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

OCT 05 2011

The Honorable Doug Domenech
Secretary of Natural Resources
1111 East Broad Street
Richmond, Virginia 23219

Dear Secretary Domenech:

Thank you for participating in the September 16 Bay State Secretaries discussion regarding Phase 5.3.2 of the Chesapeake Bay Program Watershed Model and its use as a tool for Phase II Watershed Implementation Plan (WIP) development. Our conversations and exchange of information in recent weeks have allowed EPA to better understand where our collective approach is working and where we need to adapt in order to achieve our common goal of restoring the region's waterways. As described in my letter to you dated August 1, 2011, EPA developed the Phase II WIP planning targets to represent the actions, assumptions and "level of effort" necessary to meet the final allocations established in the 2010 Chesapeake Bay total maximum daily load (TMDL). EPA agrees with your desire to ensure that work to refine model assumptions and data inputs does not distract us from the key implementation priorities at hand.

The purpose of this letter is to provide EPA's proposed path forward based on the proposal that you shared on September 16 and in follow-up exchanges. Most notably, in the Phase II WIPs, EPA does not expect the jurisdictions to express the "local area targets" in terms of Phase 5.3.2 Watershed Model inputs or outputs, such as pounds of pollutant reductions by county. Instead, Phase II WIPs could identify "targets" or actions that local and federal partners would take to fulfill their contribution toward meeting the Chesapeake Bay TMDL allocations. These targets could be expressed as programmatic actions, such as adopting ordinances. This letter also includes actions that we can take as a Partnership to address the modeling and data input concerns that you raised on September 16. I believe that this path forward will allow you to continue progress and improve confidence in your Phase II WIP and milestone commitments.

EPA also recognizes that it is the nature of environmental modeling for confidence in outputs to increase as scales become larger. With this in mind, EPA provided Phase II WIP planning targets for nitrogen, phosphorus and sediment for the major basins in each jurisdiction. The jurisdictions have considerable discretion to distribute those planning targets among the source sectors. As the jurisdictions have pointed out, there are areas in the watershed where there are limitations to the application of the Chesapeake Bay Program Watershed Model at a finer scale. EPA is, therefore, clarifying its March 2011 Phase II WIP guide to allow jurisdictions the option of submitting input decks for their Phase II WIPs that focus on meeting the major river basin planning targets in each jurisdiction rather than loading targets in each county or sub-watershed. However,

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EPA continues to request the jurisdictions submit Phase II WIP narratives that clearly articulate that local partners (e.g., local governments, conservation districts, planning commissions, utilities, and watershed groups) understand their roles and responsibilities for implementing their share of the WIP strategies.

EPA is maintaining the Phase II WIP schedule provided in previous communications, but we believe that placing less emphasis on model inputs and outputs to express local area targets should make it easier to achieve these deadlines. EPA expects that the draft Phase II WIP submissions on December 15, 2011 contain:

- An explanation of how jurisdictions are working with local partners;
- Evidence that critical local partners are aware of their role in meeting the TMDL allocations and the Phase I WIP commitments;
- As appropriate, identification of targets or actions that local and federal partners would take to fulfill their role. These targets could be expressed as programmatic actions (eg, adopting ordinances) rather than model inputs or outputs (e.g., pounds reduced, pounds per acre);
- Any changes or updates to Phase I WIP strategies based on work with local partners;
- One input deck for processing through Phase 5.3.2 that meets the Phase II WIP planning targets for the major basins in each jurisdiction. This deck could be based largely on Phase I WIP input decks plus any requested changes to wasteload and load allocations.

EPA recognizes that WIP implementation will be an adaptive process that continues to change both in the final Phase II WIP submitted on March 30, 2012 and in future two-year milestones.

We must continue to work together as a Partnership to refine the modeling tools that support our decisions. EPA agrees that nutrient management is an important strategy for reducing pollutant loads to our waterways. Current model outputs demonstrate that nutrient management reduces total loads from agriculture. We are committed to continue to work with the Partnership to ensure that the more regional and local simulations of nutrient management and other model components are better informed by the latest data and scientific understanding. Based on your input, I have worked with staff to identify specific and concurrent next steps to address the following issues raised by you and your colleagues:

- Calculation of nutrient rates on acres not under nutrient management;
- Calculation of load reductions associated with the application of nutrient management plans, including the effect of manure routing sequences;
- Refinement of methods for developing and applying regional factors during model calibration;
- Development of the ability to apply multiple BMPs on urban lands and lands under continuous no-till;
- Refinement of the ability to consider submitted BMPs versus credited BMPs; and
- Refinement of the calculation regarding the amount and nutrient content of poultry manure.

My staff will be sending additional materials to the jurisdictions in the coming days that outline the specific immediate, near, medium and long term steps that we can take to address these issues.

We have committed resources to support and expedite the Chesapeake Bay Program Partnership's expert panels in their review of the latest science supporting BMP definitions and efficiencies that have already been approved by the Partnership. These panel reviews will maintain the integrity of a collaborative review and continue to follow the priorities established by the

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Partnership's source sector workgroups. They will provide recommendations for interim placeholder BMPs that can be used in the Phase II WIPs in the near term, as well as approved BMP values that can be used for reporting progress in advance of 2017. Finally, I expect that these expert panels will yield valuable recommendations for the midterm evaluation that will be completed in advance of the Phase III WIPs. While these panels are underway, I strongly encourage your submission of interim placeholder BMPs that can be reviewed by the Chesapeake Bay Program *immediately* for use in your draft Phase II WIPs.

We also recognize that, even with less emphasis on model inputs and outputs in Phase II, it is important for partners to understand and be able to access the Chesapeake Bay Program modeling tools. In response to this need, we have recently completed a series of Scenario Builder Workshops in all seven jurisdictions and are now focused on scheduling training for user-friendly, web-based tools such as the Chesapeake Assessment and Scenario Tool (CAST) to help your staff and local partners have the capability to assess alternative approaches to meeting your Phase II commitments.

In addition, we heard your strong concerns about how EPA would proceed with assessing progress by each jurisdiction in developing Phase II WIPs and achieving milestone commitments. We will use common sense in approaching these assessments. As was stated in the milestone guide, our evaluations will first assess whether jurisdictions have achieved nitrogen, phosphorous and sediment reduction targets *for their state as a whole*, rather than within particular sectors or localities. The models are not the only tool for assessing milestones. We will ensure implementation is proceeding forward by also considering programmatic milestones. Our review of progress will take into consideration all available data and information, recognizing we will be continually working to credit new practices, factor in new scientific understanding, and account for previously underreported implementation actions.

EPA is committed to working with you to develop your Phase II WIP for implementing the TMDL. The adaptations our respective agencies have made to date and those described here will result in a more flexible Phase II process and improve our measure of progress in the future. Thank you for your commitment to work on parallel tracks that involve engaging local partners in shaping your next generation WIP, investing resources to meet your milestone commitments, continuously improving data inputs, and participating in the Partnership review of the suite of the Chesapeake Bay Program models in advance of the 2017 mid-course evaluation.

We appreciate your efforts and cooperation in moving forward with the implementation of WIP and milestone commitments and the restoration of the Chesapeake Bay. If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Jeffrey Corbin, EPA's Senior Advisor on the Chesapeake Bay, at 215-667-9304.

Sincerely,

Shawn M. Garvin
Regional Administrator

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