



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:

Thank you for submitting Pennsylvania's draft amended Phase III Watershed Implementation Plan (WIP) to the U.S. Environmental Protection Agency, Region III (EPA) on December 30, 2021. I also wanted to acknowledge receipt of your February 16, 2022, letter concerning Pennsylvania's draft amended WIP development and outreach. This letter and EPA's evaluation is a response to that letter.

I appreciate Pennsylvania's efforts to engage counties within the Chesapeake Bay watershed to complete the Countywide Action Plans (CAPs). There is a significant level of commitment demonstrated by the counties and I commend them and Pennsylvania for the effort to engage local leaders and stakeholders in the community who are invested in improving local water quality and their communities.

After the amended WIP was received, EPA and Pennsylvania met several times to discuss the submission and identify any information needed to complete the review. Pennsylvania provided more than 70 unique Chesapeake Assessment Scenario Tool (CAST) scenarios that EPA consolidated into one scenario. This effort was completed by January 31, 2022, and was necessary to meet current Chesapeake Bay Program (CBP) partnership decisions regarding the use of CAST. This also made the draft amended Phase III WIP consistent with previous WIPs submitted by Pennsylvania and all Bay jurisdictions.

Pennsylvania's draft amended Phase III WIP meets 70% of the nitrogen target, 99% of the phosphorus target, and 93% of the sediment target. Applying the CBP partnership's decisions and tools, EPA's review finds that Pennsylvania's draft amended Phase III WIP does not fully address the CBP partnership's 2025 targets. Some of the methods identified to achieve reductions are not currently approved by the CBP partnership. Based on this information, Pennsylvania has not demonstrated that its draft amended Phase III WIP will meet the CBP partnership's planning targets by 2025. There remains a nitrogen gap of 9.7 million pounds, a phosphorus gap of 6,000 pounds, and a sediment gap of 48 million pounds.

The draft amended Phase III WIP does not provide EPA with confidence that Pennsylvania will have all practices and controls in place by 2025 to achieve the CBP's nutrient and sediment targets. Pennsylvania's draft amended Phase III WIP included few plans to: update or develop new programs; enhance existing programs; or increase funding for best management practices (BMPs). The draft amended Phase III WIP lacks details about Pennsylvania's plans to

direct program upgrades, close needed program gaps or fully fund state programs, or support implementation of the CAPs.

The draft amended Phase III WIP did not demonstrate how Pennsylvania plans to achieve the additional 1.81 million pounds of nitrogen and 95,000 pounds of phosphorus by 2025 related to climate change conditions as expected by the Principals' Staff Committee. Pennsylvania did have the choice to address climate change conditions in either the amended WIP or the 2022–2023 milestone submission. Pennsylvania provided a description related to climate change in the draft amended WIP and committed to develop a CAST scenario that will be provided to EPA at a later date.

Enclosed with this letter (Enclosure 1) is EPA's evaluation of Pennsylvania's draft amended Phase III WIP that highlights the strengths of the WIP as well as expected enhancements for the final amended Phase III WIP submission. The enhancements noted in the enclosed evaluation would increase EPA's confidence that Pennsylvania will meet its nutrient and sediment targets. Despite increased local engagement, some agricultural conservation policies and programming that are important 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.

EPA expects an updated submission within 90 days of this letter that details Pennsylvania's plan to close the nutrient and sediment gaps using CBP partnership approved BMPs and data management methods. In addition, the updated submission should explain programmatic enhancements and strategies to increase confidence in meeting the CBP partnership's 2025 targets.

In my letter to Pennsylvania in December 2021, I noted that EPA expected Pennsylvania's amended WIP to fully address the nitrogen shortfall and provide confidence through enhancements to programs and increased funding to demonstrate meeting its nutrient and sediment reduction targets. If it did not, EPA would take additional steps to ensure adequate progress toward meeting the CBP partnership's 2025 targets. Given the lack of programmatic changes and funding proposed by the Commonwealth in this draft to support the CAPs and additional BMP implementation needed, EPA will be increasing its federal actions. The list of potential federal actions has been enclosed with this letter. EPA will be increasing agriculture and stormwater inspections and enforcement, as appropriate, redirecting certain federal funding to agencies and programs that can spend it more efficiently in Pennsylvania, and increasing permitting oversight. Additional actions will be considered based on Pennsylvania's response to this evaluation.

EPA remains committed to working with Pennsylvania to provide assistance that supports revisions to the final amended Phase III WIP, the development of programmatic strategies to increase BMP implementation in the watershed, and implementation of the current WIP. There will be significant new funding available to the Commonwealth through the Infrastructure Investments and Jobs Act (IIJA) and American Rescue Plan Act (ARPA) of 2021, in addition to EPA maintaining existing grant funding, support to Pennsylvania.

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I urge Pennsylvania to submit a final amended Phase III WIP that meets its targets using CBP partnership approved BMPs and decisions, proposes programmatic changes and strategies to increase implementation levels, and invests greater resources to support the implementation of the CAPs and other BMPs to achieve the CBP partnership's 2025 targets. I look forward to continuing to work with you.

Sincerely,

Adam Ortiz
Regional Administrator

Enclosure 1: EPA's Evaluation of Pennsylvania's Amended Phase III WIP

Enclosure 2: Potential Federal Actions

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

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