



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

January 28, 2020

The Honorable Chris Van Hollen
United States Senate
Washington, D.C. 20510

Dear Senator Van Hollen,

On behalf of the U.S. Environmental Protection Agency (EPA), I am responding to your letter dated January 10, 2020, concerning the commitment of the EPA to the restoration of the Chesapeake Bay. The Chesapeake Bay (Bay) is a unique and important national resource. The EPA's actions to protect and restore the Bay have matched the commitment that EPA Administrator, Andrew Wheeler, made at his confirmation hearing where he said that, "I am very much committed to the Chesapeake Bay and to the Chesapeake Bay Program." The EPA will continue to work diligently and professionally with all the jurisdictions and stakeholders engaged in supporting restoration of the Bay.

The mischaracterization of the EPA Chesapeake Bay Program Director's recent remarks is unfortunate and distracts from the good work that is being done. The question of whether the Total Maximum Daily Load (TMDL) itself is enforceable by a court was answered by the previous administration in court filings defending the Bay TMDL. In 2016, the Obama Administration told the U.S. Supreme Court that a TMDL is an informational tool that "does not impose any binding implementation requirements on the States," and that "the Bay TMDL does not directly regulate any sources or require any permits." The Trump Administration agrees with these statements from the prior administration.

The Clean Water Act implementing programs, together with the Bay TMDL and the Chesapeake Bay Program (CBP) partnership's extensive Accountability Framework – especially the jurisdictions' Watershed Implementation Plans (WIPs) – and the EPA's oversight of implementation progress, represent the collective goals and assurances for the Bay's recovery. The EPA and the Bay jurisdictions, together, have legal authority to ensure the Bay TMDL's implementation. As it has done since the Bay TMDL was issued, the EPA will continue to use its existing authorities under the Clean Water Act to ensure that all six Bay states and the District of Columbia are accountable for implementing their share of the Bay TMDL's nitrogen, phosphorus and sediment reductions. The CBP partnership, which includes the jurisdictions as well as EPA, remains committed to the CBP partnership's goal of having all practices and controls in place by 2025.

Nothing more clearly signifies the EPA's ongoing commitment and accountability to the restoration of the Bay than our most recent Phase III WIP evaluations. The EPA has identified that five



of the Bay jurisdictions, including Pennsylvania, must do more to achieve their goals. Our evaluations also identified targeted and extensive EPA support to assist the jurisdictions in their efforts to implement the WIPs. Our commitment is further evident in our on-going participation and support for the Principals' Staff Committee, as well as the Management Board, Goal Implementation Teams and workgroups. I once again reiterated EPA's commitments at the Principals' Staff Committee meeting held on Friday, January 24, 2020.

Regrettably, our long-standing and continued commitment to the Bay restoration has been called into question in recent news articles and by certain stakeholders. Maryland has even threatened litigation against the EPA and Pennsylvania, abandoning the long-standing consensus that partnership is the best way to resolve issues. Diverting our collective resources to litigation will undoubtedly distract from efforts to restore the Bay and harm the existing partnership among the parties that has been the hallmark of this effort.

As noted in our recent WIP evaluation, Maryland has work to do to provide confidence that it can comply with its own responsibilities necessary to have all controls and practices in place by 2025 to restore the Bay. For example, Maryland committed to the reissuance of five Phase I municipal separate storm sewer (MS4) permits by December 2019, four of which expired over a year ago. Although these draft permits were submitted to EPA for review on November 27, 2019, on December 26, 2019, EPA formally issued interim objections for all five permits due to their incompleteness. The late submission of draft permits and their current incomplete status has delayed Maryland's ability to meet its Bay milestone commitments. EPA's and the jurisdictions' resources are better allocated towards continued enhancement and implementation of plans that will improve water quality.

Together, with your support, I hope we can return the proper focus to making progress on Bay TMDL implementation. We are happy to provide you and your staff additional information on this important ongoing work. If you have further questions, you may contact me, or your staff may contact Sven Kaiser in the EPA's Office of Congressional and Intergovernmental Affairs at Kaiser.Sven-Erik@epa.gov or (202) 566-2753.

Sincerely,



Cosmo Servidio
Regional Administrator

cc:

Benjamin L. Cardin
United States Senate

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United States Senate

Mark R. Warner
United States Senate

Thomas R. Carper
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