

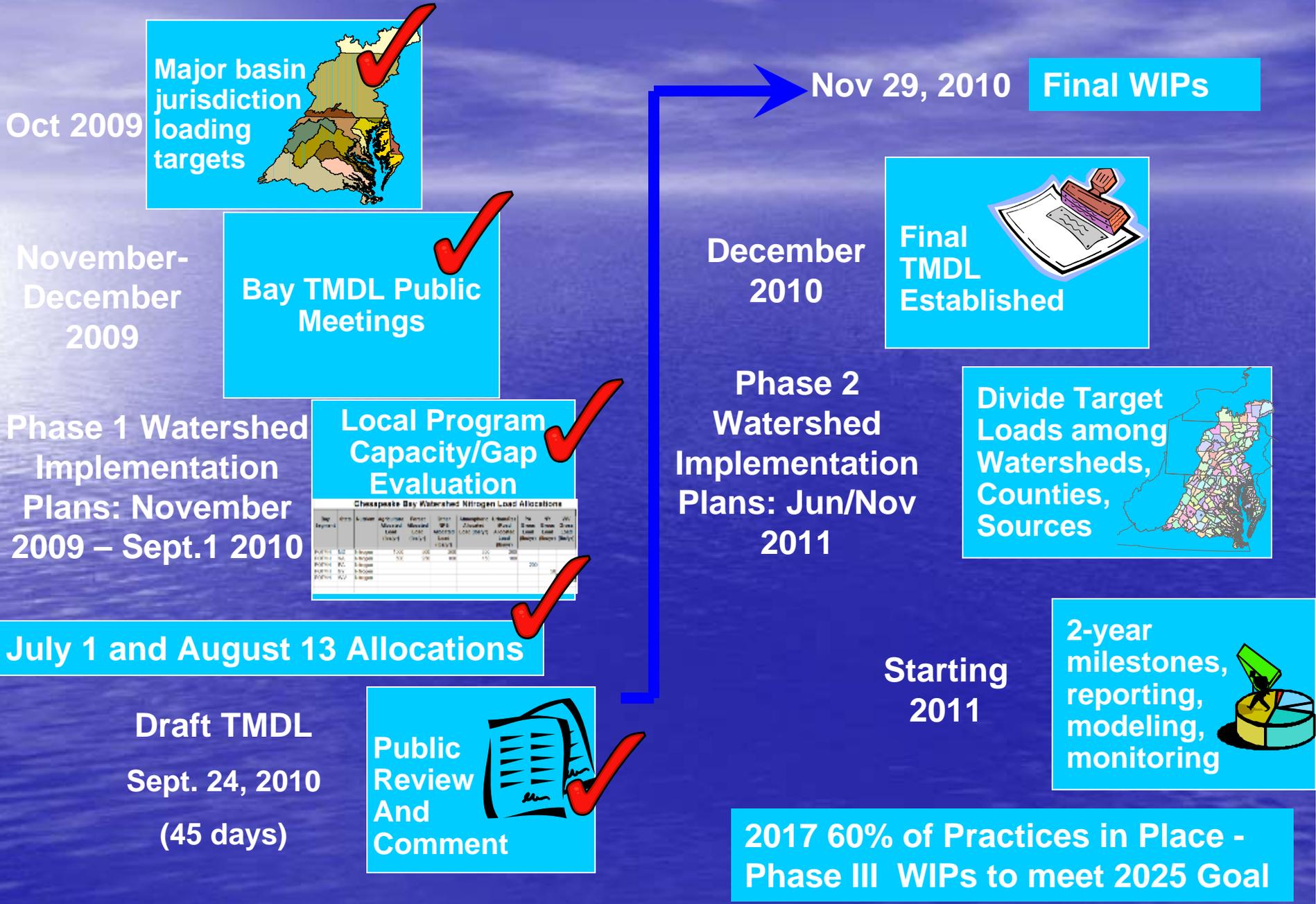
# EPA's Response to Virginia's Watershed Implementation Plan (WIP)

