

# **U.S. ENVIRONMENTAL PROTECTION AGENCY’S EXPECTATIONS FOR FEDERAL LANDS AND FACILITIES IN SUPPORTING CHESAPEAKE BAY WATERSHED JURISDICTIONS’ PHASE III WATERSHED IMPLEMENTATION PLANS**

EPA is providing expectations regarding federal agency participation in the [Chesapeake Bay Total Maximum Daily Load \(TMDL\)](#) Phase III Watershed Implementation Plans (WIPs) that will be developed by the Bay jurisdictions (Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia). EPA provided expectations for the [Phase I](#) and [Phase II](#) WIPs. This document provides additional detail on expectations to ensure that the Bay jurisdictions have the information regarding federal lands and facilities needed to prepare Phase III WIPs and to demonstrate that needed pollutant reductions will occur.

These expectations are based on the federal facility-specific Section 10.4 of the TMDL and the [Executive Order 13508](#) (EO) and [Executive Order 13508 Strategy](#) (EO Strategy), which direct federal agencies with property in the watershed to reduce loadings of nitrogen, phosphorus, and sediment from federal lands and facilities and to contribute to the Bay jurisdictions’ WIPs. [Executive Order 13834](#) states that the head of each agency shall meet goals, which are based on statutory requirements, including compliance with stormwater management requirements. On June 20, 2018, EPA released its expectations for the jurisdictions’ Phase III WIPs. This document builds upon and complements those expectations previously communicated. EPA set a specific expectation that jurisdictions engage with federal agencies in the development and implementation of the Phase III WIPs and partner with federal agencies in the development of local planning goals. EPA also committed to working with federal partners to determine what policies, programs, and funding can be enhanced or streamlined to support the jurisdictions’ implementation of their Phase III WIPs. This document applies only to those federal agencies with property in the Chesapeake Bay watershed.

## **Background**

The basis for these federal agency expectations derives from the Clean Water Act, the 2010 Chesapeake Bay TMDL document, the 2014 Chesapeake Bay Watershed Agreement, the EOs 13508 and 13834, as well as multiple EPA and Chesapeake Bay Program (CBP) partnership decisions and documents that establish the progress accountability system that applies to the TMDL (available at <https://www.epa.gov/chesapeake-bay-tmdl/correspondence-and-guides-regarding-chesapeake-bay-tmdl>).

- The Clean Water Act requires that:
  - Federal agencies that own or operate a facility in the Chesapeake Bay watershed participate in regional and sub-watershed planning and restoration programs (section 117(f)(1))
  - Federal agencies that own or occupy real property in the Chesapeake Bay watershed ensure that the property, and actions taken by the agency with respect

to the property, comply with the Chesapeake Bay Agreement and any subsequent agreements and plans (section 117(f)(2))

- Section 10.4 of the Chesapeake Bay TMDL states “The federal sector is like other sectors in that EPA expects federal land owners to be responsible for achieving load allocations (LAs) and waste load allocations (WLAs) through actions, programs, and policies that will reduce the release of nitrogen, phosphorus, and sediment (CWA Section 313, 33 U.S.C. 1323).”
- The [2014 Chesapeake Bay Watershed Agreement](#), (Agreement), which was signed by EPA on behalf of the federal agencies, contains water quality goals and outcomes that directly relate to the jurisdictions’ WIPs.
- The EO Strategy sets out that “Federal agencies with property in the watershed will provide leadership and will work with the Bay jurisdictions in the development of their Watershed Implementation Plans.” (EO Strategy page 24)

### **Phase III WIP Expectations for Federal Agencies**

EPA expects federal agencies to work with the Bay watershed jurisdictions to ensure that they have the information necessary to prepare their Phase III WIPs. These expectations apply not only to federal agencies that own or operate facilities, but also to those that lease or occupy land or facilities in the Bay watershed, subject to the terms and conditions of any applicable lease or occupancy agreements.

