



CHESAPEAKE BAY COMMISSION

Policy for the Bay • www.chesbay.us

December 4, 2013

Honorable Vincent C. Gray, Mayor
1350 Pennsylvania Ave, NW, Suite 316
Washington, DC 20004

Dear Mayor Gray:

For 30 years, the Chesapeake Bay Commission (CBC) has witnessed first-hand the power of the Chesapeake Bay agreements. Each has played a critical role in driving Federal, state and local policy as governments and citizens work to restore our watershed's water quality and living resources. Each has guided the Commission in its research, outreach and legislative work. Importantly, the commitments made have always been aspirational, demanding that we force ourselves to stretch, and the expectations of its signatories unified and clear. I am writing to express the concern of the Chesapeake Bay Commission that these hallmark features are missing in the current draft agreement.

We applaud your efforts to make it happen by May of 2014. The need for this new agreement has always been explained in terms of time and governance. *Time*, because 13 years have elapsed since C2K and many of its commitments have either been achieved or expired. *Governance*, because the TMDL has changed the tenor and relationships within the Program, invoking a regulatory framework while calling for the inclusion of the three "headwater" states of West Virginia, New York and Delaware.

Our concerns focus on the issue of governance. First, please note that the CBC fully recognizes the important role of the headwater states in the restoration of the Bay. There are seven jurisdictions in our watershed and, big or small, all play a meaningful role in restoring the Bay. Second, we value our relationships with the headwater states. They have been our partners when tackling regional policy initiatives such as biofuels, non-tidal wetlands and the Chesapeake Bay Watershed Initiative in the 2008 Farm Bill, to name just a few.

However, our discussions of governance raised a number of questions that we believe remain unresolved. Below are some examples:

Several changes to the draft agreement language have been made to emphasize that, with the exception of the water quality goals commitments that are part of the Chesapeake Bay Total Maximum Daily Load, participation of signatories, and thus commitments by them, is entirely optional. This raises an unanswered question of decision-making. For example, what influence will a signatory that has not initially made a commitment have in the development and implementation of that strategy? Or, how will watershed-wide progress be tracked if only a few signatories participate?

Historically, there was no voting within the Chesapeake Bay Program. Rather, there was a commitment to action, varying across signatories, but always moving in a forward direction. The TMDL and the rightful inclusion of all of the watershed states seems to have introduced a regulatory tone to the negotiation of this agreement. While understandable, doing so reduces the cooperative, respectful nature of implementation of the agreement. The signatories should take the time and effort to think through the differences between the TMDL regulatory actions and the jurisdiction by jurisdiction voluntary actions to clean up the Bay waters and clearly articulate them in advance of adoption of this agreement.

Second, it is not clear if the governors of the headwater states intend to personally participate in EC meetings. The strength of the Bay Program is a result of leadership by the highest levels of its signatory partners. Intentionally, the EC meets just once annually. While it is understandable that in any given year, a principal may not be able to attend the EC meeting, the regular absence of a majority of EC members, or even a majority of the gubernatorial members, sends a poor message to the Congress, our partners and public about the ownership and importance of the Bay Program's work.

Finally, how will financial investment decisions of the Program now be made? Under Clean Water Act Section 117, EPA has always supported the jurisdictional signatories' implementation efforts, along with the work of its committees. How will funding be allocated with the addition of the new partners? How will initiatives be prioritized? Are all voices equal or are they subject to participation in the management strategies?

It is our concern that this lack of clarity will lead to confusion, conflict and a failure to reach for realistic yet aspirational goals. Therefore, we ask that the partnership:

1. Include a governance section in the agreement that clearly describes these new relationships, manages expectations and guides our maturing Chesapeake Bay Program. At the least, the agreement should reference and incorporate as an appendix an updated Chesapeake Bay Program governance document ; and
2. Embrace this new agreement as an opportunity to challenge ourselves beyond our current capabilities and past achievements. As with all prior agreements, this agreement should represent a reach. To do this, the agreement should clarify the aspirational nature of our goals.

The above suggestions reflect preliminary review of the draft language by the CBC at our meeting on November 15. We will continue to review the language and expect to have additional comments following our next meeting on January 2, but we wanted to share our preliminary comments now so that the partnership has sufficient time to consider them while keeping the timeline on track.

On behalf of the Chesapeake Bay Commission, I look forward to seeing you and those EC members planning to attend the December 12 meeting in Washington, D.C. It is my understanding that we will be voting for a new EC Chair and I ask that these issues convey to our incoming chairman. If you have questions in the meantime, please call the Commission's Executive Director, Ann Swanson, at 410-263-3420 to schedule a mutually-agreeable time for us to talk.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. McIntosh', with a long, sweeping horizontal line extending to the right.

Delegate Maggie McIntosh (MD)
Chair