



July 7, 2017

Pennsylvania Department of Environmental Protection
Policy Office
Rachel Carson State Office Building
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Harrisburg, PA 17105-2063
(via electronic mail to ecomment@pa.gov)

RE: Public Comment Invited to Help Develop State Plan to Improve Local Water Health in Chesapeake Bay Watershed Counties

The undersigned members of the Choose Clean Water Coalition submit the following comments to help inform the Commonwealth of Pennsylvania's Department of Environmental Protection (DEP or Department) about how best to develop and implement the Phase III Watershed Implementation Plan (WIP).

It is no small secret that Pennsylvania is off-course in meeting its portion of the nutrient and sediment goals established in the Chesapeake Bay Total Maximum Daily Load (TMDL). In fact, "Pennsylvania is only about 10 percent of the way towards its 2025 nitrogen goal, and thus about 35 percent below its 2015 target." (EPA Expectations for Pennsylvania's Phase III WIP, April 27, 2017, p. 1)

The Department has solicited input regarding the planning, drafting, and implementation of the Phase III WIP. The undersigned members of the Choose Clean Water Coalition assert that in order to forge a path toward achieving local and Bay-wide water quality goals, the Commonwealth must:

- be realistic in its ability to provide funding for Department staff and restoration initiatives;
- include more detail and documentation in the portions of the WIP related to agriculture;
- include a frank assessment of whether or not the Department has the programmatic capacity necessary to implement the Phase III WIP and underlying restoration strategy;
- include and engage local partners in the planning and implementation of WIP III, particularly conservation districts;
- target financial and staff resources to the Southcentral tier of the state where agricultural pollution is most profound and where water quality improvements will have the most impact upon Bay restoration efforts;
- increase the quantity of inspections completed;

- require agricultural operations to fully implement their planning documents;
- focus on installation of efficient and effective best management practices;
- prohibit the land application of manure in the winter; and,
- require all farming operations to submit reportable information related to farm practice and best management practices to DEP or the County Conservation District.

Funding

All parties involved understand that these are tough budget times in which we are operating. While there has been much talk about the state legislature passing a water usage fee or a new iteration of Growing Greener, neither is on the cusp of passage and should therefore not be relied upon when the Commonwealth is in the planning phase of WIP III. EPA expects the Commonwealth to “coordinate with EPA to perform resources workload model analyses in 2017 [to] determine if there are sufficient resources to implement the Commonwealth’s core state regulatory programs, and in 2018 to determine if there are sufficient resources to meet the Commonwealth’s Chesapeake Bay Phase III WIP implementation needs.” (EPA Expectations for Pennsylvania’s Phase III WIP, p. 5) EPA has also instructed the Commonwealth that any Chesapeake Bay funding provided by EPA for implementation of best management practices should only be applied to projects in priority watersheds in the Susquehanna and Potomac River watershed. (EPA Expectations for Pennsylvania’s Phase III WIP, p. 5)

Agricultural Sector

EPA has stated that it expects the Commonwealth’s Phase III WIP to contain more detail and documentation related to the Agriculture Sector because that sector is under backstop actions and oversight by EPA. EPA has also provided the Commonwealth with “state-specific expectations for jurisdictions and pollutant sectors which are under enhanced or back-stopped levels of federal oversight. . . .” (EPA Interim Expectations, p. 8) The Commonwealth’s Phase III WIP must address gaps in programmatic capacity aimed at addressing “the financial cost share, technical assistance, and regulatory oversight capacity to deliver agricultural conservation practices at levels consistent with those projected as needed to achieve their Phase III WIP agricultural sector load reductions.” (EPA Interim Expectations, p. 2) First and foremost, the Phase III WIP must document programmatic and policy changes needed to “[e]nsure compliance with and full implementation of state nutrient and sediment pollutant load reduction regulations.” (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 3) The Phase III WIP must also include a discussion of implementation incentives meant to encourage nutrient management planning and other priority best management practices. (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 3) The Commonwealth also needs to identify and address the Department’s lack of programmatic capacity and failure to track best management practices. (EPA Interim Expectations, p. 2) EPA notes that jurisdictions should consider corollary benefits of best management practices targeted for implementation, such as addressing other environmental issues, improving wetlands, increasing forest buffers in addition to water quality benefits of a practice. (EPA Interim Expectations, p. 3)

