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

The Honorable L. Preston Bryant
Secretary of Natural Resources
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

DEC 29 2009

Dear Secretary Bryant:

I am writing to you in your capacity as chair of the Principals' Staff Committee of the Chesapeake Executive Council. The past year has provided the Chesapeake Bay Program partners with an unprecedented opportunity to accelerate efforts to restore the Chesapeake Bay, including the agreement made by the Chesapeake Executive Council to install the necessary nutrient and sediment controls no later than 2025. In May 2009, President Obama issued *Executive Order 13508: Chesapeake Bay Protection and Restoration* that commits the broad authorities of the Federal government toward a renewed sense of urgency and commitment to restoring the Bay. Energized by the prospect of a Chesapeake Bay Total Maximum Daily Load (Bay TMDL) by December 2010, the Bay Program partners are hard at work preparing comprehensive Watershed Implementation Plans and two-year milestones, the foundation for water quality improvement in local waters and in the Bay.

A key part of this renewed effort is the establishment of an accountability framework to ensure the restoration of the Chesapeake Bay and reflect the commitment of the Bay partnership across the watershed. One critical component of this new accountability framework is the identification of actions that the U.S. Environmental Protection Agency (EPA) will draw upon if a Chesapeake Bay watershed State or the District of Columbia does not meet EPA's expectations for developing Watershed Implementation Plans or does not demonstrate satisfactory progress toward achieving nutrient and sediment allocations established by EPA in the Chesapeake Bay TMDL. [1]

Overview of EPA's Chesapeake Bay Accountability Framework

EPA's new accountability framework was first described in September 2008 to guide local, state, and federal efforts to reduce nitrogen, phosphorus, and sediment loads to levels that achieve the States' and the District's water quality standards in the Chesapeake Bay and its tidal tributaries and embayments. [2] The accountability framework is being established in part to

[1] These potential EPA actions were jointly developed by the U.S. Environmental Protection Agency's Region III Water Protection Division and Chesapeake Bay Program Office, EPA Region II, and EPA Headquarters' Office of Water and Office of General Counsel.

[2] U.S. EPA, Letter from Region III Administrator Donald S. Welsh to Secretary John Griffin, Maryland Department of Natural Resources, September 11, 2008, accessed at http://archive.chesapeakebay.net/pubs/subcommittee/wqsc/EPA_Region_III_letter_to_PSC_091108.pdf

implement the reasonable assurance provisions of the Chesapeake Bay TMDL and pursuant to Section 117(g)(1) of the Clean Water Act, which directs the EPA Administrator to "ensure that management plans are developed and implementation is begun... ."[3] The Executive Order 13508 also calls for a new accountability framework that guides local, state, and federal water quality restoration efforts.[4]

In a November 4, 2009 letter, EPA provided its expectations for the first two elements of the Chesapeake Bay accountability framework: the Watershed Implementation Plans (Plans) and the two-year milestones.[5] In that letter EPA also said it "may take any, or all, of a variety of actions or 'consequences'" should the jurisdictions not meet EPA's expectations. The remaining elements of the accountability framework involve EPA's commitment to track and assess restoration progress and, as necessary, take specific federal actions if the States and/or the District do not develop sufficient Watershed Implementation Plans, effectively implement the Plans and/or fulfill their two-year milestones.

This letter identifies how progress toward achieving nutrient and sediment allocations will be tracked, what State or District shortfalls may trigger EPA action, and what actions are currently available to EPA. EPA sees these potential actions as necessary for ensuring accountability but intends that they be viewed as a "backstop," with successful and timely State and District implementation the much preferred alternative. The identification of possible federal actions is intended to strengthen our individual and collective resolve to make the difficult choices and decisions along the road to a restored Chesapeake Bay and watershed and to fill in the gaps to aid States and the District to meet their commitments in order to ensure that the allocations in the TMDL are achieved. There must be clear expectations laid out at the start, quantifiable measures established along the way, and public accountability with each step taken under this new framework. EPA is committed to doing its part to make this framework successful; the actions identified here are part of that commitment.

