Summary: EPA Evaluation of West Virginia Draft Watershed Implementation Plan

Rating for Gap-Filling Strategies: **Serious Deficiencies**
WIP Numbers Compared to 7/1 and 8/13 Allocations: N 18% over; P 6% under; TSS 38% over though latter may not result in water quality impairments. Will explore P:N exchanges in final WIP and TMDL
Backstop Allocations in Draft TMDL that will remain if final Phase I WIP not strengthened:

- **High level backstop allocations** for West Virginia 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 unregulated land 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 and August 13 nutrient and sediment allocations that EPA will ensure occurs through additional federal backstop actions
- **Finer scale wasteload and load allocations** (same level of detail as tidal states) to ensure NPDES permits will be consistent with Chesapeake Bay TMDL wasteload allocations

Overall

- The gap-filling strategies for agriculture and stormwater rely on existing, largely voluntary programs with little discussion of how to increase participation levels
- The WIP lacks action plans, specific milestones, or strategies to secure additional funding and resources
- Should consider how increased funds from Chesapeake Bay Regulatory and Accountability grant could be used to fill key gaps in regulatory programs

Agriculture: Serious Deficiencies in Gap-Filling Strategies

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

- A gap strategy has not been developed. WV seems to rely upon existing conservation programs with no indication of increasing implementation levels other than increasing conservation tillage. It is not clear whether this practice will be combined with appropriate nutrient management
- WV CAFO program has not been approved by EPA. There are several issues that need to be addressed in order for EPA to approve
- EPA would like more detail on how WV's effort to revisit the P index will ensure no over application of P beyond plant needs and ensure that soils do not become saturated with P
- Provide additional detail on how West Virginia intends to achieve large increase in manure transport. Transport is effectively reduces loads, but need strategy to implement

- Consider greater engagement with poultry integrators to find solutions to manure management, with an emphasis on alternative uses of manure

Urban Stormwater: Some Deficiencies in Gap-Filling Strategies

Strengths

- WV small MS4 permit has a solid performance standard for new and redevelopment. However, revised stormwater management plans and new retention standards for MS4s do not need to be fully implemented until 2015, 5 years after permit issuance
- Strong emphasis and history on outreach to MS4s

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- Mechanism(s) to regulate additional new development discharges are needed. One mechanism to achieve new and redevelopment standards for an expanded universe of discharges is to include them in Construction General Permit (CGP). This would provide state-wide coverage without needing to use residual designation authority, or develop a new permit or set of permits. Performance standard in the MS4 permit does not apply until a municipality becomes an MS4, potentially missing the biggest opportunity to stormwater from developed lands outside urban centers
- Strong retrofit program, also with tight performance standards, and a reasonably aggressive implementation schedule needs to be fully developed if West Virginia wants to achieve reductions from existing nitrogen and phosphorus sources
- Since staffing is so limited (1 FTE to be increased to 2), consider use of Chesapeake Bay Regulatory and Accountability Program grant to hire more stormwater staff
- Very limited enforcement (1st inspection completed on 8/30/10). Another opportunity to use Chesapeake Bay Regulatory and Accountability Program grant to fill key gap

Wastewater: Serious Deficiencies in Gap-Filling Strategies

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- Loads and schedules not in PCS. Need to increase tracking of compliance with final nutrient loads and applicable WWTP upgrade schedules
- WV has determined that N and P are not pollutants of concern for certain industrial discharges with "negligible loads". These need to be included or they will receive a "0" allocation
- Aware that inadequate funding has been a barrier to wastewater treatment plant upgrades to date; how is West Virginia intending to address this need prior to 2017?

Growth: Serious Deficiencies in Gap-Filling Strategies

Key Areas for Improvement and Opportunities for Strengthening Phase I WIP

- Good to see a framework for trading program, but need more information on enforceability, baseline definition, and schedule with milestones for program development
- States that agricultural loads are decreasing, but more poultry on less land could result in greater nutrient imbalances