WIP.

A majority of the watershed in NYS is rural and thus is not regulated by MS4 permits, yet these local communities must still be held accountable for managing stormwater sustainability.

What does New York need?

Agriculture: NYS must continue to improve its agricultural practices and monitor agriculture BMP implementation to reduce the agricultural sector's sizable contribution of excess nitrogen to the Bay.

Agency oversight: NYS should address its missed 2016-17 milestone regarding data reporting for non-significant wastewater treatment plants in its 2018-19 program milestones and reconsider a statewide wastewater strategy.

- Follow the progress and oversight of the consent order with regard to the rehabilitation of Johnson City Wastewater Treatment Facility to ensure it meets state discharge limits by its May 1, 2019 deadline.
- NYS and local governments should continue to identify and perform other municipal sewage treatment plant upgrades.

Stormwater: NYS should better identify where industrial growth is occurring and needs to be offset with respective water quality goals.

- NYS should continue to engage and offer technical assistance to local municipalities that are not MS4 permitted on site-scale stormwater management practices and green infrastructure techniques.

What Your Organization Can Do:

1. **Advocacy with Choose Clean Water Coalition**. Your organization's voice — and the voices of your members — are making a difference. Sign-on letters and action alerts matter. Commit to participating in advocacy efforts and the Choose Clean Water Coalition to impact funding and policies that benefit our local streams. Take part in the CCW Coalition work group calls. Our agencies and your watershed need these funds to continue our progress.
2. **Engage your local governments on the WIP:** Work with your local government to ensure that they are tackling robust WIPs and doing their part to reduce as much pollution as possible. They should be completing evaluations of what worked and what did not in their phase II WIPs and what they need to do to in phase III. Ensure that our state agency engages local governments on an individual basis to assess what worked in the phase III WIP what did not, and most importantly what is needed in order to ensure local quantitative targets are met.
3. **Hold agencies accountable**: attend hearings, comment on proposed plans, and use the press through Op-eds, LTEs, etc. to hold them accountable. Chesapeake Legal Alliance can help Choose Clean Water organizations lie yours draft comments.
4. **Local planning:** Get involved in your local planning and zoning to ensure that forests are conserved so that population growth and development do not endanger the health of the Bay. Engage in your local comprehensive plans and growth development planning processes.
5. **Stormwater education and outreach:** Have at least one person from your group be a point of contact for public inquiries about best management practices for homeowners and businesses. Educate elected officials and the movers and shakers about the importance of polluted runoff fees or other programs that set money aside for pollution reduction
6. **Support important legislation on the state level and hold elected officials accountable**: Help build the effectiveness of the environmental community by maximizing participation of conservation-minded individuals in public policy decisions.

Cross Region Asks:

If we are to achieve the necessary pollution reductions critical to saving the Bay, New York must also ensure that the following goals are met:

Climate Change/Coastal Resilience

- Why is this issue important?
  - Chesapeake Bay Program scientists have determined that Bay states need to eliminate an additional 9 million pounds of nitrogen pollution and 500,000 pounds of phosphorus to offset the impacts of climate change and ensure that dissolved oxygen standards can be met in the Bay mainstem by 2025 (to say nothing of compliance with WQS in watershed tributaries). While the jurisdictions rejected a proposal that would commit each jurisdiction to account for their proportion of the these numeric loads, the partnership did approve a policy to qualitatively or programmatically address climate impacts in the Phase III WIPs.
- *What is our ask?*
  - In addition to the Bay Program's own guidance (currently in draft form, final in October), Coalition members should ask for
    - A quantitative commitment to address climate-attributable pollution loads, as presented by the Bay Program modeling produced in 2017-2018, and supported by narrative discussion of proposed practices to eliminate the jurisdiction's proportion by 2025
    - An assessment of and specific actions to address the impact that increasing loads of inorganic nitrogen will have on watershed tributaries
    - Quantitatively address risk of climate impacts to proposed BMP siting based upon the best-available projections for inundation factors such as modeled storm surge and sea level rise; qualitatively and/or quantitatively consider impacts on design where feasible and supported by available science
    - Conduct and include assessment of and specific actions that will be taken to address the climate vulnerability of existing BMPs, consistent with the guidelines above.
    - Include clear commitment to specific actions that will be taken to facilitate the collection and evaluation of BMP performance data to support future development of BMP standards for climate resilience
    - Provide a clear and specific narrative description of how potential climate co-benefits, addressing challenges such as flooding and urban heat islands, were identified and prioritized through the selection and design of proposed BMPs and other interventions
    - Provide a clear and specific narrative description of how the Phase III WIP is adequately flexible and adaptable to addressing elimination of climate-attributable, numeric pollution loads (once adopted by the partnership in 2021) before that 2025 deadline. In other words, have a plan for a plan to eliminate climate-attributable pollution loads, beginning in 2021 (sooner is better) and no later than 2025.
      - "Cadillac-option": include commitments and specific actions to begin elimination of climate-attributable pollution loads before they are adopted in 2021. E.g. "We can expect that the modeling will indicate our burden will be somewhere between XX,XXX and YY,YYY additional pounds by 2025, so we propose getting started on implementing BMPs before 2021 that will address half of that additional pollutant loading."
    - Commit to consideration of a set of "stopping rules" policies - before Phase III WIPs are finalized – that would ensure adoption by 2021, and

