



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
CHESAPEAKE BAY PROGRAM OFFICE  
410 SEVERN AVENUE  
ANNAPOLIS, MD 21403

May 4, 2015

Kelly Heffner  
Deputy Secretary, Water Management  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, Pennsylvania 17101

Dear Ms. Heffner:

As I indicated in an e-mail message to you on April 29, EPA is providing specific recommendations for agricultural and urban/suburban activities for inclusion in your workplans for Pennsylvania's FY 2015 Chesapeake Bay Implementation Grant (CBIG) and/or Chesapeake Bay Regulatory and Accountability Program (CBRAP) grant.

EPA grant guidance indicates that we can exercise a number of options related to the CBIG and CBRAP grants if a Chesapeake Bay watershed jurisdiction does not demonstrate satisfactory progress toward achieving nutrient and sediment allocations established in the Chesapeake Bay TMDL and the 2-year milestones. For example, EPA may condition or redirect CBRAP and/or CBIG funds, and potential funding actions by EPA may be targeted to improve the existing program or workplan deliverables. EPA also may not fully award future CBIG and/or CBRAP funding and will consider doing so in FY2016 if these recommendations are not addressed in your FY2015 workplans. In such a case, EPA would seek to use the funding directly to close the nutrient and sediment gaps by supporting on-the-ground implementation in the lagging sectors. The grant guidance states that jurisdictions should give priority to addressing state regulatory program deficiencies identified in assessments such as the recent Animal Agriculture Program and Urban Stormwater Program Assessments that can be impediments to achieving your Watershed Implementation Plan (WIP), milestones commitments, and pollution reduction targets.

Pennsylvania currently is not on pace to meet its 2017 or 2025 goals for nitrogen by having necessary practices in place. The Commonwealth must reduce 23 million pounds of nitrogen to meet the 2017 outcomes, and agriculture and urban/suburban runoff represent the largest man-made sources of nitrogen. In comparison, estimated nitrogen loads statewide and from agriculture and urban/suburban runoff specifically have increased since 2009. Our draft interim evaluation of the 2014-2015 milestones and the Program Assessments have identified key areas for the Commonwealth to focus on to succeed in meeting its Bay TMDL goals. To that end, we offer the following recommendations to focus the EPA federal funding on efforts that will support the Commonwealth's aggressive agricultural and urban/suburban pollution reduction commitments outlined in your WIP. In 2016, EPA may take one or more of the actions identified

in our CBPO grant guidance if Pennsylvania does not take the necessary steps to close the gap for nutrients and sediment.

We have organized our recommended CBIG and CBRAP activities into five main priorities: (1) increasing compliance with state regulatory programs for agricultural operations; (2) expanding nutrient management programs to more agricultural operations and more advanced forms of nutrient management; (3) launching new programs/initiatives to accelerate implementation of high priority agricultural conservation practices; (4) reissuing a general permit (PAG-13) for small Municipal Separate Storm Sewer Systems (MS4s); and, (5) accelerating implementation of priority practices to control nutrient and sediment pollution from urban/suburban runoff.

We will work with you to help identify which grant program is most appropriate for each of these recommended activities. Generally, the CBRAP grant program will be most appropriate for the compliance activities and any expansions to regulatory programs, whereas the CBIG program will be more appropriate for voluntary/incentive-based initiatives and activities associated with accelerating implementation of high priority practices. EPA will also work with you to develop specific objectives, tasks, quantitative outputs, and deadlines for the activities described below.

EPA looks forward to a continued dialogue with PADEP on how best to focus funding. We also are open to suggestions from Pennsylvania of alternative approaches to achieving the five priorities outlined in this email that would achieve comparable nutrient and sediment reductions.

#### **I. Increase Compliance with State Regulatory Programs for Agricultural Operations**

EPA recommends directly funding efforts that work to achieve full compliance with Pennsylvania's Manure Management Program and Agriculture Erosion and Sediment Control programs, which apply to 80-90% of the animal operations in Pennsylvania's portion of the Chesapeake Bay watershed. To achieve this objective, we suggest the following activities.