Local Engagement

EPA has stated quite explicitly that local partners must be engaged in both the WIP III planning process and implementation of strategies and practices. (EPA Interim Expectations, p. 3) “A significant and integral driver towards restoring local waters within the Chesapeake Bay watershed and meeting the goals of the 2010 Chesapeake Bay Total Maximum Daily Load (Bay TMDL) is active engagement and participation from local partners, such as local governments, conservation districts, planning districts, municipalities, federal facilities, watershed organizations, source water protection groups, private businesses, and local elected officials.” (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 1) The Bay Program has stated that “the Phase III WIPs should help local partners understand their contribution to achieving water quality improvements and clearly articulate who will be held accountable for following through on Phase III WIP implementation.” (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 1)

The Bay Program recommends including local partners in discussions and decisions about who will take responsibility for which load reductions, from planning to implementation. (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 9) “A justification of the distribution should be provided in terms of equity, practicality, or cost-effectiveness.” (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 10) The Bay Program has stated that merely allocating load reduction responsibility to a local partner is not acceptable. (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 9) Within the Phase III WIP, the Commonwealth must “demonstrate collaboration” with and among its partners, not merely set directives for them to follow. (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 2)

In addition to engaging local partners, the Phase III WIP must describe in detail how local planning goals below the state-major basin scales will be achieved. (EPA Interim Expectations, p. 1) “A recommendation is to engage those at the county level first to gain an understanding of the process of determining their fair share of the allocation and what they need to do in order to meet that target.” (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 9) The Choose Clean Water Coalition supports county level planning goals in PA, with emphasis on the Southcentral part of the state with respect to the agricultural sector. If agriculture continues to lag behind in meeting its sector goals, DEP should assign individual cap loads to agricultural operations. A permitting program would be needed to capture all farming operations, but this would be a fair and equitable way to ensure that all farms are doing their part to meet the sector load. DEP has suggested that it would consider such a program. (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 29)

To demonstrate commitment to inclusion of local partners, the composition of Pennsylvania’s Steering Committee for the Phase III WIP must be adjusted to include more local partners. The Choose Clean Water Coalition suggests that directors of Conservation Districts in the

Southcentral tier of the state should be added to the Steering Committee, particularly those from Cumberland, Adams, York, Lancaster, and Lebanon Counties. Pennsylvania's Steering Committee for the Phase III WIP is comprised completely of state agency or quasi-agency officials. There are no county or local government officials represented on the Commonwealth's Steering Committee for the development of the Phase III WIP. (Pennsylvania Chesapeake Bay Phase 3 Watershed Implementation Plan (WIP), Steering Committee Meeting Minutes, April 3, 2017)

Additionally, there is no representation on the Steering Committee by EPA. Failure to include EPA in discussions about how the Commonwealth could reach its Bay TMDL sector loads is a missed opportunity for guidance about whether the chosen path will be accepted by EPA as sufficient, especially in light of EPA's enhanced oversight of the Commonwealth for both agriculture and stormwater.

Require Implementation of Planning Documents

In order to create the culture of compliance that the Department seeks from agricultural operations, DEP is going to have to require farm operators to implement their nutrient and sediment control plans. "Inspection and verification activities related to agricultural . . . sources have been a missing piece in creating a culture of compliance with existing regulatory requirements, and documenting pollutant reductions necessary to meet our targets. If these basic functions of BMP documentation and verification of compliance are not given their proper role, Pennsylvania's performance in meeting water quality goals and Bay performance measures will continue to seriously lag." (A DEP Strategy to Enhance Pennsylvania's Chesapeake Bay Restoration Effort, January 21, 2016, p. 1) First and foremost, DEP must increase the number of agricultural inspections it is completing in order to address pollutant reduction deficiencies. (A DEP Strategy to Enhance Pennsylvania's Chesapeake Bay Restoration Effort, January 21, 2016, p. 2)

EPA has set a goal for jurisdictions to inspect 10 percent of farms in the Chesapeake Bay Watershed annually, and the Pennsylvania Department of Environmental Protection has made a commitment to meet that goal within the Commonwealth's portion of the Bay watershed. (A DEP Strategy to Enhance Pennsylvania's Chesapeake Bay Restoration Effort, January 21, 2016, p. 2) In 2014, DEP completed 592 farm inspections which is only 1.8 percent of the farms in the Commonwealth's portion of the Bay watershed. That is only 17.6 percent of EPA's required level of inspections, well below the 3,360 that EPA anticipates being inspected annually. (A DEP Strategy to Enhance Pennsylvania's Chesapeake Bay Restoration Effort, January 21, 2016, p. 13) DEP completed even fewer inspections of agricultural operations in 2016. In 2016, DEP and Conservation Districts had only completed approximately 500 inspections of farming operations. (Agriculture Initial Inspection Update, Presentation to Ag Advisory Board, April 27, 2017)