In June 2015, the CBP partnership issued the ‘[Protocol for Setting Targets, Planning Best Management Practices \(BMPs\) and Reporting Progress for Federal Facilities and Lands](#)’ (Protocol). The Protocol explained how each of the jurisdictions developed federal targets, consistent with the Clean Water Act, for approximately 750 federal facilities belonging to over a dozen federal agencies within their respective jurisdictions. In addition, it detailed steps for creating federal facility level planning scenarios, reporting annual progress, and verifying implementation.

#### **• Phase III Federal Facility Targets<sup>1</sup>**

- EPA expects federal facilities to have all practices in place to achieve the federal facility targets established in 2015, or however modified to align with Phase III WIP local area planning goals, by 2025.
- New targets will be established in 2018-2019 as part of the jurisdictions’ local planning goals development for their Phase III WIPs, consistent with the CWA. The explicit load reductions established by states for individual or grouped federal facilities will be set in a similar manner and to the same extent as those established for non-governmental entities.

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<sup>1</sup> Local planning goals and federal facility targets are not finer scale wasteload and load allocations in the Bay TMDL. EPA expects local planning goals to be developed by the jurisdictions. Federal facility-specific targets for federal lands are a component of local planning goals.

- Using an updated protocol, the jurisdictions, EPA and the CBP partnership's Federal Facility Workgroup will work together to develop federal agency or facility-specific targets. Final negotiated load reductions for federal agencies or facilities should be expressed at a scale (e.g. county vs. facility level) that fits with each jurisdiction's approach to setting local area planning goals established in their Phase III WIPs.
- **Annual Progress Reporting:** Federal agencies are expected to report annual BMP progress to the jurisdictions (copy EPA) using tools provided by the jurisdictions that are compatible with requirements for the National Environmental Information Exchange Network (NEIEN). The CBP partnership's Phase 6 Watershed Model now enables EPA to track federal agency BMP implementation progress by federal agency instead of the previous designation of "federal lands." With this new capability in place, EPA will track federal agency progress for each agency for each of the Bay jurisdictions on an annual basis. EPA will not hold jurisdictions accountable if federal facilities fail to meet their expected load reductions and planning targets.
- **Water Quality Two-Year Milestones:** Federal agencies are expected to develop two-year programmatic (actions, programs and policies) and two-year BMP implementation (nutrient and sediment load reduction) milestones. Programmatic milestones are developed through the CBP partnership's Federal Office Director's workgroup and include actions being taken at both the agency and facility level to support the jurisdictions' WIPs. Federal agencies are responsible for coordinating and submitting BMP implementation milestone commitments to the jurisdictions and EPA. The CBP partnership's Federal Facilities Workgroup will consider the possibility of aggregating BMP milestones at the sub-basin or other appropriate scale. Federal agencies are also expected to report annually to the jurisdictions and EPA on the progress on attaining the programmatic and implementation based milestones. EPA will evaluate federal agency implementation progress annually along with the Bay jurisdictions' evaluations. Detailed information on the tools available and schedule for submission and EPA's evaluation of these federal agency two-year milestones will be provided in an updated *Two-Year Milestone Guide* to be released in 2018 and posted on the [Chesapeake Bay TMDL Correspondence and Guides page](#).
- **Information to support Phase III WIPs:** EPA expects Federal agencies to compile and provide, or make available to each jurisdiction through other appropriate means, such as the [Chesapeake Assessment Scenario Tool or CAST](#), the following information to support the development of the Bay watershed jurisdictions' Phase III WIPs:
  - Location and description of the federal land or facility (such as facility name, property boundaries, land cover, area, land use types, nature of activities);
  - Description and estimation of current releases of nitrogen, phosphorus, and sediment from those federal lands or facilities (point and nonpoint sources) and an estimate of anticipated growth through 2025;
  - Verified records of the existing BMPs that have been implemented and maintained through 2017;