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EPA

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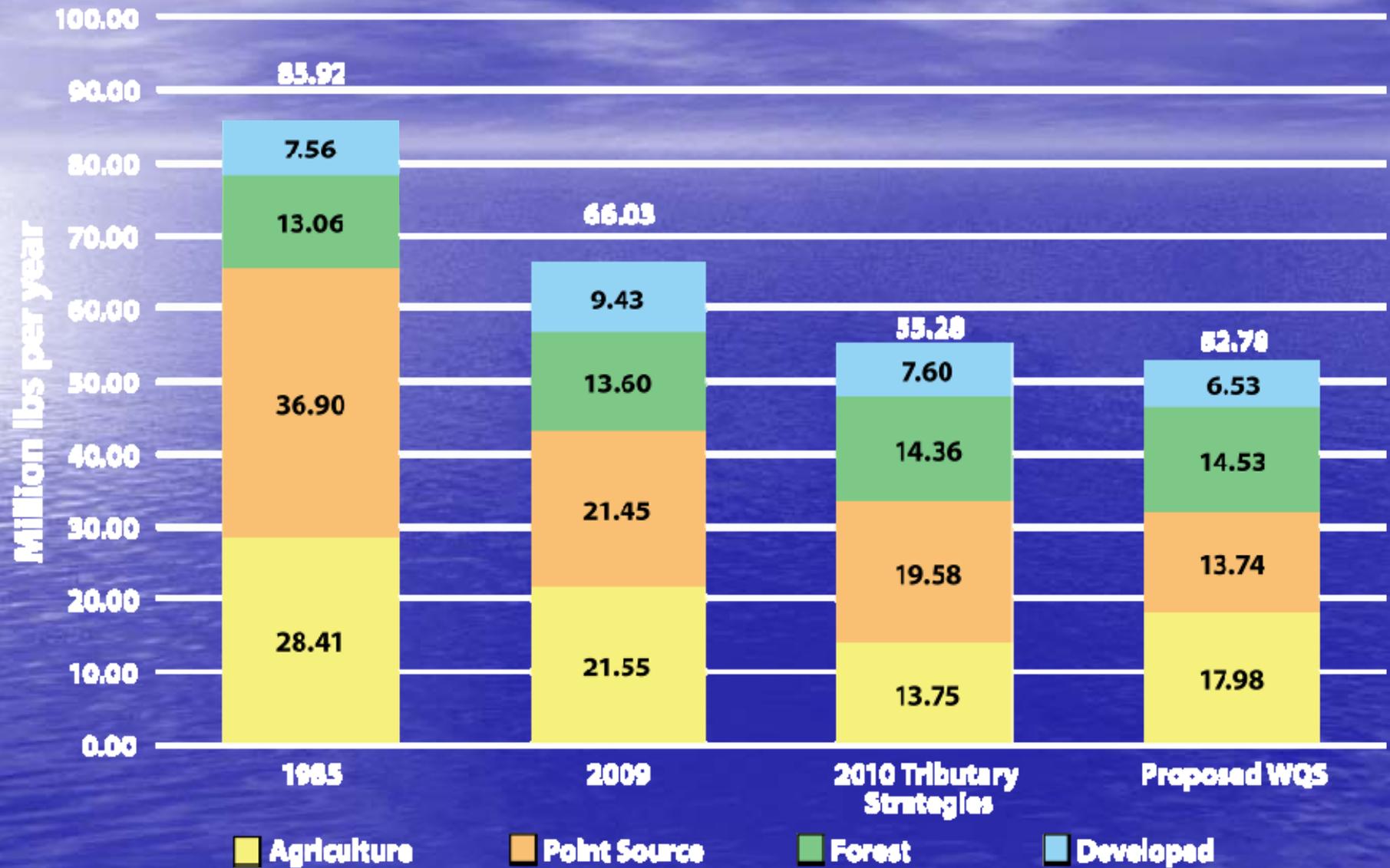
# Bay TMDL and WIP Schedule: 2009-2017



# TMDL/WIP Outreach

- Draft TMDL Issued on Sept 24: 45 Day public comment period until November 8<sup>th</sup>
- Four Public Meetings in Virginia: October 4 – 7, 2010
  - EPA and VA Participation
  - Webinar
- Stakeholder Outreach: Environmental Organizations, State Legislators, Local Governments, Agricultural Community, Homebuilders/Developers, and Wastewater Associations

# VA Nitrogen Loads by Sector and Scenario—CBP Watershed Model P5.3



## CHAPTER 519

*An Act to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 4.1, consisting of sections numbered 62.1-44.19:4 through 62.1-44.19:8, relating to the **Water Quality Monitoring, Information and Restoration Act**. [S 1122]*

