



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 26 2018

Mr. William C. Baker
President
Chesapeake Bay Foundation
6 Herndon Avenue
Annapolis, Maryland 21403

OFFICE OF WATER

Dear Mr. Baker:

The purpose of this letter is to provide you with the U.S. Environmental Protection Agency's (EPA) assessment as to whether revisions of the National Pollutant Discharge Elimination System (NPDES) regulations for concentrated animal feeding operations (CAFOs) are necessary to achieve the objectives of the animal agriculture commitments in the states' Watershed Implementation Plans (WIPs) developed to implement the Chesapeake Bay total maximum daily load (TMDL). This assessment satisfies the final EPA commitment made in the settlement agreement that resolved the lawsuit between the Chesapeake Bay Foundation (CBF) and EPA. *Fowler et al. v. EPA*, Civ. No. 1:09-cv-0005-CKK (D.D.C.) (Paragraph III.E.21 as amended by modification dated May 29, 2013) (EPA-CBF Settlement Agreement). For reasons described in this letter, the EPA's assessment is that revisions to the federal CAFO regulations are not necessary for the states to achieve their Chesapeake Bay agricultural pollution reduction goals.

Chesapeake Bay Watershed State Animal Feeding Operations (AFO)/Concentrated Animal Feeding Operations (CAFO) Program Reviews

Consistent with commitments in the EPA-CBF Settlement Agreement and the EPA's ongoing oversight responsibilities, the Agency has undertaken the following activities regarding the Bay states' implementation of agricultural programs designed to meet Chesapeake Bay TMDL pollutant reduction goals:

1. **Animal Agriculture Program Assessments:** The EPA conducted animal agriculture program assessments of the Bay watershed states: New York, Pennsylvania, Delaware, Maryland, Virginia, and West Virginia. The EPA's assessments evaluated the states' implementation of animal agriculture programs to achieve reductions in the amount of nitrogen, phosphorus, and sediment pollutants consistent with the Bay TMDL. The assessments examined each state's implementation of regulatory programs, as well as voluntary incentive-based programs, to meet the animal agriculture nutrient and sediment reduction commitments in their WIPs. Reports detailing the findings of the assessments can be found at: <https://www.epa.gov/chesapeake-bay-tmdl/epas-assessments-animal-agriculture-programs-chesapeake-bay-watershed>.
2. **Animal Feeding Operations (AFO) Subwatershed Assessments:** The EPA conducted assessments of AFOs within four subwatersheds in the Chesapeake Bay watershed: Cooks Creek (Virginia), Little Antietam Creek (Maryland), Beck Creek (Pennsylvania), and Rattlesnake Run (Pennsylvania). The EPA's assessments evaluated each AFO's compliance with state and federal

requirements for reducing nitrogen, phosphorus, and sediment. The EPA also evaluated the implementation of priority agricultural conservation practices relevant to improving water quality. The EPA has used these subwatershed assessments to determine how well the various state programs are being implemented at the farm level. Reports detailing the findings of the AFO assessments can be found at: <https://www.epa.gov/chesapeake-bay-tmdl/epa-assessments-subwatershed-animal-feeding-operations-afos-chesapeake-bay>

3. **CAFO Permit and Nutrient Management Plans (NMP) Reviews:** In each of the six Bay watershed states, the EPA reviewed NPDES CAFO permits and their associated NMPs. The EPA reviews, on an ongoing basis, individual permits and their associated NMPs as part of its NPDES permit oversight program to ascertain whether CAFO permits are enforceable and are consistent with NPDES regulatory requirements. The EPA has also reviewed NMPs from a number of operations covered by general permits. The results of the individual permit and NMP reviews for Delaware, Pennsylvania, Virginia, and West Virginia are incorporated in the published animal agriculture program assessments. The results of the general permit reviews for New York and Maryland can be found at: <https://www.epa.gov/chesapeake-bay-tmdl/epas-review-concentrated-animal-feeding-operation-cafo-permits-and-nutrient>.
4. **Annual Bay TMDL Progress Reviews:** The EPA conducts annual reviews of each jurisdiction's progress in meeting its Chesapeake Bay TMDL milestones and pollution reduction targets. The results of these evaluations can be found at: <https://www.epa.gov/chesapeake-bay-tmdl/epa-oversight-watershed-implementation-plans-wips-and-milestones-chesapeake-bay>.