action no later than 2025, to address numeric pollution loads attributable to climate change.
    - Include a clear and unequivocal commitment to addressing climate-attributable pollution loads beginning no later than 2022.

Accounting for growth

- Why is this important?
    - Partnership agreed to policy decisions related to accounting for growth. While the Bay Program has forecasted growth through 2025 in order to give states a better sense of what they will need to offset, the states still need to make policy changes or ramp up BMP implementation in order to deliver on that. Advocates have an opportunity to help state lawmakers and officials develop innovative policy approaches that are uniquely tailored to their states. It is imperative that we push states here, because this is not a traditional aspect of Clean Water Act implementation. Rather, it is unique to the Bay TMDL and necessary to achieving the TMDL's goals.
- What is our ask?
    - Phase III WIPs that are *accounting for growth* include policies that account for and offset pollution from new or expanding sources for all sectors, consistent with the TMDL and EPA expectations. If the state has not created an accounting for growth regulation, policy, or even working/stakeholder group, then we should urge the state to move forward to create one and volunteer to assist.
    - It is also crucial that we advocate that states develop policies for ALL sectors. This is not solely designed to focus on new residential/commercial developments. New animal populations in many states will dwarf the impact of pollution from human population or economic growth.

Land Conservation

- Why is this important?
    - *Land conservation* is a part of a long term plan for restoring and maintaining water quality in the region. Land use change continues to be a major driver of pollution in the Chesapeake Bay watershed. Land conservation BMPs are among the options that jurisdictions are considering and committing to in developing their WIPs.
    - Since one of the major drivers of pollution in the Chesapeake Bay Watershed is land use change (from less polluting to more polluting uses), land conservation must be a part of long term plans for restoring and maintaining water quality. That should start with Phase III WIPs. Permanent land conservation is one of the most cost-effective and enduring forms of pollution reduction--by avoiding pollution in the first place and maintaining protection of that land in perpetuity. And its value in delivering this and many other benefits will only increase in future decades, making it an even sounder investment as time passes.
- What is our ask?
    - Ensure that land conservation BMPs are among the options that jurisdictions are considering and committing to in developing their WIPs.
    - Engage local land trusts as stakeholders in the WIP III planning process

- Consider land trusts not only as partners who can deliver land conservation, but also as partners who are stewarding land and have relationships with landowners that could help facilitate "traditional" BMP implementation on private land

State and Local Funding

- Why is this important?
  - State budgets are essential for meeting the 2025 target. We will not succeed without new and enhanced programs backed by strong budgetary support. Our WIPs will not succeed without identifying funding deficiencies and developing a plan of action to increase those funds.
  - Funding is the most difficult challenge facing our efforts to meet our goals. There are not enough available fund and state legislatures are unwilling to appropriate the necessary funds.
- What is our ask?
  - Phase III WIPs identify innovative *state and local funding* needs to implement best management practices (BMPs) for farmers and conservation practices.
  - See state expectations resource for compelling and local arguments as to why an investment in clean water is a good one.

State Best Management Practice (BMP) Verification Programs

- Why is this important?
  - The TMDL will only succeed if pollution reduction practices – including "Best Management Practices," or BMPs – work as intended. The only way to know whether BMPs are working as intended is to verify that they have been installed, implemented, and maintained correctly. Verification is also key to public trust in the TMDL process.
- What is our ask?
  - For more detail, see the state CCWC BMP Verification Protocol Comments submitted to the EPA chesapeake Bay Program in January 2016. In general, we need to work to ensure verification plans should require more provisions to ensure adequate transparency, enforcement, adaptive management, and funding. See you state expectations for more guidance here.

