



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Patrick McDonnell, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2036
Harrisburg, Pennsylvania 17105-2063

Dear Secretary McDonnell:

It was a pleasure to meet with you to discuss how Pennsylvania and the U.S. Environmental Protection Agency (EPA) can work together to protect human health and the environment. One of my top priorities as Regional Administrator is to work closely with partners to strengthen efforts to restore the waters of the mid-Atlantic states. To that end, the Chesapeake Bay Program (CBP) partnership has committed to establish necessary programs and put practices in place by 2025 to achieve applicable water quality planning targets for nitrogen, phosphorus, and sediment for the Bay and its tidal rivers. The Bay jurisdictions, including Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia have made important progress in meeting those goals, especially since the Chesapeake Bay Total Maximum Daily Load (TMDL) was established in 2010.

Notably, Pennsylvania has made significant improvements since 2015 in its efforts to restore its local waters, most recently working closely with local communities and stakeholders through its planning efforts. It is clear that state agencies, municipalities, local communities, stakeholder groups, and farmers are stepping up. EPA is committed to work with you to credit these efforts toward load reductions. EPA notes and supports this local engagement. Pennsylvania has committed to provide an amended Phase 3 Watershed Implementation Plan (WIP) by December 31, 2021 to address the 9.8-million-pound nitrogen gap identified by EPA in our evaluation of the 2019 submission. EPA expects Pennsylvania's amended WIP to fully address the nitrogen shortfall and provide confidence that Pennsylvania will meet its nutrient reduction goals. If it does not, EPA will take additional steps to ensure adequate progress toward meeting the CBP partnership's 2025 goals.

Despite these more recent improvements, agricultural conservation policies and programming to control pollution are insufficient or lacking – measures that had been established by downstream jurisdictions years ago. These include a dedicated state agriculture cost share program, improved manure management practices, or requirements for stream buffers or fencing to keep animals from accessing local waters. Healthy farm practices enable access to healthy water and better quality of life for farm families. Healthy farm practices also lead to healthy local waters and a healthier Bay for all the Mid-Atlantic states to enjoy.



In addition to achieving progress towards the CBP partnership's 2025 goals, implementation of conservation measures will have many positive impacts for local communities and farms. Conservation and stormwater controls will help to address more frequent and localized flooding events. I pledge to work with you and local stakeholders to help target available funding to communities that could benefit most from these investments for community benefits and protection of infrastructure and property.

In addition to the ongoing backstop activities EPA has already implemented, the Agency has additional authorities under Federal law to seek pollution reductions. This can include increasing the number of regulated entities to include mid-sized and small farms, municipalities, and other sources; expanding Federal review and oversight of environmental permit issuances; and intensifying enforcement - including fines and litigation as appropriate. A list of backstop actions under our consideration is in the enclosure to this letter.

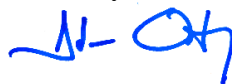
Pennsylvania's Phase 3 WIP submitted in 2019 focused heavily on working with agriculture to achieve needed reductions. Supporting our farmers' conservation efforts is a cost-effective approach, which based on modeling simulations, has the potential to address approximately 96%, or 9.5 million pounds, of Pennsylvania's WIP nitrogen gap and will make great progress toward cleaning up local streams and the Chesapeake Bay. To realize the water quality benefits to both local streams and the Chesapeake Bay, it will take both federal and state funding.

I encourage Pennsylvania to create a State cost-share program and invest in collaborative approaches, especially with operators of small farms who have an important role and are deeply committed to land conservation and stewardship. Investing in collaborative approaches with the farming community has proven to be successful in reducing nutrient pollution and improving local water quality. Having met with the Pennsylvania Farm Bureau and other stakeholders, I know these investments are strongly desired among the agricultural community.

The American Rescue Plan and the Bipartisan Infrastructure Law provide ample opportunity for states to utilize funding. Tremendous technical and financial resources available to our state partners to advance our critical work. I urge Pennsylvania to take this opportunity to access assistance and not leave millions of dollars on the table. Now is the time for Pennsylvania to supplement our federal investment with a robust and targeted State agriculture cost-share program to close the nitrogen gap and return the state's water resources to their communities.

My commitment to the CBP partnership and to the public is to ensure that the Agency and Pennsylvania do all they can to address the nitrogen shortfall. I appreciate Pennsylvania's commitment to restore its local waters and the Chesapeake Bay, and I look forward to continuing to work with you.

Sincerely,



Adam Ortiz
Regional Administrator

Enclosure

Cc: Secretary Dunn, Pennsylvania Department of Conservation & Natural Resources
Secretary Redding, Pennsylvania Department of Agriculture

Enclosure – Backstop Actions Under Consideration

- Expanding National Pollutant Discharge Elimination System (NPDES) permit coverage: For example, using residual designation authority to increase the number of sources, operations, or communities regulated by the NPDES program;
- Further expanding EPA review of draft permits in the Bay watershed and objecting to permits that do not meet the requirements of the Clean Water Act (including NPDES effluent limits that are not consistent with the Chesapeake Bay Total Maximum Daily Load (TMDL) wasteload allocations (WLAs));
- Requiring net improvement offsets that do more than merely replace the anticipated new or increased loadings;
- Establishing finer-scale WLAs and load allocations (LAs);
- Requiring additional reductions from point sources by revising the Chesapeake Bay TMDL to reallocate load reductions from nonpoint to point sources, such as wastewater treatment plants;
- Further increasing and targeting federal enforcement and compliance assurance in the watershed, including both air and water sources of nitrogen, phosphorus, and sediment;
- Further conditioning or redirecting EPA grants and incorporating criteria into future Requests for Proposals based on demonstrated progress in meeting WIPs or in an effort to yield higher nitrogen, phosphorus, or sediment load reductions;
- Promulgating federal standards where the jurisdiction's water quality standards (WQS) do not contain criteria that protect designated uses locally or downstream.