

March 24, 2023

Lucinda Power
U.S. Environmental Protection Agency, Region III
Chesapeake Bay Program Office
1750 Forest Drive, Suite 130
Annapolis, MD 21401

Dear Ms. Power:

I am writing in response to the U.S. Environmental Protection Agency (EPA) draft expectations document for the Conowingo Watershed Implementation Plan (CWIP), received on February 16, 2023, entitled “EPA Expectations: Implementation of the Conowingo Watershed Implementation Plan’s Phased Approach” (CWIP Expectations). The Pennsylvania Department of Environmental Protection (DEP) worked with Maryland Department of the Environment (MDE), New York State Department of Environmental Conservation (NYDEC), the Center for Watershed Protection (CWP), as well as the entire CWIP Steering Committee to develop and submit the 2022 Milestone Progress Report to EPA by the deadline of January 17, 2023. The 2022 Milestone Progress Report was developed based on EPA’s comments on the 2022-2023 CWIP Milestone Commitments, received on October 4, 2022.

The CWIP Expectations should have been provided to the Principals Staff Committee (PSC) in lieu of or in addition to EPA’s comments on the 2022-2023 CWIP Milestone Commitments. It is unclear how the CWIP Expectations connect with EPA’s previous comments provided on the Milestone Commitments, nor is it clear how we can incorporate the expectations during this current two-year milestone period.

Numeric Implementation Commitments –

- **Best Management Practice (BMP) Implementation Targets:** The CWIP Expectations identifies that the milestone commitments should “establish implementation targets for those BMPs that account for at least 60 percent of the nitrogen reductions in the CWIP at the beginning of each milestone period.” This specific comment was not provided by EPA during the establishment of the initial 2022-2023 Milestone Commitments, nor was it included in the 2022-2023 Milestone Evaluation comments received on October 4, 2022.
 - The CWIP Expectations identifies “specific geographies and practices must be identified as part of these implementation targets” and “provide BMP implementation levels expected from each Susquehanna Basin jurisdiction to meet the targeted levels of BMP implementation.” Neither of these comments were provided in the 2022-2023 Milestone Evaluation comments received on October 4, 2022. Maryland and Pennsylvania are instituting new Pay-for-Performance programs, therefore specific geographies cannot be identified. Further, the use of the word “must” demonstrates a required element, which was not provided by EPA in any other evaluation to date.
- **Annual Submission of BMP Progress and Verification Data:** The CWIP Expectations provides the same schedule for numeric progress submission, “by December 1st of each year”, as the jurisdictional WIPs. While the states have met with EPA to discuss the internal

tracking and reporting structure of BMPs implemented for the purpose of the CWIP, EPA has not provided clarity on how it would be effectively accomplished. Any EPA required tracking and reporting structure should be developed at least nine to twelve months prior to the submission deadline, so that information can be collected throughout the July – June time period leading up to the December 1st deadline.

- Load Reduction Progress – The CWIP Expectations identifies “at least 25 percent of the necessary nitrogen reductions and 100 percent of the necessary phosphorus reductions will be achieved by 2025.” It is unclear where the 100 percent of necessary phosphorus reductions arises from; the PSC actions and decisions from the July 19, 2022 meeting does not provide this metric goal.

For the states to implement the CWIP, we request EPA address the following items to help ensure we reach our goals:

- Tracking and reporting mechanisms – EPA has met with Pennsylvania regarding concerns about ensuring CWIP implementation is captured not only on the ground but also through the required reporting mechanisms to EPA. Concerns related to potential for BMP cut-off and NEIEN and CAST acceptance have yet to be ameliorated.
- Continued financial support of grantees – Pennsylvania and the CWIP Steering Committee have been providing funds from our Chesapeake Bay Implementation Grant (CBIG) toward the work to develop the CWIP. Continued investment of these federal funds throughout the implementation phase of the CWIP is necessary to ensure forward progress and successful implementation.
- Innovative strategies and solutions – Pennsylvania and Maryland have put forth innovative solutions to the nutrient and sediment water quality challenges to the partnership, including dredging, acid mine drainage (AMD) treatment, and freshwater mussels. The implementation of these as well as other more typical practices to the Chesapeake Bay model are in their early stages for the CWIP, and it is imperative to have EPA and Chesapeake Bay Program partnership support to facilitate and ensure the success of these innovative strategies.

We look forward to working with EPA, the PSC, and the CWIP Steering Committee to ensure that progress is achieved through implementing the innovative multi-jurisdictional approach for the Conowingo.

Sincerely,



Jill Whitcomb
Director