Farm Bill

- Why is this important?
  - The Farm Bill provides an opportunity to increase funding to the Chesapeake Bay through the Regional Conservation Partnership Program (RCPP) and the Conservation Reserve Enhancement Program (CREP).
- What is our ask?
  - Chesapeake Bay jurisdictions should collectively support improving funding mechanisms such as the RCPP and CREP within the Farm Bill that will bring continued, critical funding back to the region.
- What does this mean?
  - RCPP - The 2014 Farm Bill's RCPP was meant to replace the Chesapeake Watershed Initiative, which brought $47 million annually to Chesapeake Bay watershed farmers to install conservation practices meant to benefit water quality. RCPP fell short, and has only brought in about $10 million annually. The changes made to RCPP in the Senate Farm Bill, supported by the Choose Clean

Water Coalition, should substantially increase conservation funding for all eight Critical Conservation Areas across the country, which includes the Chesapeake Bay watershed. The primary change is to have 60% of all RCPP funds, rather than the current 35%, go to those 8 Critical Conservation Areas.
    - CREP - This is the primary Farm Bill program used to restore and protect riparian forest buffers in the Chesapeake Bay watershed and nationwide. The Coalition supported a provision that got into the Senate Farm Bill which will increase the number of acres that can be restored nationwide by at least 50% - from 1 million acres to at least 1.5 million acres. Riparian forest buffers are a primary conservation practice used in every state's WIP to meet pollution reduction targets by agricultural sector.

Conowingo Dam

- Why is this important?
    - The Conowingo Dam unintentionally acts as a "pollution gate" stopping sediment (and attached pollutants) from going down stream into the Chesapeake Bay. At this point in time, the reservoir behind the dam is essentially full and is trapping smaller and smaller amounts of sediment over time. When the region experiences large storms that create strong floods, this scours the sediment and other pollutants behind the dam and sends them downstream into the Bay. Original estimates stated that the dam would not be at trapping capacity until 2030 or 2035, but the dam is approximately 95 percent full right now, and recent assessments have determined the dam is no longer stopping pollution at all.
- What is our ask?
    - A strong WIP for the *Conowingo Dam* that provides sufficient funding.

Clean Water Act Permits

- Why is this important?
    - The jurisdictions are gathering input from stakeholders and conservation organizations leading up to and during *Clean Water Act Permit* renewals and development.
        - A significant percentage of reductions have come from facilities regulated under CWA permits. Many of these facilities are regulated under general permits that come up for renewal every 5 years (or they're supposed to). At any given time, some of these permit renewals are under development. Advocates need to know when the permit renewals are due and start working with the state months, if not a full year, in advance to have our voices heard in the permit development process.
        - As an example, under a TMDL milestone assessment, EPA downgraded Maryland's stormwater sector and one condition to prevent further downgrading was to develop the next round of MS4 Phase I permits two years early, sharing the draft template permit with EPA Region 3. MD advocates met with MDE a number of times during that year and submitted written comments.

Phase III WIP Schedule:

- **Phase III WIP Planning District Commissions (PDCs) Assistance Grants**
  - Grant contracts to PDCs- April 15. PDC grant project start date- July 2. Project completions date- Dec 14.
- **Release of final planning targets**-May 25-June 25.
- **Seek input from Chesapeake Bay Stakeholder Advisory Group (SAG)**-March, April, June, August, October, and December.
- **CAST Training**- Staff training-May. Local partner training- June.
- **Coordinated meetings with PDCs and Soil and Water Conservation Districts (SWCD) Areas**- May/June.
- **SWCD Area meetings to evaluate agriculture input desks**- July2-November 1.
- **PDCs meetings with local elected officials to evaluate non-agriculture input decks**-July 2-November 1.
- **PDCs convene meetings with local partners and SWCDs to evaluate non-agriculture input decks**-November 1-December 14.
- **On-going drafting of Phase III WIP document**-May-December.
- **DEQ builds Phase III WIP input decks from SWCD and PDC engagement**-November-January 2019.
- **Submit draft Phase III WIP for Executive Review**-February 1, 2019.
- **Submit draft Phase III WIP to EPA**-March 1, 2019.
- **Public Comment on draft Phase III WIP**-April 12, 2019.
- **Public Comment period ends**- June 7, 2019
- **Final Phase III WIPs will be released**- August 9, 2019.

Additional Resources:

- **New York League of Conservation Voters website**: http://nylcvef.org/
- **Chose Clean Water Coalition**: ChooseCleanWater.org.
- **Center for Progressive Reform**: https://create.piktochart.com/output/29335894-new-piktochart. (A terrific info graphic)