



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

FEB 17 2012

Ms. Kelly Heffner, Deputy Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Ms. ^{Kelly}Heffner:

Thank you for Secretary's Krancer's response to the email we sent you on December 1, 2011 and for providing comments on the draft report entitled "Pennsylvania's Trading and Offset Programs Draft Review Observations." Enclosed is EPA's final assessment report regarding Pennsylvania's Trading and Offset Program which contains EPA's comment on each of PADEP's responses regarding the draft report.

As you are aware, the review of each Chesapeake Bay Watershed jurisdiction's offset and trading program is the first such assessment that EPA has performed. EPA plans to revisit these assessments periodically. The timing of this first assessment was important to providing feedback to the jurisdictions as they prepared their draft Phase II Watershed Implementation Plan (WIP) and 2012-2013 two-year milestones. We want to thank you and your staff for the time and discussion regarding the Pennsylvania Nutrient Credit Trading Program (NCTP) during our meetings in May and July 2011 as well as during follow-up calls. EPA would like to continue working with you in the resolution of our comments as Pennsylvania moves forward to meet the assumptions and requirements underlying the Chesapeake Bay TMDL.

In this assessment, EPA has emphasized to all jurisdictions the need for credible offset programs for each sector that will contribute new or increased nutrient or sediment loads to the Chesapeake Bay Watershed. EPA is committed to ensuring that all jurisdictions have effective offset programs in place. If a jurisdiction does not develop a credible offset program to manage growth in particular sectors, EPA expects that jurisdiction to demonstrate that those sectors either are not growing or do not contribute new or increased loads even though they are growing. This numeric demonstration should be based on recent historical trends and future projections and should be consistent with the assumptions and requirements underlying the Chesapeake Bay TMDL.

Additionally, EPA has questions about whether the Pennsylvania agricultural trading baseline meets the requirements of Appendix S of the Chesapeake Bay TMDL. It is critical that the agricultural baseline meets all the load allocations assigned in the Bay TMDL to Pennsylvania agriculture if credits generated are to be used to meet a permittee's compliance

obligations. EPA expects Pennsylvania to 1) demonstrate that the agricultural trading baseline when applied to all applicable agricultural sources is consistent with the applicable load allocations in the Bay TMDL or 2) make necessary adjustments to the trading baseline to ensure consistency with the TMDL.

The baseline issue, along with remaining unresolved Pennsylvania-specific issues, are summarized in Appendix A of the final report. EPA understands that several of these issues cannot be immediately corrected. EPA expects PADEP to develop a plan of action to address by the end of calendar year 2012 all unresolved, jurisdiction-specific Tier 1 and Tier 2 recommendations from the enclosed final report and to address by the end of calendar year 2013 all unresolved recommendations common to all jurisdictions. As a first step, EPA and PADEP should agree on a schedule to develop an action plan that can be incorporated into Pennsylvania's final Phase II WIP. This schedule should include actions over the same period as the Commonwealth's current two-year milestones for the Chesapeake Bay.

Please contact Patricia Gleason of my staff at 215-814-5740 to coordinate any follow-up meetings.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Andrew Zemba