- Description of existing programs, policies and strategies (with examples) used to drive BMP implementation;
  - Inventory of National Pollution Discharge Elimination System (NPDES) permits;
  - Description of facility's stormwater management program including, but not limited to, Municipal Separate Storm Sewer System (MS4) permit requirements, if applicable;
  - Planned pollutant reductions from point and nonpoint sources associated with federal lands and facilities that meet the federal facility's share of a local planning goal (as agreed to with the jurisdiction) and address any anticipated growth;
  - BMP implementation scenarios to reduce nitrogen, phosphorus and sediment to reach the new facility-specific targets, consistent with the CWA;
  - Planned actions, programs, policies, and resources necessary through 2025 to reduce nitrogen, phosphorus, and sediment pollutant loads associated with federal lands and facilities with specific target dates;
  - Description of plans to address any gaps in achieving the pollutant reduction goals;
  - Procedure for tracking, verifying and annually reporting BMPs to the jurisdiction (copy to EPA) in a manner that is consistent with the jurisdiction's procedures;
  - A description for how the federal facilities are going to verify BMPs that is consistent with the CBP partnership's [Basinwide BMP Verification Framework](#) and the partnership approved and published BMP verification protocols;
  - Process for assessing implementation progress and adapting management actions to continually improve the implementation of practices to reduce nitrogen, phosphorus, and sediment loads; and
  - Other information, including any specified in permit conditions, needed by the jurisdictions.
- Given the nature of federal facilities in the watershed and the importance of stormwater at these facilities, EPA expects the federal agency to take, at a minimum, the following steps:
    - Assess properties to determine the feasibility of installing urban retrofit practices and implementing nonstructural control measures that reduce the volume and improve the quality of stormwater runoff, and implement retrofits and non-structural BMPs necessary to meet planning targets.
    - Align urban stormwater retrofits and erosion controls with the Bay TMDL allocations and jurisdictions' two-year milestones.
    - Assess and implement appropriate nonstructural practices to control stormwater discharges from developed areas, meet planning targets and reduce, prevent, or control erosion from unpaved roads, trails, and ditches.

- Ensure compliance with all applicable MS4 and other relevant stormwater management regulatory requirements and permit conditions.
- Federal agencies can take additional steps, such as providing support (e.g., financial, technical, and staff resources) in source sectors where EPA is applying enhanced oversight or other federal actions as a demonstration of the leadership committed to in the EO Strategy.
- Federal agency senior management is expected to participate in and review planned actions, policies, and programs and ensure that adequate leadership commitment and sufficient resources are requested to enable BMP implementation to achieve two-year milestones. It is senior management responsibility to provide each agency's share of reductions, as agreed to with the relevant jurisdiction(s).
- When developing planned pollutant reductions, federal agencies are encouraged to consider the corollary benefits of BMPs. Corollary benefits are those benefits that not only result in water quality improvements, but could also address specific local water quality benefits and other Agreement outcomes such as stream health; land conservation; increasing acres of wetlands, forest buffers; and the restoration and enhancement of fish and wildlife and their habitats. The CBP partnership's Management Board convened an Action Team to develop materials to help federal facilities consider these corollary benefits. Those materials include [fact sheets and a PowerPoint presentation](#) for use as messaging tools to internal staff and other decision makers.
- When developing planned pollutant reductions, federal agencies are encouraged to engage the local government jurisdiction in which the agency or facility resides for the purposes of identifying opportunities to collectively meet local area planning goals.

### **Additional Considerations for Federal Agencies to Assist Phase III WIP Development and Implementation**

Additional statutes, Executive Orders, guidance and the CBP partnership 2014 Chesapeake Bay Watershed Agreement will assist federal agencies in carrying out their role in the jurisdictions' development and implementation of Phase III WIPs. These additional considerations may build on and streamline the Phase III WIP development process.

- **EO 13508 Section 502 Guidance:** Federal agencies with land, facilities or installation management responsibilities affecting 10 or more acres in the Bay watershed will implement Section 502 [Guidance for Federal Land Management in the Chesapeake Bay Watershed \(EPA May 12, 2010\), EPA 841-R-10-002.](#)
  - Federal agencies are expected to incorporate applicable elements of the Section 502 guidance into their overall strategy to meet the loading reduction goals that the jurisdictions assign to them in their Phase III WIPs.
  - Federal agencies are expected to work with jurisdictions and EPA to build Section 502 guidance-management actions on federal lands into input decks including those needed for the jurisdictions' Phase III WIPs, annual progress runs and future model calibrations.
  - When planning and documenting management actions, federal agencies are expected to describe how the Section 502 guidance was utilized to develop the overall strategy to meet load reductions.