Approved March 18, 1997

*§ 62.1-44.19:7. Plans to address impaired waters.*

- A. The Board shall develop and **implement** a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring. The plan shall include the date of **expected achievement of water quality objectives, measurable goals, the corrective actions necessary, and the associated costs, benefits, and environmental impact of addressing impairment and the expeditious development and implementation of total maximum daily loads** when appropriate and as required pursuant to subsection C.*
- C. ...The Board shall develop and **implement** pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.*

*CHAPTER 3.7.*

*CHESAPEAKE BAY AND VIRGINIA WATERS CLEAN-UP AND OVERSIGHT ACT*

*§ 62.1-44.117. Development of an impaired waters clean-up plan; strategies; objectives.*

*A. The Secretary of Natural Resources shall **develop a plan** for the cleanup of the Chesapeake Bay and Virginia's waters designated as impaired by the U.S. Environmental Protection Agency. The plan shall be revised and amended as needed to reflect changes in strategies, **timetables**, and **milestones**.*

# CHESAPEAKE BAY AND VIRGINIA WATERS CLEAN-UP AND OVERSIGHT ACT

Continued...

*B. The plan shall address both point and nonpoint sources of pollution and shall include, but not be limited to the following:*

- 1. Measurable and **attainable objectives**;*
- 2. A description of the **strategies to be implemented**;*
- 3. **Time frames** or phasing to **accomplish plan objectives** and the expected dates of completion;*
- 4. A **clearly defined, prioritized, and sufficiently funded program** of work within the plan both for point and nonpoint source clean-up projects;*
- 5. A **disbursement** projection plan;*
- 6. **Potential problem areas** where delays in the implementation of the plan may occur;*
- 7. A **risk mitigation strategy**;*
- 8. A description of the extent of coordination between state and local governments;*
- 9. Assessments of alternative funding mechanisms*

# Watershed Implementation Plans

~Expectations~

## Similar to Existing Statutory Requirements

1. Interim and Final Nutrient and Sediment Target Loads
2. Current Loading Baseline and Program Capacity
3. Gap Analysis
4. Commitment and Strategy to Fill Gaps
5. Account for growth
6. Tracking and Reporting Protocols
7. Contingencies for Slow/Incomplete Implementation
8. Appendix with Detailed Targets and Schedule

**60% by 2017!!**

# Communicating Expectations

- November 4, 2009, expectations letter
  - Expectations for content and timing of WIPS
  - Two-year milestones
- December 29, 2009, consequence letter
  - Potential Federal actions and consequences
- Final guide issued to States on April 2, 2010
  - Draft guide issued to states on March 18, 2010 for review
  - Provided a common framework for the review of the Phase I WIPs
  - Includes eight elements with level of detail needed
  - Expansion of November 4, 2009 “expectations” letter

# EPA-VA Communication

- Aug. 24 – VA Summary of Proposed WIP Elements (SAG)
- Sept. 3 – Draft WIP submitted
- Sept. 23 – EPA Conference call with VA Senior Management - summary of EPA WIP review
- Sept. 24 – Letter from R3 Administrator explaining review process and brief summary of EPA WIP review findings
- Oct. 4 – Detailed WIP evaluation letter sent to VA

# EPA WIP Review Process

- A Team of EPA experts conducted a 3-day rigorous evaluation process
  - Common review criteria
  - Tiered the State submissions in 4 categories of quality and Reasonable Assurance
- Three goals were paramount:
  - Achieving the load caps in all basins and impaired segments
  - Providing a high level of reasonable assurance that nonpoint source controls will be achieved
  - Sufficient detail for permit writers

# Overview - Draft WIP Deficiencies

- No strategy for filling recognized program or resources gaps
- Few enforceable or otherwise binding commitments
- Discrepancies between proposed implementation programs and pollution reduction #s contained in a WIP
- Reliance on pollution trading programs--no commitment to adopt critical trading drivers such as new regulations
- Few dates for key actions and program-building milestones