##### **Activities:**

- **Develop and Implement an Effective Compliance Assurance Strategy:** Develop and implement an effective compliance assurance strategy that communicates to the agricultural community the expectation for compliance with state regulatory programs for non-CAFOs and non-CAOs. PADEP needs a uniform plan for assessing and dealing with non-compliance. An effective compliance assurance strategy that is fully enforced is critical for creating a culture of compliance.
- **Amend the "3 Strikes You're Out" Policy:** The current policy does not establish the expectation that when an operation is inspected it should be in compliance. Instead, the policy allows a farmer to delay action in addressing a compliance issue until they are visited a third time.

We suggest PADEP consider approaches that establish an expectation of compliance and results in timely resolution of compliance issues (either by farmer actions to remedy a problem or PADEP enforcement actions). Farms that are in non-compliance with state regulatory programs should receive a formal enforcement action both to bring the farm

into compliance in a timely manner and to establish deterrence to motivate others. The north-central region has demonstrated a strong culture of compliance, which we believe is the result of strong leadership from the north-central regional office, effective inspections, and timely follow-up enforcement actions on both CAFOs/CAOs as well as non-CAFO/CAOs. We recommend PADEP institutionalize similar approaches across the agency.

- **Increase Random Inspections of More Non-CAFOs and Non-CAOs:** We recommend conducting 1,000 random, annual PADEP inspections on non-CAFOs and CAOs. These inspections would be in addition to those PADEP is conducting to meet its compliance monitoring strategy commitments for CAFOs and CAOs and those inspections PADEP is conducting as part of its Regional Agricultural Watershed Assessment Program Initiative.

Inspecting 1,000 operations annually would cover approximately one-half of all non-CAFOs and non-CAOs by 2025. Having random inspections and timely, appropriate follow up actions that are focused on the non-CAFOs and non-CAOs will send a strong message that PADEP is serious about ensuring compliance beyond just complaint driven inspections and the targeted watershed assessments it has underway.

In addition to funding inspections through CBRAP, ways to build the sufficient staff resources needed for this inspection work are:

- If PA DEP is struggling to hire and keep inspector positions, consider contracting out the work or hiring “term” employees.
- **Take Appropriate and Timely Enforcement Actions:** Farms should be in compliance when inspected and PADEP should take appropriate, timely actions when an operator does not have or is not fully implementing a required plan. When a source is found in non-compliance, PADEP should take a formal action. Violations/non-compliance should be defined as not having and/or not fully implementing the elements of a required plan.
- **Institute Farmer Self-Reporting:** We recommend that PADEP institute an annual farmer self-reporting form for non-CAFO and non-CAO operators to report on their compliance with state regulatory programs. This annual reporting requirement would send the message that PADEP is expecting compliance with state regulations.
- **Clearly Define the Role of Conservation Districts in Compliance:** We recommend that PADEP more clearly define the role of the county conservation district staff and the 43 nutrient management technicians in compliance with state regulations. If PADEP follows through with its plan to transition the nutrient management technicians to verification responsibilities, then PADEP should consider a compliance verification role for the conservation districts that is focused on ensuring that all farmers visited have a current and fully implemented Manure Management Plan and an Agriculture Erosion & Sediment Control plan for the non-CAFOs and non-CAOs.

## II. Expand Nutrient Management beyond CAFOs and CAOs and to More Advanced Forms of Nutrient Management

EPA recommends directing CBIG funding to efforts that expand nutrient management to the non-CAFOs and non-CAOs and to cropland in order to meet Pennsylvania's aggressive nutrient management goals outlined in its WIP. The Commonwealth has committed to increase its coverage of nutrient management from 32% of available acres in 2014 to 95% in 2025, with 85% of the acres being under enhanced nutrient management.

This will be quite a challenge, given that 80-90% of the animal operations are not required to develop and implement nutrient management plans, there are no requirements for row-crop farmers to have nutrient management plans, and there are no requirements for enhanced nutrient management on either animal operations or cropland.

### Activities:

- **Expand Nutrient Management to Non-CAFOs and Non-CAOs and Cropland:** We recommend that PADEP develop a plan and actions for how it will expand its nutrient management to the non-CAFOs and non-CAOs and to cropland – either through expansions of regulatory programs or through voluntary, incentive-based initiatives.
- **Transition Farmers to Enhanced Nutrient Management.** We recommend that PADEP develop a plan and actions for how it will transition farmers from Manure Management Plans to Nutrient Management Plans with enhanced nutrient management – either through expansions of regulatory programs or through voluntary, incentive-based initiatives.

