

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

Background: In 2009, the states whose water drains into the Chesapeake Bay planned with the multi-state Chesapeake Bay Program to have all the practices in place that will clean the Bay by 2025. If successful, it could be a model for how to restore similarly impaired estuaries around the world. Each state agreed to a *total maximum daily load* -- a "pollution diet" -- of how much nitrogen, phosphorous, and sediment pollution that state could release into the water for the Bay to be able to recover. On July 27, 2018, the EPA released their midpoint assessment to assess progress on the states goal of reducing pollution by 60%. *The water is getting cleaner, but we still have a long way to go.*

For the first time in decades, we are seeing significant progress. Bay grasses are coming back, and the oxygen-depleted "dead zone" is shrinking. However, recovery is fragile. Together the states have only reached 40% of the reduction in nitrogen pollution necessary to clean the Bay by 2025. To reach the goal, each state is creating the final stage of its plan to close the gap: Phase III of the Watershed Implementation Plan (WIP).

How is Virginia doing?

Virginia has made real progress. Because of hard work in several sectors -- including farming and wastewater treatment plants -- we met our nitrogen and phosphorous pollution reduction goals. With the help of several cost-share programs, a growing number of Virginia's farm producers are managing their land and livestock to reduce runoff by planting cover crops to better hold soil on the farm, prevent livestock from damaging streams, and by planting vegetation alongside streams. Virginia has also upgraded major wastewater treatment plants to modern standards and technology. The filtered water discharged by treatment plants is often cleaner than the water found in the receiving river.

More work is ahead of Virginia:

- Statewide, Virginia achieved its 2017 goals for nitrogen and phosphorus pollution reduction, but did not achieve its target for sediment pollution reduction.
- Virginia achieved its 2017 goals for all pollutants in all major basins except for nitrogen pollution in the Rappahannock River and for sediment pollution in the James and the Rappahannock Rivers.

What does Virginia need?

Highly Coordinated and Consistent Approach: To be successful, Virginia needs to significantly engage with local governments and agencies in an ongoing, responsive, and cooperative manner, and through providing adequate funding, technical assistance, and clear guidance toward successful WIP development and project implementation.

Agriculture: Despite achieving great strides, animal feeding operations -- particularly poultry operations in the Shenandoah Valley and Eastern Shore -- remain a significant and growing source of pollution. Virginia needs to complete evaluations on the remaining Animal Feeding Operations (AFOs) and renewal of its long-expired Concentrated Animal Feeding Operation (CAFO) General Permit.

Many farmers have already accomplished a great deal to clean the runoff coming off their land thanks to several voluntary programs that pay farmers or provide cost share. However, Virginia will need to do more to ensure that farmers may affordably be supported in installing cost-effective and stream-protective measures, including livestock stream exclusion fencing and riparian buffer plantings. Support of the Virginia Agricultural Cost-Share Program at the documented need of \$100 million per year according to the Agricultural Needs Assessment is critical. Virginia must furthermore uphold consistent and adequate annual funding to ensure certainty. See the [2019 Environmental Briefing Book](#) (*Giving Farmers the Tools they Need to Protect our Rivers and Streams*, pages 10-11) for background and details.

Clean Water Act permits: As required by federal law, permits are required for several distinct pollution sources. Virginia is required to issue and to renew these permits every five years. To achieve the goals of the Phase III WIP, the Virginia General Permits for the following pollution sources must be robust, up-to-date and effectively monitored and enforced to protect water quality: Concentrated Animal Feeding Operations; Cooling Water Discharges; Stormwater Discharges from Small MS4s, Industrial Facilities, and Construction.

Urban sector: Urban and suburban areas represent the fastest growing pollution source in Virginia. See the [2019 Environmental Briefing Book](#) (*Meeting Virginia's Growing Need to Tackle Polluted Runoff*, pages 12-13) for background and details.

To achieve Virginia's Phase III WIP goals, the following issues must be addressed:

- The Chesterfield and Prince William County Phase I MS4 permits must be reissued during 2018-2019.
- Milestones should be created for continued training and outreach to MS4 communities.
- Given that unregulated urban land in Virginia accounts for approximately 70 percent of urban land area, Virginia should include a milestone to address implementation strategies for non-regulated developed land. Virginia should conduct outreach to small unregulated communities to install, inspect, maintain, verify and report urban BMPs installed.
- Virginia must increase its rate of BMP implementation in the urban sector to meet its WIP goals.
- The historical investments in wastewater treatment plants have been critical to improving the health of our rivers, streams, and the Chesapeake Bay. That same level of investment is needed now to address the growing problem of polluted runoff. \$50 million is required annually for the Commonwealth to keep up with its stormwater obligations. The Stormwater Local Assistance Fund (SLAF) is the perfect mechanism to provide these funds, and stable, consistent deposits will allow for great forward momentum towards meeting our restoration goals.
- Consistent and adequate funding for the Virginia Conservation Assistance Program will help restore the creeks and streams our children play in; create habitat for birds, bees, and other pollinators; reduce localized flooding; and protect property values.
- Legislators must not weaken and, where possible, improve Virginia's Stormwater Management Program.