The EPA uses the results of the above-listed reviews and assessments to evaluate the effectiveness of each state program including the agricultural programs in achieving the pollutant reductions and other milestones set forth in each Bay jurisdiction's WIP.

The EPA's CAFO Regulation Assessment

The EPA's reviews described above have provided extensive information about each state's animal agriculture program and its likely achievement of the objectives of the animal agriculture commitments in the states' WIPs developed to implement the Bay TMDL. Based on these reviews, it is the EPA's assessment that federal CAFO regulation revisions are not necessary to achieve the Chesapeake Bay TMDL's agriculture pollution reduction goals. Based on these reviews, the EPA has identified three components of the states' agricultural programs that, in combination, appear to correlate with achievement of the animal agriculture pollution reduction goals:

- (1) well-implemented and well-enforced regulatory programs;
- (2) voluntary incentive programs that address farming operations not covered under the regulatory programs; and
- (3) a targeted annual state agriculture cost share program and other financing programs that supplement USDA Farm Bill funding to implement agricultural conservation practices called for in the state WIPs.

Because of the unique regulatory and agricultural landscape in each Bay watershed state, each state employs a different mix of these three program components. For example, the reviews provide examples of states that have strong state programs (regulatory and/or voluntary programs), and are making progress under the TMDL, despite limited coverage by NPDES CAFO permits. Conversely, the reviews also provide examples of states that have comprehensive NPDES CAFO permit coverage but whose

progress under the TMDL is hindered by weaknesses in funding and compliance regarding state programs that address operations not covered under the CAFO program.

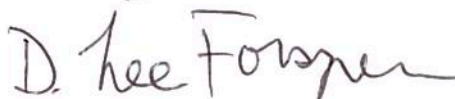
Comprehensive and well-implemented CAFO permit programs are an important component in helping to achieve the animal agriculture pollution reduction goals, but they are not the only important component. In all Bay watershed states, the EPA has found that it will take more than effective CAFO permit programs to meet the state animal agriculture pollution reduction goals. It is also possible to achieve the goals through strong state programs to address animal operations that are not covered under the CAFO program, and with sufficient funding to implement the agricultural conservation practice called for in its WIP.

The EPA can devote its efforts toward the achievement of the WIP animal agriculture commitments most effectively by helping states achieve the three components of state agriculture programs listed above. The EPA will continue its rigorous and transparent oversight of the states' progress toward attainment of the Bay's 2025 goals. Future milestones in the states' efforts and EPA's oversight of the states' progress are outlined in the Chesapeake Bay TMDL, which can be found at: https://www.epa.gov/sites/production/files/2014-12/documents/cbay_final_tmdl_section_7_final_0.pdf. The EPA has developed Phase III WIP expectations for the Bay jurisdictions to guide the development and implementation of their state plans between now and 2025. In 2019, the jurisdictions are expected to submit draft Phase III WIPs, and the EPA will use the information from the program review activities described in this letter to evaluate whether the jurisdictions' agricultural pollutant reduction plans are comprehensive and robust enough to meet the Bay TMDL's pollutant reduction goals.

The EPA will continue to work with the states as they implement federal and state regulatory programs, voluntary programs, and agricultural cost-share programs and other financial incentives supporting implementation of the conservation practices in the state WIPs. In addition, the EPA will continue to perform its oversight responsibilities to confirm that these strategies are implemented. As leaders in cooperative federalism, the EPA and the Chesapeake Bay Program partnership remain committed to achieving the Chesapeake Bay TMDL's agriculture pollution reduction goals in service of restoring this vital national resource.

If you have any questions concerning this assessment, please do not hesitate to contact me or have your staff contact Jenny Molloy, Water Permits Division, at molloy.jennifer@epa.gov or (202) 564-1939.

Sincerely,



D. Lee Forsgren
Deputy Assistant Administrator

cc: Peter D. Lopez
Cosmo Servidio