## III. Develop New Initiatives to Accelerate Implementation of High Priority Agricultural Conservation Practices

As EPA outlined in its Animal Agriculture Program Assessment, even if the Commonwealth achieves full compliance with the federal and state agricultural regulations, additional programs, policies, and initiatives will be necessary to achieve Pennsylvania's aggressive pollution reduction commitments for agriculture. EPA indicated in its draft interim milestone evaluation that PA is significantly off track in meeting many of its agricultural conservation implementation levels and associated nutrient reduction goals. EPA would like to direct funding to support development and implementation of new initiatives that accelerate implementation of high priority agricultural practices.

### Activity:

- **Accelerate Implementation of High Priority Practices:** We recommend that PADEP identify the high priority agricultural conservation practices that will significantly reduce pollution loads and develop programs for how to accelerate implementation of those practices. Examples of high priority practices identified through EPA evaluations are: enhanced nutrient management, stream exclusion, forest buffers, traditional cover crops on inorganic acres, precision dairy feed management, animal waste management systems, conservation tillage, conservation plans, and phytase on poultry operations.

We can work with you to develop quantitative outputs with timeframes such as developing cost-share programs to fund practice implementation by a certain date, acreage/linear feet goals for each practice, etc.

#### **IV. PAG-13 Reissuance**

If Chesapeake Bay goals are to be achieved, the next version of Pennsylvania's general permit for small MS4s (PAG-13) must include specific load reduction requirements and clear provisions that are consistent with federal regulations and the assumptions and requirements of the Chesapeake Bay TMDL. PADEP had submitted a pre-draft PAG-13 for EPA review and comment and it did contain required specific reduction targets. EPA also would like to acknowledge the training that PADEP has been delivering regarding meeting core-permit requirements and water quality based requirements

##### **Activities:**

- Provide guidance to permittees with respect to how they will comply with permit conditions, including pollutant reduction requirements. This guidance needs to be consistent with the assumptions and requirements of the Chesapeake Bay TMDL, including BMP efficiencies. The guidance to permittees how reductions are to be properly calculated in Chesapeake Bay Pollutant Reduction Plans, similar to guidance documents issued by Maryland Department of Environment and Virginia Department of Environmental Quality. This document will ensure that plans are consistent throughout the state and assist PADEP in review and approval determinations. The pollutant reductions specified in the pre-draft PAG-13 are insufficient to meet the pollutant reduction goals proposed by the Commonwealth for the Urban Stormwater sector. As part of the PAG-13 issuance process, PADEP must propose an attainable goal for the Urban Stormwater sector and identify where other sector loads will be adjusted.
- Grant funds can be used to work with contractors to assist with the development of a guidance document and/or staff training for review and approval of plans.
- Offer continued program training to permittees throughout the permit reissuance process. Grant funding can be used to support PADEP staff or hire 3<sup>rd</sup> party contractors to prepare and present trainings to a wide audience.
- Encourage more watershed-based or regional permits and plan preparations. Grant funding can be used to structure PAG-13 to encourage watershed-based or regional (i.e., county-based) plans and/or to develop a program to support permittees in the development and implementation of shared program.

#### **V. Accelerate Implementation of Priority Practices to Control Urban/Suburban Runoff**

##### **Activities:**

- Support efforts to implement high priority practices that reduce nutrient and sediment pollution resulting from urban/suburban runoff.
  - It is our understanding that PADEP has begun a program to provide funding to local government entities for the implementation of urban best management practices (BMPs) and green infrastructure. Grant funds can supplement this program.

- Use grants to fund and replicate innovative local programs to implement nutrient and sediment BMPs, such as programs that integrate green infrastructure into existing maintenance and capital improvement programs.
- Finalize a revised stormwater BMP Manual that is consistent with the Chesapeake Bay Program definitions and nutrient and sediment reduction values.
  - Grant funds can be used for the development, review and distribution of the manual and associated trainings.

Thanks for considering our specific recommendations and we look forward to the technical meetings that are being planned this month for EPA and PADEP to work through these issues together. Please contact me or your Project Officers for these grants if you want to discuss further.

Sincerely,



Nicholas A. DiPasquale, Director  
Chesapeake Bay Program Office

cc: Kristin Wolf, Chesapeake Bay Program Coordinator, PA DEP  
Steve Taglang, Environmental Program Manager, PA DEP  
Andrew Zemba, Director, Office of Interstate Waters, PA DEP