Offsets and Trading: Virginia must account for and describe how it will offset any sector or basin growth in its Phase III WIP (e.g. programs, regulations, etc.). Growth projections will be updated every two years. Virginia must address any projected growth in its two-year milestones. In particular, observed data shows increases in loads (e.g. growth in the Agriculture and Septic

sectors and increases in nitrogen in the Urban/Suburban Stormwater sector). Virginia should include milestones for the completion of an effective, transparent and fair nutrient trading and tracking system.

Climate change must be incorporated: Climate change is fully considered in the Phase III WIP. Virginia should add measurable commitments that account for these impacts.

Need for land use planning, land conservation, and accounting for growth: Land conservation is an important component 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 throughout the entire Chesapeake Bay watershed. Land conservation BMPs need to be options that localities consider and commit to in developing their WIPs.

- As Virginia's population continues to grow, the Commonwealth must consider how to meet the Bay's pollution diet. Phase III WIPs that account 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.

Verification of BMPs: Virginia's BMP Verification Program should be fully implemented for all BMPs and in all sectors. All reported practices and control technologies must be implemented, maintained and working so they effectively yield nutrient and sediment load reductions.

Federal facilities: Virginia is home to a significant number of federal facilities that impact water quality. Virginia must work with EPA and the appropriate federal agencies to establish federal facility targets that are coordinated with local area goals and ensure that BMPs reported by specific federal agencies are included in progress assessments.

Increased compliance: Reduced agency budgets and staffing loss, expired pollution permits, and lagging enforcement capacity beleaguer state agencies charged with enforcement and permit compliance.

- Virginia Department of Environmental Quality (DEQ) has seen its staff cut by 30 percent and its budget reduced by nearly \$60 million over the past decade. A backlog in expired pollution permits continues. Meanwhile, new requirements and systems requiring greater government oversight – such as nutrient trading -- are being developed.
- We must enforce the law to make sure that the actions we seek actually happen. The lack of capacity in enforcement actions is a concern at the local, state, and federal levels. DEQ must increase enforcement of industrial facilities and all involved in trading to ensure the integrity of the nascent trading program. Requirements that lack enforcement will do little to accomplish the well-intended goals of the WIP.
- Governor Northam has committed to increasing money spent on conservation from its current 0.6 percent to 2 percent of the General Fund. The Administration will need to be supported to uphold this commitment, and to ensure that funding is directed where it most effectively and strategically benefits water quality improvements.

What Your Organization Can Do:

1. **Engage your local governments on the WIP:** Work with your local government to ensure that they are engaged and supportive of a robust WIP. They should be completing evaluations of what has worked and what needs improvement in their Phase II WIPs, and how they will address these needs in planning for Phase III. Meet with local officials to help them work through strategy and logistics. Ensure DEQ 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 to ensure local quantitative targets are met. Use the 2018 coalition local engagement sign-on letter as a guide.

2. **Hold agencies accountable:** Participate in relevant public meetings, submit comments on proposed plans, and capitalize on the media through Op-eds and LTEs.
3. **Engage localities on stormwater permits:** Many cities, towns, and counties will soon have new draft MS4 permits. Comment on these permits and work with your locality to ensure the permits are ambitious and are actively addressing the Phase III WIP.
4. **Local planning:** Get involved in your local Planning District Commission and Zoning Board to ensure that forests are conserved, and that Virginia's population growth and development do not diminish the health of creeks and rivers.
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 decision-makers about the importance of stormwater fees and other programs that set money aside for pollution reduction.
6. **Advocacy:** 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 your local creeks and rivers. Take part in the CCW Coalition and VCN workgroup calls. Our agencies and your watershed need these funds to continue our progress. Support important legislation and funding needs at the state level before and during General Assembly session.

Cross-Region Asks:

If we are to achieve the necessary pollution reductions critical to restoring a healthy Chesapeake, Virginia must also ensure that:

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 your 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 decks**- July 2-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:

- **Virginia Conservation Network:** www.vcnva.org
- **Chose Clean Water Coalition:** ChooseCleanWater.org.

- **Center for Progressive Reform:** <https://create.piktochart.com/output/29335894-new-piktochart>. (A terrific info graphic)