

EPA REGION 3

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

The Chesapeake Bay Settlement Agreement

ISSUE SUMMARY:

In 2023, EPA entered into a settlement agreement with Delaware, Maryland, the District of Columbia, Virginia, the Chesapeake Bay Foundation, the Maryland Watermen's Association, Anne Arundel County Maryland, and two individuals resolving a lawsuit that those parties had filed in late 2020 in the United States District Court for the District of Columbia. The suit alleged that EPA failed to execute a mandatory duty under Section 117 of the Clean Water Act and violated the Administrative Procedure Act in connection with the Agency's role in implementing the Chesapeake Bay total maximum daily load (TMDL). Specifically, the Plaintiffs claimed that EPA erred in its review of Pennsylvania's and New York's Phase 3 Watershed Implementation Plans, which did not demonstrate that the states would meet a Partnership Goal of having all practices and controls in place by 2025 to achieve applicable water quality standards in the Bay. In the Settlement Agreement, EPA agreed to take certain actions through April 2027 to resolve the litigation. By its terms, the Settlement Agreement terminates on April 30, 2027.

KEY POINTS:

- EPA has continuing obligations under the Settlement Agreement through April 2027. Region 3's Chesapeake Bay Program Office, Water Division, and Enforcement and Compliance Division each are responsible for actions required by the Settlement Agreement.
- If the Agency fails to meet these obligations, the Settlement Agreement provides that the Plaintiffs may reinstitute their original lawsuits.
- Plaintiffs and other environmental non-Governmental Organizations (NGOs) continue to track EPA's compliance with the terms of the Settlement Agreement. Per the terms of the Settlement Agreement, the Agency maintains a website where it posts information about completion of actions required by the Settlement Agreement, including, but not limited to, bi-annual summaries of compliance assurance activities that EPA has taken in certain Pennsylvania counties in the prior six months.
- The Settlement Agreement terminates on April 30, 2027.

ONGOING/UPCOMING REVIEWS FOR FY2025:

- Under the Settlement Agreement, the following are some of the actions required to be completed by EPA in FY2025:
 - Evaluate Pennsylvania's progress toward the 2025 Goals and make the evaluation publicly available on www.chesapeakeprogress.com;
 - Determine whether there are any administratively extended NPDES permits issued by the Pennsylvania Department of Environmental Protection (PADEP) in the Bay watershed and post a list of any such permits on <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed>;
 - Continue to identify and review animal feeding operations in certain Pennsylvania counties and evaluate whether the AFOs are significantly contributing nitrogen, phosphorus, and/or sediment to jurisdictional waters and to determine if those sources should be subject to individual NPDES permits;

- Review relevant Chesapeake Bay grant guidance and update it as needed; and,
- Monitor Chesapeake Bay assistance agreements for proper and timely obligation of federal funds.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress
 ☐ Industry
 ☒ States
 ☐ Tribes
 ☒ Media
 ☒ Other Federal Agency
☒ NGO
 ☒ Local Governments
 ☒ Public

MOVING FORWARD:

The Region 3 Office of Regional Counsel will continue to work with the Chesapeake Bay Program Office, the Water Division, and the Enforcement and Compliance Assurance Division to monitor progress under the Settlement Agreement and to timely meet EPA's action deadlines. As 2025 approaches, EPA should expect continued and increased interest by NGOs and other stakeholders in the Agency's progress under the Settlement Agreement and whether the actions the Agency takes are having an impact on efforts to achieve water quality goals.