

Missing the Mark  
in the Chesapeake Bay:

**A Report Card  
for the Phase I  
Watershed  
Implementation  
Plan**

Gradesheet for  
Delaware



**Delaware**

Transparency of Information		Strength of Program Design	
National Pollution Elimination Discharge System (NPDES) Permitting			
Does the WIP disclose the number of facilities within the Bay watershed that are required to have NPDES permits and the number of facilities that have up-to-date NPDES permits in the following sectors: (1) Municipal wastewater facilities (2) Industrial wastewater facilities; (3) Concentrated animal feeding operations; (4) Municipal stormwater within MS4 areas; (5) Industrial stormwater; and (6) Construction outside MS4 areas?	Points	For each sector, is the state’s NPDES permitting program effective at issuing up-to-date permits for all facilities that require them?	Points
	1	1 point, if 80% of NPDES permits are up-to-date	
	1		
	1		
	1		
	1	6 (1 point/sector x 6 sectors)	2
	1		
Does the WIP contain a schedule with deadlines or other specific qualitative commitments (e.g. x number of permits/month) to reissue and update expired or expiring permits to be consistent with the Bay-wide TMDL and the applicable tributary segment TMDL?	0	When will the state have all permits updated and rewritten to include the Bay-wide TMDL and individual tributary segment TMDLs? 4 points, by 2016 3 points, by 2018 2 points, by 2020 1 point, by 2022	4
Does the WIP disclose the estimated funding and personnel gap between existing and needed resources to ensure the NPDES permitting program is consistent with the Bay-wide TMDL and individual tributary segment TMDLs?	1		
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	1		
9 points total	8	10 points total	6

Transparency of Information		Strength of Program Design	
Enforcement of NPDES Permits			
Does the WIP disclose basic enforcement data, including:	Points	Does this enforcement information describe an effective, deterrence-based enforcement program for compliance with National Pollution Discharge Elimination System permits?	Points
(1) The number of physical, on-site inspections conducted by the state authority in the relevant watersheds during the last year for		1 point per sector, if the percentage of inspections is greater than or equal to EPA's guidance	
a. Municipal wastewater facilities;	0	a. Municipal wastewater facilities—50% annually;	1
b. Industrial wastewater facilities;	0	b. Industrial wastewater facilities—50% annually;	1
c. Concentrated animal feeding operations;	0	c. Concentrated animal feeding operations—20% annually;	0
d. Municipal stormwater within MS4 areas;	0	d. Municipal stormwater within MS4 areas—20% annually;	0
e. Industrial stormwater; and	0	e. Industrial stormwater—10% annually; and	0
f. Construction outside MS4 areas?	0	f. Construction outside MS4 areas—10% annually.	0
(2) The total number of violations, the number of civil and administrative penalty actions, and the amount of civil and administrative penalties collected in the relevant watersheds during the last year (3)?	1	1 point, based on the level of enforcement resources: Inspector-to-permits ratio of 1:400 or less	0
(3) If local authorities have received delegated authority to conduct local enforcement actions, a narrative description of their enforcement activities (including inspections) for the relevant tributary segments and in the Bay watershed?	1	1 point, if less than 15% of major facilities are in significant non-compliance	0
(4) Enforcement resources for the relevant tributary segments and in the Bay watershed, including personnel and funding?	0		
(5) Data on major facilities in the relevant tributary segments and in the Bay watershed that are in significant non-compliance?	0		
Does the WIP disclose the estimated funding and personnel gap between existing and needed resources to ensure an effective enforcement program that will lead to compliance with the Bay-wide TMDL and individual tributary segment TMDLs?	1		
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	1		
14 points total	4	8 points total	2