# Initial VA Findings: Stormwater

- Contingency actions lacking in the event that Virginia's new regulations are not promulgated on schedule
- Lacked strong performance standards for development and new development
- Lacked strong detailed retrofit program with aggressive performance standards; reductions from existing stormwater loads not possible without retrofits
- Overall concern with proposed expansion of Nutrient Credit Exchange Program
- Discrepancies between the WIP strategies and input deck (E3 issue)
- Insufficient implementation schedules

# Initial VA Findings: Wastewater

- Lacked commitment to retrofit and optimize WWTPs in the James River Basin
- Lacked detail regarding permitting of non-significant WWTPs
- Additional clarity needed regarding tracking, verifying and reporting nutrient loads and upgrade/compliance schedules to EPA
- Insufficient detail for strategies to achieve nitrogen reductions from onsite treatment systems

# Initial VA Findings: Agriculture

- Lacked assurance for increased implementation of “priority practices”
  - Proposed regulatory and legislative were removed
  - Detailed strategy outlining timing and process for large increases in implementation rates
  - Sources of funding
- EPA recommendation to develop a detailed Manure Management Strategy with innovative approaches
- Insufficient detail ensuring compliance with current regulatory programs
  - Compliance/Enforcement procedures
  - Needed staffing levels
  - Frequency of inspections/verification
- Additional need to address impacts of small dairies on water quality
- Limited commitment to improving phosphorus (P) management to address high P in soils and related excess manure
- Insufficient efforts to improve horse pasture management

# Do WIPs meet the allocations?

| Jurisdiction | Nitrogen | Phosphorus | Sediment |
|--------------|----------|------------|----------|
| DC           | ✓        | ✓          |          |
| DE           |          |            | ✓        |
| MD           | ✓        | ✓          | ✓        |
| NY           |          |            | ✓        |
| PA           | ✓        |            |          |
| VA           |          |            | ✓        |
| WV           |          | ✓          |          |

# (Proposed) Federal Backstop Allocations

(modify state WIP allocations)

- All jurisdictions require some level of Backstop allocation or adjustment because:
  - Didn't achieve basin-jurisdiction allocations (N, P, Sediment)
  - Didn't provide a high level of assurance that proposed strategies could be implemented (particular emphasis on 60% by 2017)

# Federal Backstop Actions Could Include...

- **Establish additional reductions from regulated point sources (e.g., wastewater treatment plants, CAFO, MS4s)**
- **Establish finer scale allocations for headwater states (TMDL)**
- **Expand NPDES permit coverage to unregulated sources**
- **Increase permit oversight/object to permits**
- **Require net improvement offsets**
- **Increased federal enforcement**
- **Condition or redirect federal grants**
- **Promulgation of local nutrient standards**

# (proposed) Federal Backstops

## 3 Levels of Allocation Adjustments

- **Minor** - adjust load allocations to equal targets
- **Moderate**
  - Stronger CAFO/MS4 requirements
  - Significant WWTPs: N @ 4 mg/l, P @ 0.3 mg/l
- **High Backstop**
  - Stronger CAFO/MS4 requirements
  - Significant WWTPs: N @ 3 mg/l, P @ 0.1 mg/l

# Draft VA WIP Evaluation

## For Virginia: **moderate backstop**

- Wastewater facilities: 4 mg/L TN and .3 mg/L TP and design flow
- MS4s: 50% of urban MS4 lands meet aggressive performance standard through retrofit/redevelopment; 50% of unregulated land treated as regulated
- Construction: Erosion and sediment control on all lands subject to Construction General Permit
- CAFO production areas: Waste management, barnyard runoff control, mortality composting, precision feed management for all animals. Same standards apply to AFOs not subject to CAFO permits EXCEPT no feed management on dairies

# Opportunities for Improvement

- EPA is providing the States with opportunities to **enhance** their WIPs by November 29
  - Potential to remove/adjust EPA backstop allocations
  - 2011 Phase II WIPs – opportunity to enhance levels of commitment
- EPA is extensively engaging the jurisdictions to share information, guidance, examples from other states, etc.
- Two-Year Milestones
- 2017 – Phase III

# EPA-VA Interaction

- Weekly Conference Calls
- Available Technical Experts
- Sit-Down Meeting – Oct. 29
- Early Nov. “Closure Meeting”
- Share Revised Data
- Shared Revised Strategies



“There are no mistakes...only opportunities.”

- Anonymous



Image courtesy Guy Stephens