Message

From: Sexton-sims, Aisha [Sexton-Sims.Aisha@epa.gov]
Sent: 5/22/2020 4:33:10 PM
To: Dere, Christopher [Dere.Christopher@epa.gov]
Subject: RE: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

Ex. 5 Deliberative Process (DP)

-Aisha

Aisha M. Sexton-Sims, Ph.D.
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(212) 637-3608

From: Kramer, Kim <Kramer.Kim@epa.gov>
Sent: Friday, May 22, 2020 11:27 AM
To: Sexton-sims, Aisha <Sexton-Sims.Aisha@epa.gov>
Cc: Balla, Richard <Balla.Richard@epa.gov>; Dere, Christopher <Dere.Christopher@epa.gov>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>
Subject: RE: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

Ex. 5 AC/DP

Ex. 5 Deliberative Process (DP)

Kim M. Kramer
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US EPA Region 2
290 Broadway-16th Floor
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From: Sexton-sims, Aisha <Sexton-Sims.Aisha@epa.gov>
Sent: Friday, May 22, 2020 9:46 AM
To: Kramer, Kim <Kramer.Kim@epa.gov>
Subject: RE: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

Thanks very much Kim. Adding my apologies for not contacting you when we heard of this. We submitted highlights on this as well. Looks like the States' NOI was not included in our write up. Yours looks great.
Best,

Aisha

Notice of Intent to Sue Regarding Chesapeake Bay TMDL: On May 18, the Chesapeake Bay Foundation, along with its partners, issued a 60-day notice to EPA for the agency's failure to hold PA
and NY accountable under the Bay TMDL. This Notice of Intent (NOI) will assert that U.S. Environmental Protection Agency has failed to require Pennsylvania and New York to develop implementation plans that will achieve the needed pollution reductions by 2025. The NOI is the first step in the litigation process. EPA has 60 days to respond before any further action can be taken. (POC: C. Dere)

Provides $6 Million to Reduce Excess Agricultural Runoff to the Chesapeake Bay: On May 18, EPA announced the allocation of $6 million to Chesapeake Bay states to improve water quality by reducing excess nitrogen from agricultural operations. EPA analyses have shown that reducing nitrogen through improved agricultural practices is far less costly, and more effective, than reducing phosphorus to improve water quality. The funding will be prioritized in each state to their most effective basins (allowing for the greatest impact from the reduction in nitrogen), and to those projects that implement "Best Management Practices" with the highest effectiveness. Each state in the Chesapeake Bay watershed recently submitted Phase III Watershed Implementation Plans (WIP), in which they committed to reduce nitrogen loads from the agriculture sector from 2019 to 2025. The following funding allocations were calculated as a percentage of the total of each bay jurisdictions' WIP commitments: Pennsylvania: $3,695,112, Virginia: $1,110,191, Maryland: $695,940, Delaware: $364,540, New York: $79,536, and West Virginia: $54,681. (POC: C. Dere)

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From: Kramer, Kim <Kramer.Kim@epa.gov>
Sent: Friday, May 22, 2020 8:47 AM
To: Sexton-sims, Aisha <Sexton-Sims.Aisha@epa.gov>
Subject: FW: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

I left you off, Aisha, sorry. FYI below.

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From: Kramer, Kim
Sent: Friday, May 22, 2020 8:46 AM
To: Balla, Richard <Balla.Richard@epa.gov>
Cc: Jackson, Wayne <Jackson.Wayne@epa.gov>; Arcaya, Alyssa <arcaya.alyssa@epa.gov>; Dere, Christopher <Dere.Christopher@epa.gov>
Subject: FW: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

See below for details on the call I had with Kelly Gable and Chris Day (R3 ORC) yesterday and the weekly I drafted for Phyllis to send up.

Kim M. Kramer

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From: Kramer, Kim
Sent: Thursday, May 21, 2020 2:18 PM
To: Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>
Subject: Weekly Highlight for Next Week on the 2 NOIs re Chesapeake Bay TMDL Implementation

Hi Phyllis.

I spoke with Chris Day and Kelly Gable about the NOIs that came in. They told me that on Monday, the Chesapeake Bay Foundation, along with the three Attorneys General from Maryland, Virginia and the District of Columbia, held a press conference on their NOIs and were in lock-step with each other on their arguments that the EPA failed to ensure that PA and NY's Watershed Implementation Plans meet the CB TMDL. They also mentioned that on Tuesday, the Administrator and Region 3 Regional Administrator announced that they were releasing some funding for non-point sources in the CB region and during that announcement, the Administrator and RA were asked why the agency failed to ensure that PA's Phase III WIP meet the CB TMDL. Lastly, the Administrator testified in front of the Senate Environment and Public Works committee this week and the expectation was that he would be asked about this. We are awaiting the transcript on this.

Ex. 5 Deliberative Process (DP)

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Here is a weekly on the matter.

Chesapeake Bay Foundation, MD, VA, DC, and Others Notify EPA of Their Intent to File Litigation Challenging EPA's Assessment of PA and NY's Implementation Plans for the Chesapeake Bay TMDL
On May 18, 2020, EPA received two notices of intent (NOI) to sue the agency regarding its assessment of PA and NY's Phase III watershed implementation plans (WIP) for the Chesapeake Bay TMDL. One NOI was sent by the Chesapeake Bay Foundation (and other stakeholders) and the other by Maryland, Virginia and the District of Columbia. Both include the claim that EPA failed to ensure that PA and NY's WIPs met the Chesapeake Bay TMDL. The NOIs allege that EPA violated its mandatory duty under Section 117(g) of the CWA for failing "to ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain . . . the nutrient goals of the Chesapeake Bay Agreement. The CBF NOI also included a claim that EPA acted arbitrarily and capriciously in its assessment of PA and NY's Phase III WIPs, in violation of the Admirative Procedure Act. At a joint press conference to announce nonpoint source grant funds for Chesapeake Bay farmers that same day, EPA Administrator Wheeler and Regional Administrator Servidio responded that the claims in the NOIs lack merit. They emphasized that EPA remains committed to working with the States to achieve the TMDL's goal of ensuring that measures are in place across the Bay watershed by 2025, to restore the tidal Bay water quality. A DOJ attorney is in the process of being assigned to this case. Contact Kim Kramer (212) 637-3238.

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