Transparency of Information		Strength of Program Design	
<b>Monitoring and Verification for Nonpoint Sources (NPS)</b>			
Does the WIP include specific procedures and resources for assuring participation and compliance with actions to reduce pollution, including implementing best management practices and meeting nutrient management plan requirements, from nonpoint sources in the relevant watersheds?	Points 1	Do the procedures and resources available to encourage participation by NPS provide assurance that pollution from these sources will in fact be reduced? Evaluate the quality of these procedures: 4 points, if the procedures are mandatory, binding, and enforceable	Points 3
Does the WIP specifically allocate funds for monitoring and verification activities in the relevant watersheds?	1	3 points, if the procedures are mostly mandatory, binding, and enforceable, with some voluntary procedures	
Does the WIP disclose the estimated funding gap between existing and needed resources for effective monitoring and verification activities?	1	2 points, if the procedures are mostly voluntary with some mandatory procedures	
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	1	1 point, if the procedures are only voluntary	
4 points total	4	4 points total	3
<b>Contingencies</b>			
Does the WIP contain specific plans for the implementation of contingencies regarding the achievement of the TMDLs for each of the 92 tributary segments in the event that any of the following occurs: (1) delays in the adoption of new or revised legislation, regulations, local ordinances, or permit issuance and renewal;	1	Are the contingencies sufficiently stringent to motivate implementation of primary controls?  1 point for <b>coordination</b> , or pairing of specific failures to specific contingencies	1
(2) non-compliance with state or local laws, regulations, and permit requirements;	1	1 point for <b>timeliness</b> , or planned implementation of contingency within 6 months of determining failure of primary control measure	1
(3) inadequate participation rates in voluntary, incentive-based programs; or	1	1 point for <b>specificity</b> , or the ability to point to data showing that contingency measure will reduce pollution	1
(4) adverse changes in land use or development rates?	1	1 point for <b>stringency</b> , or the authorities or other mandatory requirements that compel implementation of the contingencies	0
Does the WIP include deadlines or a timeline for initiating the implementation of contingencies once failure of primary control measures is determined?	0		
Does the WIP explain how the state will acquire the funding needed to implement contingencies and provide a timeline for acquiring the funding?	0		
6 points total	4	4 points total	3



Transparency of Information		Strength of Program Design	
<b>Concentrated Animal Feeding Operations (CAFOs)</b>			
Does the WIP disclose the number, category, and location of each farm or other agricultural operation that contributes nitrogen, phosphorus, or sediment to the Chesapeake Bay through unregulated non-point source run-off?	Points 0	When will the state's NPDES CAFO program be updated? 4 points if the program is up-to-date 3 points, by December 2010 2 points, by December 2011 1 point, by December 2012	Points
Does the WIP disclose whether or not the Bay state's NPDES CAFO permitting program is current with federal regulations, and if not when the program will be updated?	1		4
Does the WIP disclose the estimated funding and personnel gap between existing and needed resources to update and maintain an effective CAFO NPDES permitting program that is consistent with the Bay-wide TMDL and individual tributary segment TMDLs?	1		
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	1		
4 points total	3		4 points total
<b>Stormwater</b>			
Does the WIP include copies of stormwater permittees' most recent self-reported disclosures?	0	Do the local authorities' enforcement efforts amount to an effective deterrence-based enforcement program? 1 point for regular <b>inspection frequency</b> 1 point for <b>assessment of penalties</b> 1 point for <b>enforcement authority</b> , meaning the local authority has enforcement authority roughly equivalent to the state authority 1 point for <b>permit coverage rate</b> of greater than 80% of all sites that are required to have permits	
Does the WIP disclose, with specificity, how the state or a delegated local authority verifies that such dischargers are meeting permit requirement?	1		1
Does the WIP disclose the estimated funding and personnel gap between existing and needed resources to ensure an effective stormwater NPDES permitting program that is consistent with the Bay-wide TMDL and individual tributary segment TMDLs?	1		0
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	1		1
4 points total	3		4 points total

Transparency of Information		Strength of Program Design	
<b>Air Deposition</b>			
Does the WIP identify all of the sources that contribute to the air deposition of nutrients in the Chesapeake watershed and the relevant loadings attributed to each?	Points 0	Is the state able to control nutrient deposition from air sources within its jurisdiction? 2 points, if the state cites specific mandatory air pollution control measures that are enforceable 1 point, if the state identifies specific legal authority to enforce air pollution controls 1 point, if the state has meaningful penalties for violations  4 points total	Points
Does the WIP disclose, with specificity, what air pollution control authorities a state will use to reduce the air deposition of nutrients from permitted and non-permitted sources?	0		0
Does the WIP disclose the estimated funding and personnel gap between existing and needed resources to ensure an effective air pollution control program that contributes to the state's compliance with the Bay-wide TMDL and individual tributary segment TMDLs?	0		0
Does the WIP explain how the state will fill the funding gap and provide a timeline for acquiring the additional funding?	0		0
4 points total	0		0
<b>Discretionary Points (4 Max)</b>			
Delaware provides some of the most detailed disclosure of its funding sources and needs.	1		0
<b>Total Points</b>			
	27		21

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