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Saving a National Treasure

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December 6, 2013

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The Honorable Andrew Cuomo
State Capital Building
Albany, New York 12224

The Honorable Jack Markell
Carvel State Office Building
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Ms. Gina McCarthy
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Environmental Protection Agency
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The Honorable Robert McDonnell
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Ms. Maggie McIntosh
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The Honorable Martin O'Malley
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The Honorable Earl Ray Tomblin
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Mr. Tom Vilsack
US Secretary of Agriculture
US Department of Agriculture
1400 Independence Avenue, SW
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Dear Members of the Executive Council:

Roughly thirty years ago, the leaders of the United States Environmental Protection Agency (EPA), the State of Maryland, the Commonwealths of Pennsylvania and Virginia, the District of Columbia, and the Chesapeake Bay Commission embarked upon a historic and ambitious journey to work cooperatively to restore the Chesapeake Bay. As the 30th Anniversary of the signing of the first Chesapeake Bay Agreement approaches and the Executive Council is considering a new Bay Agreement, it seems appropriate to look back at the program's successes and failures and learn from them, with the goal of identifying actions that will help fulfill the vision of a restored Chesapeake Bay. With that in mind, we offer the following eight recommendations, on behalf of the Chesapeake Bay Foundation (CBF).

The Chesapeake Clean Water Blueprint, comprised of the pollution limits established by the Chesapeake Bay Total Maximum Daily Load (TMDL), the associated Watershed Implementation Plans (WIPs), along with the accountability framework, represent "the moment in time" for Bay restoration. While progress has been made, we need your continued commitment to this effort. Specifically, we urge the jurisdictions to view EPA's pending assessment of milestone achievements (from 2012-2013) as the opportunity to conduct an honest examination of their programs. They should focus their efforts on identifying areas that need improvement, as opposed to fending off criticism or defending their current programs.

Recommendation: EPA, using its authority under Clean Water Action Section 117(g), needs to ensure the Bay jurisdictions stay on track, achieve their milestone commitments, or face consequences for failure.

In addition, we encourage the States and the District to continue to engage interested stakeholders in their implementation efforts. In Pennsylvania, for example, we are concerned with a notable decline in emphasis on Bay issues as manifested by less frequent meetings of various advisory committees and workgroups. These meetings were vital to providing clarity of intent and understanding of technical issues and responsibilities among federal, state, and local agencies, the regulated community, and others stakeholders.

Recommendation: Jurisdictions should hold regular meetings of the advisory committees and workgroups associated with WIP implementation.

The most costly and challenging aspect of complying with the Chesapeake Clean Water Blueprint is reducing and maintaining pollutant loadings from urban/suburban areas. The majority of this responsibility falls to local governments, many of which currently lack the technical and financial capacity to achieve and maintain the necessary pollution reductions. As a result, many local jurisdictions are pushing back against what they see as an “unfunded mandate.” In addition, many of the hundreds of stormwater permittees within the watershed, have been asking for clarity and technical assistance from EPA and the states.

Recommendation: EPA needs to provide strong and consistent oversight of municipal stormwater permit development by the states. At the same time, the states must create permits with clear standards and full accountability, benchmarks and deadlines, and implementation plans directly connected to achieving TMDL Waste Load Allocations. Further, the states must commit to assisting their local partners with financial and technical support while also expediting – and not further delaying -- completion of regulatory mandates.

Recommendation: The Partnership should better utilize its existing connections to local governments to help them develop the technical and financial capacity to succeed. In addition, the new Bay Agreement should contain explicit goals and outcomes regarding local government involvement and assistance.

One strength of the Partnership is in providing a forum for the exchange of ideas, lessons learned, and facilitating innovation. Providing a venue for the development and transfer of creative stormwater financing mechanisms would be an ideal role for the Partnership. CBF supports the creation of a Finance Advisory Committee that would serve as an expert resource for local governments, as well as assist in developing financing strategies to achieve broader conservation goals, magnifying the expertise that the region already has in the Environmental Finance Center.

Recommendation: Create a Finance Advisory Committee, loosely modeled on the Scientific and Technical Advisory Committee.

The Partnership’s focus, in recent years, on achieving pollution reductions, was necessary and appropriate. That said, we think it is time to re-energize and engage the broader group of agencies and stakeholders that have felt somewhat disenfranchised in recent years due to the focus on the development and implementation of the Clean Water Blueprint. Consequently, we support a new Chesapeake Bay Agreement with a broader set of goals and outcomes. We are struck, however, by the “workman-like” approach to the development of the new Agreement. The Agreement should be an opportunity to re-invigorate the program and reaffirm the vision for, and framework to achieve, a healthy watershed. Currently, it appears the goals and outcomes of the Agreement are determined by the “lowest common denominator,” - as opposed to being aspirational and forward looking – one of the problems that has plagued the Partnership in the past.

Recommendation: Create a new Chesapeake Bay Agreement that is broad in scope, aggressive in action, and effective in outcome.

Perhaps some skepticism of a new Agreement is warranted, given that many of the commitments of the Chesapeake 2000 Agreement were not achieved. However, we are in a new era. Today, the Chesapeake Clean Water Blueprint and the Executive Order 13508 for Chesapeake Bay Protection and Restoration are in place, charting a course for action and providing mechanisms to assess and track progress. CBF's priority for a new Agreement is to ensure this same level of transparency and accountability. Unfortunately, the current draft Agreement, that allows for jurisdictions to "opt in or out" of various goals and outcomes, provides neither transparency nor accountability. In addition, the provision that would allow goals and outcomes to be changed by the Principals' Staff Committee, and not the Executive Council, is equally problematic.

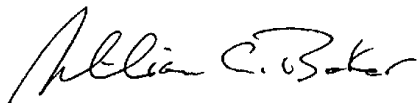
Recommendation: Do not allow for jurisdictions to "opt in or out" of the various goals and outcomes in the new Bay Agreement. The Agreement should specify roles and responsibilities of state and federal partners.

Clarifying expectations and roles of the various jurisdictions in the new Agreement, should not preclude the development of, and commitment to, strong goals and outcomes. For example, the current omission of any outcome for toxic contaminants, nor mention or consideration of climate change in the draft agreement, is incredibly short-sighted and quite frankly, an embarrassment, for what is considered to be the "premier" restoration program in the country.

Recommendation: Ensure the new Chesapeake Bay Agreement includes goals specific to toxic contaminants and climate change.

In closing, we want to sincerely acknowledge the hard work and commitment that has led to progress toward restoring the Chesapeake Bay and its rivers and streams during the last 30 years. There is much of which we should feel proud, but as highlighted in the recent Bay Barometer, there is still more work to do. The Chesapeake Bay Foundation remains a willing and active partner to ensure progress continues and the goal of a clean Bay is achieved.

Sincerely,



William C. Baker
President
Chesapeake Bay Foundation



Kim Coble
Vice President
Chesapeake Bay Foundation

cc: Principals' Staff Committee
Jeff Corbin, EPA
Beth McGee, CBF