PA DEP's strategy thus far for agricultural inspections, thus far, has been to require each County Conservation District Chesapeake Bay Technician under contract with DEP to do "50

Manure Management and Agricultural E&S Plan inspections, supplemented with an unfunded BMP data collection activity.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 9) PA DEP’s strategy has focused exclusively on whether farms have planning documents and locating and quantifying previously undocumented best management practices. DEP’s directive to Conservation District staff has been to focus on assuring “that everyone who is required to have plans to be in regulatory compliance has all the necessary plans applicable to their farming operation.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 9) Of the farms inspected in 2016, 64 percent had an administratively complete Manure Management Plan (MMP) while only 60 percent had an administratively complete Agricultural Erosion and Sediment Control Plan (Ag E&S Plan). (Agriculture Initial Inspection Update, Presentation to Ag Advisory Board, April 27, 2017)

DEP has completely ignored making a determination as to whether those plans have been implemented. DEP has specifically directed Conservation District staff to only seek confirmation that plans are in place, but staff should not seek to make a determination as to whether a farming operation is in compliance with those planning documents. This is completely contradictory to EPA’s directive to implement planning requirements and BMPs. DEP’s Standard Operating Procedure for farm inspections states that “[i]nspections do not include inspection of waste management systems, production areas, barnyards and other animal housing areas, or Best Management Practices (BMPs).” (Standard Operating Procedure, Chesapeake Bay Agricultural Inspection Program, SOP No. BCW-INSP-018, Version 1.0, Final, May 27, 2016, p. 14) The undersigned members of the Choose Clean Water Coalition believe it is the duty and obligation of DEP and Conservation District staff inspecting farming operations to make a determination about BOTH compliance with planning requirements AND implementation of MMP and Ag E&S Plans.

Geographic Targeting of Resources

The Commonwealth must target financial and staffing resources to specific geographic areas where “accelerated restoration efforts are needed and where local governments are receptive towards making a discernable difference in their community in meeting their WIP commitments.” (Chesapeake Bay Program Partnership’s Phase III WIP Stakeholder Assessment Action Plan, 2016, p. 4) As discussed at the PA Steering Committee meeting on April 3, 2017, “[t]argeting should factor into each workgroup’s discussion. Where BMPs are placed is as important as what, when[,] and how they are implemented.” (Pennsylvania Chesapeake Bay Phase 3 Watershed Implementation Plan (WIP), Steering Committee Meeting Minutes, April 3, 2017) Given the lack of financial resources for the restoration effort, the Commonwealth must focus funding and staffing where it can most effectively and efficiently “maximize nutrient and sediment pollutant load reductions.” (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 2) EPA has stated that the Commonwealth’s Phase III WIP should prioritize areas in the Susquehanna and Potomac River watersheds where restoration efforts will have the most impact on the Bay and where local water quality improvement can be achieved. (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 2) EPA has stated that the

Commonwealth should utilize available information and tools that assist “in identifying sources of nutrients and sediment, determining appropriate practices that reduce pollution flows, and calculating costs associated with selected actions. . . .” (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 2) EPA acknowledges that programs and practices may need to be targeted to certain geographic areas in order to more effectively and efficiently reduce pollutant loads. (EPA Interim Expectations, p. 2). Accordingly, the Commonwealth should focus agricultural pollutant reduction programs and practices on the Southcentral tier of the state in which the majority of agricultural operations exist.

DEP’s compliance efforts thus far have been spread across the watershed fairly even, based upon location of Chesapeake Bay Technicians at Conservation Districts that have a memorandum of understanding to complete work on behalf of DEP. However, the effort should be more heavily targeted toward the Southcentral tier of the state, given the total agricultural loading to the Bay coming from that region. DEP should either contract for more Conservation District staff in those areas or target the efforts of its staff geographically to the Southcentral Regional Office with respect to agricultural enforcement. EPA has suggested that it would be appropriate for jurisdictions to contract with third parties to provide services that are central to the implementation of the WIP. (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 4) Thus, DEP could contract with third parties to perform agricultural data collection and reserve staff for farm inspections related to plan implementation or pollution related discharge events.

