Summary: EPA Evaluation of Delaware Draft Watershed Implementation Plan

Rating for Gap-Filling Strategies: **Serious Deficiencies**
WIP Numbers Compared to 7/1 and 8/13 Allocations: N 17% and P 8% over; TSS 20% under
Backstop Allocations in Draft TMDL that will remain if final Phase I WIP not strengthened:

- **High level backstop allocations** for Delaware point sources
  - WWTPs: limit of technology (3 mg/L TN and .1 mg/L TP) and design flow for significant municipal plants
  - MS4s: 50% of urban MS4 lands meet aggressive performance standard through retrofit/ redevelopment; 50% of unregulated land treated as regulated, so that 25% of urban land outside current MS4s meets aggressive performance standard. Designation as necessary
  - 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; designation as necessary.
  - Additional reductions from agricultural nonpoint sources necessary to meet July 1 nutrient allocations that EPA will ensure occurs through additional federal backstop actions

Overview

- Used a consistent approach in evaluating ten source sectors contributing loads to the Bay against the eight elements that EPA expected to be addressed in the Phase I WIP
- Highlights include the development of performance standards for future on-site systems and a stormwater offset program for all future land use changes. Both require new regulations which Delaware proposes to finalize in 2012. Offset program will need to include clear baseline definition and assurances of accountability and enforceablility
- Need further explanation of how practices will be in place by 2017 that would achieve 60% of the necessary nutrient and sediment reductions, including gap-closing strategies and timeline for implementation, contingency plans and verification/compliance procedures

Wastewater: Some Deficiencies in Gap-Filling Strategies

<u>Key Areas for Improvement and Opportunities for Strengthening Phase I WIP</u>

- Need to confirm only 2 non-significant wastewater treatment plants listed. Dischargers will receive a "0" wasteload allocation if not included in WIP and TMDL
- Identifies insufficient resources/staff for wastewater treatment plant permit writing and review, as well as administration of onsite program. However, no strategy to fill this gap.
  - Could grants (eg, Chesapeake Bay Regulatory and Accountability grant) fill this gap?

Agriculture: Serious Deficiencies in Gap-Filling Strategies

<u>Strengths</u>

- Focuses largely on practices with greatest nutrient/sediment reductions, such as continuing Nutrient Relocation Program and considering prohibiting P application on high P soils.
- Outlines key ways to improve cost-share programs, such as increasing rates for key practices

Key Areas for Improvement

- Many of the gap filling strategies for reaching ag targets are "TBD". Need more specific information on gap-filling strategies, overcoming barriers to implementation identified in the WIP, verification/compliance procedures, and contingencies
- Question claims of compliance and compliance assurance
  - Inspections of all CAFO operations (57 large, 480 medium) once every five years equates to 107 inspections per year. How will inspections be completed without more resources?
  - Question 100% of compliance with nutrient management program based on money spent on plans and complaint-driven audits. Verification and assurance needed to confirm nutrients applied according to recommendations for rate, timing, form, and method.
- No discussion of how to address the numerous NOIs for CAFO permits (~100 submitted to date) and resources needed for developing NMPs
- No plan for integrating USDA programs with state programs; only lists programs

Opportunities for Strengthening Phase I WIP, Programs and/or Authorities

- Consider revising NMP regulations to include key practices identified in WIP input deck and agricultural implementation measures recommended in the 502 Guidance
- Consider developing a field-based NMP inspection program with sufficient resources to provide meaningful compliance assurance with state regulations
- Consider greater engagement with poultry integrators to find solutions to manure management, with an emphasis on alternative uses of manure

Urban Stormwater: Serious Deficiencies in Gap-Filling Strategies

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- The WIP totally abdicates to state and federal sw rulemakings, and the scope, objectives and timing of the rulemaking isn't even clear. Is it just erosion and sediment control or is it more broadly municipal stormwater? EPA expects additional information on the following:
  - New and redevelopment performance standards along with timing, accountability, etc.
  - Retrofit program
  - Plan for utilizing residual designation authority or other mechanisms to regulate additional discharges (as a contingency, if appropriate). We know Delaware is relying on state rules for some of this – that is good. However, EPA expects more detail
- More detailed information is needed on existing implementation, inspection and compliance and rates for existing stormwater plans and construction sites. Questions that 100% of construction sites are in compliance.
- More detailed information is needed on approach for turfgrass fertilizer restrictions (as a contingency if that's appropriate)

Growth: Some Deficiencies in Gap-Filling Strategies

- Proposes to set aside additional loads from wastewater treatment plants for future growth. However, draft TMDL allocations include "0" allocation for future growth because Delaware does not achieve additional reductions from existing sources to accommodate this growth
- Need more details on stormwater offsets and baselines for generating credits in order for EPA to accept as a credible trading program
- Onsite septic systems are a growing sector, but no explicit mechanism to offset