- The Section 502 guidance and practices are expected to be implemented as expeditiously as possible and to the extent permitted by law.
- **EISA Section 438:** Federal agencies are required to address the requirements for stormwater management on federal lands that are specified in [Section 438 of the Energy Independence and Security Act \(EISA\)](#). EPA issued [technical guidance](#) to implement EISA Section 438. As outlined in the EO 13508 Strategy, federal agencies with facilities or properties in the watershed should have developed an agency-specific policy to ensure implementation of the stormwater requirements for new development and redevelopment in EISA Section 438 consistent with guidance developed by EPA. Federal agencies should have begun implementation of that policy in 2011.
- **Efficient Federal Operations (EO 13834):** Under Executive Order 13834, federal agencies are directed to prioritize actions that reduce waste, cut costs, enhance the resilience of federal infrastructure and operations, and enable more effective accomplishment of its mission. In implementing policy, federal agencies must meet several goals, which are based on statutory requirements, in a cost-effective manner including reduce potable and non-potable water consumption and comply with stormwater management requirements. Where still in use, environmental management systems provide an opportunity to blend Chesapeake Bay priorities and BMP implementation and maintenance into the day-to-day operations of federal lands and facilities. As federal agencies work toward meeting the full range of sustainability goals, the Chesapeake Bay watershed will benefit.
- **2014 Chesapeake Bay Watershed Agreement (Agreement):** When EPA signed the [Agreement on behalf of the federal government](#), federal agencies agreed to identify activities, at the agency and facility levels, to support management strategies and two-year workplans established through the CBP partnership's Goal Implementation Teams (GITs). Each year, federal agencies report on progress in achieving proposed activities during the preceding year and recommend steps to improve progress in restoring and protecting the Bay. Federal agencies and jurisdictions, as members and participants on various GITs, support the development and implementation of two-year workplans that address water quality and other goals of the Agreement. To advance this process, the CBP partnership established a Federal Facilities Workgroup, which is composed of jurisdiction representatives and federal agency representatives for most of the agencies that own land and/or facilities in the watershed. EPA expects federal agencies that own or operate a facility in the Chesapeake Bay watershed to participate in Chesapeake watershed planning and restoration programs and encourages those agencies to provide representation on the Federal Facilities Workgroup.

### **EPA's Role and Support to Federal Agencies**

As described in EPA's [Expectations for the Phase III Watershed Implementation Plans](#), EPA will help coordinate with federal agencies to provide input to the jurisdictions' Phase III WIPs, including commitments to federal actions on federal lands and facilities, and two-year milestones. The EO 13508 Strategy (page 121) states that EPA will coordinate the effort for developing federal water quality milestones.

EPA will assist with the resolution of any disagreement between a federal agency and jurisdiction at the request of the jurisdiction or the federal agency. This role is established through a provision of [EO 12088](#), which states in part:

“1-602. The (EPA) Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency.”

Section 1-3 of EO 12088 requires EPA to provide technical advice and assistance to federal agencies to ensure that federal pollution control actions are cost-effective, timely, and in compliance with applicable pollution control standards. In addition, the EPA Administrator is required to conduct reviews and inspections of federal facilities and activities to monitor compliance with applicable pollution control standards.

EPA will conduct a review of federal agency progress towards their two-year programmatic and BMP implementation milestones on an annual basis, similar to what is done for each jurisdiction. EPA will take appropriate actions if a federal agency's milestones do not meet EPA expectations or if there is a lack of adequate progress towards implementation of those milestones and having all practices in place to meet the Phase III WIP facility targets by 2025.

EPA commits to working with its federal partners to determine what policies, programs, and funding can be enhanced or streamlined to support the jurisdictions' implementation of their Phase III WIPs.