EPA Expected Deliverables and Triggers for Federal Action

In the November 4, 2009 letter, EPA provided its expectations for the content and timing of the jurisdiction's Plans and two-year milestones. To assure that these expectations are realized, EPA will closely assess and track the following activities and take appropriate action upon a jurisdiction's failure to:

- Develop and submit Phase I, II and III Watershed Implementation Plans consistent with the expectations and schedule described in EPA's letter of November 4;

- Develop two-year milestones consistent with the expectations, load reductions and schedule described in EPA's letter of November 4;

[3] Clean Water Act Section 117(g)(1).
[4] Presidential Executive Order 13508—Chesapeake Bay Protection and Restoration, Friday, May 15, 2009. Federal Register Vol. 74, No. 93. accessed at <http://executiveorder.chesapeakebay.net>.
[5] U.S. EPA, Letter from Region III Acting Administrator William C. Early to Secretary L. Preston Bryant, Virginia Department of Natural Resources, November 4, 2009 accessed at <http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf>

- Achieve each successive set of two-year milestones and their respective target loads by having appropriate controls in place pursuant to the strategies identified in the jurisdiction's Watershed Implementation Plan and two-year milestones;

- Develop and propose sufficiently protective National Pollutant Discharge Elimination System (NPDES) permits consistent with the wasteload allocations of the Bay TMDL and the Clean Water Act; and

- Develop appropriate mechanisms to ensure that non-point source load allocations are achieved.

Failure to fully meet the expectations identified above would subject a State and/or the District to potential EPA actions. However, EPA is confident that the jurisdictions will fully support and meet their planning and target load commitments on schedule.

Assessing and Evaluating Progress and Building a Transparent Accountability System

EPA monitoring of the State or the District's progress is a critical component of the Chesapeake Bay TMDL's accountability system for restoring water quality in the Bay and its tidal tributaries. For the planning elements, EPA will evaluate whether the jurisdiction's Watershed Implementation Plans and two-year milestones are consistent with the expectations identified in the November 4, 2009 letter and the load and wasteload allocations in the Bay TMDL. EPA will also monitor whether a jurisdiction has implemented point and nonpoint source controls to meet the basin-jurisdiction loading targets identified in its two-year milestones.

EPA will also work with the States and the District to build a transparent accountability system. This system is expected to allow EPA, the States and the District, local government and the public a clear understanding of how wasteload allocations (WLAs) and load allocations (LAs) are being implemented and attained through appropriate point and nonpoint source controls to meet the basin-jurisdiction loading targets identified in its two-year milestones. The system is also expected to track any offsets that are relied upon to achieve the WLAs and LAs and build appropriate accountability for implementation of such offsets. The States and the District will also be expected to identify contingency actions if proposed actions do not yield the expected results. The details of this process are further described in Enclosure A.

Potential Federal Actions

Described below, and in further detail in Enclosure B, is the list of potential actions currently available to EPA to ensure that jurisdictions: develop and implement appropriate Watershed Implementation Plans; attain appropriate two-year milestones of progress; and provide timely and complete information to an effective accountability system for monitoring pollutant reductions.[6] This list may be updated at any time based upon new legislative, regulatory

[6] All of these actions are based on existing EPA authorities. EPA reserves its discretionary authority to take any of these actions as appropriate and as part of its normal oversight of State NPDES permit and enforcement programs and the administration of grant programs for reasons independent of the Bay accountability system.

and/or program policy developments related to carrying out Chesapeake Bay restoration efforts. EPA may exercise its discretionary authority to take any or all of the following actions as necessary:

- **Expand NPDES permit coverage to currently unregulated sources –** For example, utilizing "Residual Designation Authority" to increase the number of sources, operations and/or communities regulated under the NPDES permit program;
- **Object to NPDES permits and increase program oversight** – Pursuant to EPA-Jurisdiction NPDES program agreements, expanding EPA oversight review of draft permits (major and minor) in the Bay watershed and objecting to inadequate permits that do not meet the requirements of the Clean Water Act (including but not limited to NPDES effluent limits that are not consistent with the Bay TMDL's wasteload allocations);
- **Require net improvement offsets** – For new or increased point source discharges, requiring net improvement offsets that do more than merely replace the new or expanding source's anticipated new or increased loadings;
- **Establish finer scale wasteload and load allocations in the Bay TMDL –** Establishing more specific allocations in the final December 2010 Bay TMDL than those proposed by the States and the District;
- **Require additional reductions of loadings from point sources –** Revising the final December 2010 Bay TMDL to reallocate additional load reductions from non-point to point sources of nutrient and sediment pollution, such as wastewater treatment plants;
- **Increase and target federal enforcement and compliance assurance in the watershed** – This could include both air and water sources of nutrients and sediment;
- **Condition or redirect EPA grants –** Conditioning or redirecting federal grants; incorporating criteria into future Requests for Proposals based on demonstrated progress in meeting Watershed Implementation Plans and/or in an effort to yield higher nutrient or sediment load reductions; and
- **Federal promulgation of local nutrient water quality standards** – Initiating promulgation of federal standards where the State or the District water quality standards do not contain criteria that protect designated uses locally or downstream.