Additionally, Conservation District Watershed Specialists should be utilized to facilitate restoration projects in impaired waters. This adjustment to job responsibilities was previously discussed by the Department and would be a better use of resources to achieve water quality improvements in each county. DEP has stated that the Department should “[i]mplement targeted efforts in impaired watersheds where the cause listed is . . . agriculture . . . and where geography and land use are amenable to successful BMP implementation. . . . These watersheds should be in an area where there is an interested local group ready to take the lead on implementation.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 11-12)

In addition to targeted efforts by DEP, EPA should also continue to complete targeted watershed assessments within Pennsylvania. DEP has previously acknowledged that EPA could pursue one of two approaches in order to further Pennsylvania’s efforts to gain compliance with existing regulatory requirements for farming operations. In the first approach, “EPA would directly contract for field work to assess rates of compliance with state and federal requirements of animal Ag operations in Pennsylvania.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 20) In the second approach, EPA field staff would support 3-6 targeted watershed inspection efforts per year in areas with the highest nutrient loading rates for agriculture. (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 20) The undersigned

members of the Choose Clean Water Coalition recommend that EPA continue to undertake targeted watershed assessments in the Southcentral tier of the Commonwealth.

Installation of Effective and Efficient Best Management Practices

The Phase III WIP should focus restoration efforts at agricultural operations on best management practices that are effective and efficient at controlling the loss of nutrients and sediment. DEP has committed to “putting new high-impact, low-cost BMP projects on the ground in watersheds that are currently impaired by agriculture. . . .” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 2) DEP has suggested that it is appropriate for cost share programs and funding to be targeted to the most effective and efficient BMPs. DEP has stated, and the undersigned members of the Choose Clean Water Coalition agree, that it would be most beneficial for the jurisdiction to focus on installation and implementation of the following agricultural BMPs: cover crops, tillage (no-till and conservation till), manure transport, streambank fencing, and buffers. (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 27)

Winter Manure Applications

DEP should make programmatic and policy changes necessary to prohibit winter manure applications. It is well recognized that winter manure applications are not an effective or efficient use of nutrients as plants are not actively growing. It is also well recognized that nutrients are more likely to become unavailable to plants via runoff or leaching if they are not applied close in time to when plants are actively growing. EPA has also stated that Pennsylvania’s Phase III WIP must include a discussion of programmatic, policy, legislative, and regulatory changes needed for “[r]estrictions on manure application during winter months to protect drinking water sources and ensure local and Chesapeake Bay water quality protection.” (EPA Expectations for Pennsylvania’s Phase III WIP, April 27, 2017, p. 3) DEP has also suggested that winter manure spreading should be prohibited unless it is conducted under an approved and certified nutrient management plan. (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 27)

Mandatory Reporting of Data

DEP should make programmatic and policy changes necessary to require all farming operations to submit reportable information related to farm practice and best management practices to DEP or the County Conservation District. DEP has stated that “[c]ontinued reliance on voluntary reporting and costly estimation techniques of indeterminate accuracy result in continued high levels of state and Federal expenditure . . . and seriously hamper the Commonwealth’s ability to make informed policy decisions on which to take effective action.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 6-7) DEP in partnership with the Penn State Agriculture and Environment Center completed a farm survey in which they were able to collect data on approximately 7,000 farms within Pennsylvania’s part of the Bay watershed. However, there are no immediate plans underway to repeat this effort.

DEP has previously noted the importance of establishing a mandatory reporting requirement for all farming operations, even the smaller farms. DEP has stated the need to “[e]stablish reporting requirements for Ag E&S and Manure Management Plans in the agriculture sector, and provide the CDs with tools (Practice Keeper) to capture these data.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 12) All farms should be required to provide information or plans detailing how a farming operation is meeting DEP’s regulatory requirements under the Clean Streams Law. “The data collected, coupled with verification by inspection and compliance assurance activities, will allow the Commonwealth to gather reportable, Bay model-countable data and will result in real improvement in water quality in Pennsylvania, and in the Chesapeake Bay.” (A DEP Strategy to Enhance Pennsylvania’s Chesapeake Bay Restoration Effort, January 21, 2016, p. 7)

Failure by the Commonwealth to draft and implement a Phase III WIP could lead to serious consequences by EPA, including, but not limited to: targeted EPA enforcement and compliance assurance inspections; establishing finer scale wasteload and load allocations; additional load reductions from point sources; and, nitrogen and phosphorus numeric water quality standards. The Commonwealth must use the Phase III WIP process to meaningfully engage with local partners to draft a plan in which resources are targeted to where they can be efficiently and effectively implemented to achieve water quality improvement, both local and Bay-wide.

If you have any questions or would like to discuss these comments further, please contact Kim Snell-Zarcone at (717) 648-0602 or kim@choosecleanwater.org.

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On behalf of:
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