**New York Association of Conservation Districts**
**nyacd@nycap.rr.com**
**www.nyacd.org**
**518-857-0060**
245 Hartley Rd Amsterdam, NY 12010
Tom Nichols, President
Judy Littrell, Executive Director

October 27, 2010

Water Docket
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20460

To: Lisa Jackson, Administrator

RE: Draft Chesapeake Bay TMDL

The New York Association of Conservation Districts (NYACD) is a nongovernmental, nonpartisan, volunteer organization with over 50 years of experience representing New York State's 58 Soil & Water Conservation Districts, including the 5 boroughs of New York City. Our policies represent a grassroots process that our organization undergoes, and forms the direction that NYACD follows on issues pertaining to the protection of New York's natural resources.

**New York State Has Been Proactive in improving Water Quality of the Susquehanna**

NYACD is very concerned of the effects that the proposed TMDL would have on the State of New York. For the past 10 years or so, New York has taken a proactive approach to sending clean water to the Chesapeake Bay, with the formation of the Upper Susquehanna Coalition (USC) which is a group of 16 Soil and Water Conservation Districts (SWCDs) aimed at partnering to improve natural resources in the basin, with a commitment to continue to do so. Because of the proactive work of the USC, the partnering SWCDs, and other partners such as NRCS, the water leaving New York and being tested in Towanda, PA, is deemed to be healthy. Therefore, if each of the Bay states had New York's current water quality, as it is in Towanda, nutrient and sediment problems would be nonexistence in the Chesapeake Bay, and the Bay would be healthy.

**New York Being Treated Unfairly: All States in the Basin Need to be on a Level Playing Field**

That being the case, NYACD is asking that New York be treated more fairly in terms of the TMDL and the Watershed Implementation Plan, and be given credit for the proactive work that has been done. In 2007, EPA stated those that benefit the most from the Chesapeake Bay Recovery must do more. This idea should be followed during the TMDL Allocation. Because of New York's position at the headwaters of the Bay, New York receives basically no economic benefit from the clean-up of the Bay, yet New York is being threatened with unfunded mandates, in a time, when the New York State is in dire financial stress which flows directly to county budgets. This financial stress of the state will limit the resources available in terms of implementation – to fund projects, and have technical staff available for implementation. EPA's proposed TMDL regulation imposes disproportionately heavier restrictions for water quality in New York in order to help other states meet their overall TMDL goal. Even if the other states achieve their EPA mandated allocations by 2025, their water would still contain a higher percentage of nutrients than New York has at the present. Because of the land use in the Upper Susquehanna Basin in New York, the water leaving New York has a very low nutrient content because the land use in that area. The watershed is approximately 70% forested, with a large land base for agriculture. Soil and Water Conservation Districts have worked together with farmers, rural landowners, and municipalities to implement water quality programs.

Since the late 1990's, New York's farms have been under strict CAFO regulations, those that are more strict than current EPA regulations dictate. The CAFO program is overseen by the Department of Environmental Conservation

(DEC) and the Department of Ag and Markets. CAFO plans, Nutrient Management Plans, BMPs, are all developed by Certified Nutrient Management Planners, which go hand in hand with the Ag Environmental Management program that is a voluntary assessment of farm operations so that they can reasonably meet natural resource protection on their farms. Most farms cannot financially tolerate any additional unfunded mandates and additional regulations would force many out of business. Agriculture is the leading industry in the Upper Susquehanna region of New York, so to unnecessarily loose more farms, is an economic lose to the small rural communities the Basin. Farms going out of business would also be an additional lose of a source of locally produced food and jobs.

**Unrealistic Allocation/ New York's WIP/Credibility of the Bay Watershed Model**

New York's WIP was developed by partners in natural resource management – USC, DEC, Ag and Markets, NRCS, Cornell University, and various other stakeholders. A realistic approach was used based on current water quality, proactive programs already in place, and funding sources, which are limited. New York's WIP proposed spending $200 million in technical and financial assistance by 2025. The EPA nutrient and sediment allocations and backstop mandates are unattainable and extremely costly with minimal nutrient reduction benefits and minimal impact on water quality in the Bay.

NYACD is asking that EPA accept New York's WIP without the backstops. New York's WIP is realistic, and takes into account New York's proactive programs that have been in place for more than 10 years, and are proving to be effective based on water quality, from river water tested in Towanda, PA. The EPA mandated TMDL allocation and the determination of whether the state meets the requirements are solely based on the Bay Watershed Model and not on real water quality data. The Bay Watershed Model has never been tested for its accuracy, and large deviations in estimated delivered nutrient loads have occurred from one version of this model to the next. NYACD requests that real, hands-on scientific data, be used in determining the final TMDL.

**Conclusion**

While NYACD understands the importance of restoring water quality to the Bay, it must be done so in a realistic and fair manner. The draft TMDL allocations are unattainable for New York to achieve, based on the health of the water currently leaving New York, and the strength of the programs already in place. New York does not receive any economic benefit from Bay clean-up, therefore, tidal states that do benefit economically from the clean-up, should be mandated to do more than what is being proposed for New York. If these unfunded mandates/reduction of load allocations with backstops, are placed on the back of the Upper Susquehanna Basin, it would severely damage the rural communities from an economic standpoint. Farms would go out of business, unemployment would rise, other small businesses would suffer, including support services like the Soil and Water Conservation Districts, and the tax base would be lost. Please put New York on a level playing field with other states in the Bay watershed, and please account for the proactive approach New York has implemented in regards to natural resource management.