EPA Evaluation and Notification Process

EPA expects to clearly communicate where it believes a jurisdiction has fallen short of expectations and the basis of that shortfall, so that EPA can select the most appropriate actions to correct the shortfall. For this reason, EPA has developed the following evaluation and notification process building from the triggers described above in EPA Expected Deliverables and Triggers for Federal Action and in the letter dated November 4, 2009.

Within 60 days from the date of a jurisdiction submission or due date of that submission (e.g., Watershed Implementation Plan Phases I, II, and III, two-year milestones, proposed NPDES permit), EPA will notify the States and the District of its assessment of the timeliness and completeness of their submission compared with EPA's stated expectations and consistency with the Bay TMDL allocations. The jurisdictions will have a 30-day opportunity to respond to EPA's determination on the submission.

Within 120 days of the original jurisdiction submission date or due date, EPA will notify the jurisdiction, in writing, of its final determination and initial actions EPA intends to take. This letter will outline what actions, if any, will be taken and provide a timeline for the actions to take place. EPA will work directly with individual States and/or the District to implement the appropriate actions. Where initial actions are not successful in bringing the jurisdiction back into alignment with EPA's expectations, as discussed above, EPA will take additional action as appropriate.

Summary

The potential actions or "consequences" identified above are available to EPA under its existing authority. If that authority increases or changes then EPA may take additional actions. In addition, under the auspices of the Federal Leadership Committee, EPA will engage in discussions with other federal agencies, most notably the U.S. Department of Agriculture and the U.S. Department of Transportation, to determine whether and what additional actions can be employed in this regard by our federal partners.

EPA expects that each State and the District will develop a Plan and milestones that will embody the expectations provided in EPA's November 4, 2009 letter. EPA will monitor and promptly assess the States' and the District's adherence to these expectations. Finally, if EPA determines that a State or the District does not meet expectations, EPA is fully committed to taking appropriate actions in that State or the District to ensure that its commitments for reduction of loadings of nutrients and sediments are fulfilled.

EPA intends to work closely with the States and the District, providing technical and other support as they develop their Plans and milestones. The States and the District should consult with EPA if there are concerns or questions in developing the draft Plans or milestones. If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Jon M. Capacasa, Director, Water Protection Division, at (215) 814-5422.

Sincerely,

Shawn M. Garvin
Regional Administrator

cc: Chesapeake Bay Program Principals' Staff Committee Members
Peter Silva, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency
J. Charles Fox, Senior Advisor to the Administrator, U.S. Environmental Protection Agency
Judith A. Enck, Regional Administrator, Region II, U.S. Environmental Protection Agency

Enclosure A: EPA Tracking, Assessing and Evaluating Progress
Enclosure B: EPA Description of Potential Actions

ENCLOSURE A

Environmental Protection Agency
Tracking, Assessing and Evaluating Progress

Assessing Watershed Implementation Plans

The Environmental Protection Agency (EPA) will carefully review the Phase I, II and III Watershed Implementation Plans (Plans) to assure that they are consistent with EPA's November 4, 2009 expectations letter. EPA will develop a consistent framework to assess the Plans and make these assessments widely available to the States and the District, interested parties and the public.

Transparent Accountability System

EPA will work with the States and the District to build a transparent accountability system. This system is expected to be a web accessible database that will provide EPA, the States and the District, and the public with a clear understanding of how wasteload and load allocations are being implemented and attained through appropriate point and nonpoint source controls and to meet the basin-jurisdiction loading targets identified in its two-year milestones. The accountability system will include enhanced monitoring of State or District programs such as the National Pollutant Discharge Elimination System (NPDES) program. This system can aid in monitoring the timing of a State or District permit renewal to avoid permit backlogs and aid in assuring that the permits are consistent with the applicable Chesapeake Bay Total Maximum Daily Load (Bay TMDL) wasteload allocations. The system is also expected to provide clear accounting for implementation of measures to reduce pollution from nonpoint sources consistent with load allocations, any pollutant trades among point and nonpoint sources as well as an accounting of any offsets that are relied upon to achieve the wasteload allocations and load allocations. EPA expects to work with the States, the District and local governments to design and implement this accountability system for initial start up in 2010. A status report will be provided by EPA no later than July 2010 that includes the proposed framework and major design components so that the partners in the Bay restoration may provide input to this system design.

