EIP REPORT: CHESAPEAKE BAY MAKES PROGRESS, BUT STILL HINDERED BY ILLEGAL DISCHARGES – BETTER ENFORCEMENT NEEDED

Despite Efforts to Reduce Overall Discharges in D.C., Virginia, Maryland, Pennsylvania and Other Bay States, Significant Violations Added Nearly 700,000 Pounds of Additional Nitrogen to the Bay in 2012.

WASHINGTON///January 9, 2014/// Efforts to reduce Chesapeake Bay nitrogen pollution from industrial and municipal sources continued to make progress in key Bay states in 2012, according to researchers at the Environmental Integrity Project (EIP). Nitrogen discharges from point sources dropped significantly in Virginia, the District of Columbia, West Virginia and Pennsylvania between 2011 and 2012, while Maryland, Delaware, and New York actually increased nitrogen pollution. Unfortunately, progress is slowed due to illegal discharges continuing at a regular pace across the Bay watershed. EIP announced today newly compiled data for the entire year of 2012, serving as an update to its December 2012 report, which examined 2011 nitrogen and phosphorus loadings from industrial and municipal facilities as a major source of Chesapeake Bay pollution.

The new data show that Maryland’s reversed its progress on nitrogen pollution from these facilities in 2012, increasing its loadings by more than 400,000 pounds. Virginia continued to show progress on its reductions throughout 2012, reducing nitrogen loadings from these sectors by more than 1 million pounds. In another bright spot, Pennsylvania went from increasing its municipal and industrial nitrogen loads by 4 percent between 2010 and 2011 to decreasing them by 16 percent in 2012. This encouraging trend will help the state meet the Bay water quality goals that begin to take effect in 2017, if the momentum can be sustained.

The EIP report applauds these continued efforts to reduce nitrogen pollution of the Chesapeake Bay to meet the 2010 Chesapeake Bay Total Maximum Daily Loads (TMDLs) – a cleanup plan for the Bay. Tempering the new findings, however, are ongoing concerns that Bay states will require stronger permitting, monitoring, and enforcement to meet their shared goal of a 25 percent reduction in nitrogen and phosphorus pollution in the Chesapeake Bay watershed by 2025. The states and EPA calculated that these reductions are the minimum necessary to restore the Bay’s water quality and support healthy aquatic life and fisheries.

EIP Attorney Tarah Heinzen said: “2012 progress reducing industrial and municipal pollution in key Chesapeake Bay states is encouraging, but we need to do more if we want to stay on track and meet 2017 goals. Nitrogen, phosphorus, and sediment pollution continues to degrade the water quality and fisheries of the Chesapeake Bay and its tributaries each year. All of the Bay states must focus on reducing these discharges and get serious about stopping illegal discharges.”

The updated EIP report also focuses on large individual violators, which can offset regional gains with illegal discharges of nitrogen and phosphorus that can also impair local water quality. The report shows that 8% of these large industrial and municipal dischargers violated nitrogen-based permit limits for at least a quarter of 2012. And just 17 of these large dischargers (those whose violations exceeded 1,000 pounds of nitrogen) together released nearly 700,000 pounds of nitrogen above allowed levels into the Chesapeake Bay in 2012.

A review of EPA data indicates that the following 7 large dischargers exceeded nitrogen-based permit limits by more than 50,000 pounds in 2012:

- Chambersburg Borough Sewage Treatment Plant (PA, 102,036 lbs)
- City of Salisbury Wastewater Treatment Plant (MD, 84,662 lbs)
- Lower Lackawanna Valley Sanitary Authority (PA, 82,216 lbs)
- Marlay-Taylor Wastewater Treatment Plant (MD, 75,483 lbs)
- Frederick City Wastewater Treatment Plant (MD, 72,356 lbs)
- Ballenger Creek Wastewater Treatment Plant (MD, 60,784 lbs)
Heinzen continued: “As significant pollution reductions become more difficult and expensive to achieve, addressing illegal discharges and poor data reporting at these plants will become increasingly critical.”

The Chesapeake Bay is the nation’s largest estuary, with a watershed spanning 64,000 square miles and containing more than 10,000 rivers and streams. The clean-up plan for the Chesapeake Bay requires pollution reduction efforts in Maryland, Virginia, Pennsylvania, Delaware, Washington, D.C., New York, and West Virginia.

The EIP report focuses on industrial and municipal point sources – the public sewage systems and industrial plants that account for about 20 percent of the nitrogen and nearly a quarter of the phosphorus that ends up in the Bay. These pollutants promote algae growth and rob the Bay of the oxygen needed to sustain fish and other aquatic life. The Bay clean-up plan adopted by EPA sets targets for reducing nitrogen and phosphorus from these point sources based on “wasteload allocations” that limit annual discharges from the biggest plants.

Other key findings in the EIP report include the following:

- **Chronic violators.**

  The EIP report identifies facilities among the Bay’s most significant nutrient sources with repeated violations of permit limits for nitrogen, phosphorus, and sediment. Some facilities continue to amass dozens of permit violations, indicating that enforcement actions and penalties are still failing to deter repeated illegal discharges.

  The 25 most frequent violators for nitrogen, phosphorus, and sediment permit limits in 2012 are identified in the report (Appendix C). In addition, EIP determined how many Bay dischargers have been in violation of discharge permit limits for nitrogen or phosphorus during at least one quarter of the year for each of the past 3 years.

- **Incomplete permitting.**

  Despite the five-year permit terms established in the Clean Water Act, many states allow discharge permits to expire without timely renewals, or adopt the practice of “administratively continuing” the permit without revisions, a review, or a public notice and comment process. A review of the NPDES permits in effect in the Chesapeake Bay watershed in November 2013 show that a troubling number of facilities are operating with permits that have been allowed to expire or have been administratively continued after five years.

  Regular permit renewals are critical opportunities to address large polluters and reduce total Bay loadings, so the widespread failure to maintain current permits is important to address if the region is to meet the TMDL goals for municipal and industrial point sources. Approximately 36 percent of Bay permits are currently expired – nearly 2,030 facilities – indicating the Bay states have not made progress reducing the expired permit backlog over the past year.

TO DOWNLOAD THE FULL EIP CHESAPEAKE BAY REPORT GO TO: (http://www.environmentalintegrity.org/news_reports/documents/2012_Update_The_Clean_Wate_Act_and_the_Chesapeake_FINAL.pdf).

**REPORT METHODOLOGY**

The Environmental Integrity Project examined public data obtained from EPA and states to evaluate progress in meeting TMDL goals by the largest municipal and industrial sources of nutrients in the Chesapeake Bay watershed, focusing on nitrogen discharges. Using this data, which EIP obtained
directly from state agencies or through EPA’s Enforcement and Compliance History Online (ECHO) database, EIP compared loadings between 2011 and 2012; assessed rates of violations and failures to report among the most significant dischargers; and estimated the pollution attributable to illegal discharges. EIP also reviewed the Bay states’ performance in inspecting dischargers, assessing penalties, and maintaining current permits.

ABOUT EIP

The Environmental Integrity Project (http://www.environmentalintegrity.org) is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for effective enforcement of environmental laws. EIP has three goals: 1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; 2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and 3) to help local communities obtain the protection of environmental laws.

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