Tracking Attainment of Nutrient Reductions

In a letter dated November 4, 2009, EPA outlined its expectations for the States and the District in meeting water quality goals in the Chesapeake Bay watershed. In order for EPA to determine if the States or the District are on schedule to meet their goals and milestones, the jurisdictions will need to continue to monitor, track and report their progress. The States and the District will continue to report annually to EPA on the implementation of the Best Management Practices (BMPs) and other pollution controls within their respective jurisdiction. EPA will use the reported tracking data and the Bay models along with Chesapeake Bay tidal and watershed water quality monitoring data to assess progress towards the milestones commitments.

EPA Region III's Chesapeake Bay Program Office is designing two tracking and reporting systems to facilitate the exchange of information between jurisdictions' databases and the partnerships' Chesapeake Bay Watershed Model: the National Environmental Information Exchange Network (NEIEN), and Scenario Builder. Both of these tools will allow EPA to use the Chesapeake Bay Watershed Model to assess the impact of management actions on nutrient and sediment loads delivered to the Chesapeake Bay. Additional detail and information on using the tracking systems will be available when the systems are finalized.

The States and the District are responsible for ensuring that pollution controls are properly installed and maintained and including in their annual reporting the specific mechanisms to verify that information. This will be essential in order to receive full credit in the model for nutrient and sediment reductions.

EPA intends to assure that practices and other pollution controls reported to the Agency represent actual on-the-ground implementation. EPA will work with States, the District, and local governments to design and implement a process with initial startup in 2010, to credit only that portion of pollutant removals for which the States and/or the District can provide verification that reported practices and/or controls are being appropriately installed and maintained. If a State and/or the District is unable to meet its goals or milestones based on verified BMPs and controls, EPA expects to take appropriate action as described in Enclosure B. EPA will not give credit for reported practices and/or controls that are not consistent with EPA's expectations for tracking and reporting.

ENCLOSURE B

Environmental Protection Agency
Description of Potential Actions

The Environmental Protection Agency (EPA) commits to assess progress and, as necessary, take appropriate federal action to ensure that States and the District: develop and implement appropriate Watershed Implementation Plans; attain appropriate two-year milestones of progress; and provide timely and complete information to an effective accountability system for monitoring pollutant reductions and control measures. The goal of these actions is to assure that restoration efforts continue on schedule to meet the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) allocations, which are designed to achieve and maintain the States' and the District's Chesapeake Bay water quality standards. This letter speaks only to potential EPA actions in response to the States and/or the District not meeting their commitments. EPA expects to clearly communicate where it believes a jurisdiction has fallen short of expectations and the basis of that shortfall, so that EPA can select the most appropriate actions to correct the shortfall. As chair of the Federal Leadership Committee, EPA will also seek cooperation from our federal partners to consider and employ additional federal actions within their authorities.

Option 1. Expand National Pollutant Discharge Elimination System (NPDES) permit coverage to currently unregulated sources

Under the Clean Water Act (CWA), EPA has established NPDES permitting requirements for certain stormwater discharges as well as discharges from concentrated animal feeding operations (CAFOs). The CWA provides that the EPA Regional Administrator can designate additional stormwater discharges as requiring NPDES permits where the Regional Administrator determines that: (1) stormwater controls are needed for the discharge based on wasteload allocations that are part of TMDLs that address the pollutants of concern: or (2) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.[7] The NPDES permitting regulations also authorize the Regional Administrator to designate any Animal Feeding Operation (AFO) as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.[8] These additional authorities are commonly referred to as the Residual Designation Authority (RDA). Thus EPA can use its authority to expand individual areas requiring Municipal Separate Storm Sewer System (MS4) permits and individual facilities requiring CAFO permits. .

[7] CWA") section 402(p), 33 U.S.C. § 1342(p), section 402(p)(2)(E) and (6) and 40 C.F.R. § 122.26 (a)(1)(v) and (a)(9)(i)(C) and (D)
[8] 40 CFR § 122.23(c)

Option 2. Object to NPDES permits and increase program oversight

EPA can use existing authority to object to inadequate NPDES permits and assure that appropriate permit limits are established by the States and the District that are consistent with the requirements of the CWA and the Bay TMDL's wasteload allocations (WLAs). EPA can review facilities covered under a general permit and, under certain circumstances including where the permittee is non-compliant with the general permit requirements, or where the general permit does not provide sufficient protection for water quality standards, request that the State or the District NPDES directors require each facility to apply for an individual permit.[9]

EPA regulations require that NPDES permits do not cause or contribute to exceedences of water quality standards. EPA can review and object to an NPDES permit if its effluent limit for a pollutant is based on unsupported assumptions about nonpoint source reductions of the same pollutant. If an objection is not resolved in a timely and satisfactory fashion, EPA may issue the permit itself. In addition, if an NPDES permit is not renewed in a timely fashion by a jurisdiction to include sufficiently protective provisions, EPA can apply increased oversight of that permit or take one or more of the actions described in this document.

EPA can also review the State's or the District's permits to ensure that the State's or the District's antidegradation policy is met. This would ensure, for example, that prior to issuing an NPDES permit for a proposed discharge to a Tier 2[10] antidegradation water that all cost-effective and reasonable best management practices for nonpoint sources are achieved.[11]

Option 3. Require net improvement offsets

Under 40 CFR 122.44(d)(1)(vii), NPDES permits must include a water quality-based effluent limit that is "derived from, and complies with all applicable water quality standards" and is "consistent with the assumptions and requirements of any available waste load allocation." Because of this requirement, permits for new or increased discharges within the Chesapeake Bay watershed must have effluent limits that are derived from and comply with applicable Bay water quality standards and are consistent with the assumptions and requirements of the Bay TMDL, including allocations to such discharge in the TMDL. At this time, the Bay and its watershed are already overloaded with nutrients and sediment. In light of this, EPA has told the States and the District that, during TMDL development, it expects them to "provide EPA with information that will allow it to provide for pollution load reductions that are at least sufficient to offset" growth and development in the watershed between 2011 and 2025. In developing and implementing the Bay TMDL, EPA will carefully evaluate how to assign wasteload allocations to new and expanded discharges, the circumstances under which permits for such new or expanded discharges are appropriate, how effluent limits consistent with the TMDL's wasteload allocations and "assumptions and requirements" would be calculated for such permits, and when net improvement offsets (i.e., offsets that do more than merely replace the anticipated new or

[9] 40 CFR 122.28(b)(3)

[10] Tier 2 waters are waters that meet or have better water quality than the water quality standards established for that stream.

[11] 40 CFR 131.12(a)(2) (as reflected in state antidegradation regulations)

increased loadings) may be justified or required. If EPA determines that net improvement offsets are necessary to implement the Bay's water quality standards, EPA may require that permits for new and increasing discharges include such offsets. EPA may determine that such offsets are necessary for a number of reasons including, but not limited to, the State and the District fail to provide adequate future growth information in the TMDL, the States and the District do not provide adequate assurances that new or increased loads are offset by verifiable loadings reductions by other sources, and the State or the District are not implementing their Watershed Implementation Plans or milestones.

Option 4. Establish finer scale wasteload and load allocations in the Bay TMDL

EPA may establish finer scale allocations for point and non-point sources of nutrients and sediment in the draft or final Bay TMDL if the States and/or the District do not provide sufficient detail within their proposed sub-allocations or Watershed Implementation Plans in accordance with the September 11, 2008 letter to the Principals' Staff Committee.

As discussed in EPA's November 4, 2009 expectations letter, the States and the District are expected to provide Phase I Watershed Implementation Plans in preliminary, draft, and final form by, respectively, June 1, August 1 and November 1, 2010. If the States and the District do not deliver timely or complete Phase I Watershed Implementation Plans or if ongoing efforts to place nutrient and sediment controls in NPDES permits are found to be insufficient, EPA may include more specific and individual allocations in the Bay TMDL.

EPA can, for example, establish wasteload allocations for individual wastewater discharge facilities, CAFOs and/or MS4s, which might otherwise be addressed through aggregate wasteload allocations within the Bay TMDL, as described in the September 11, 2008 guidance letter. EPA can review such facilities covered under a general permit and, if found to be noncompliant with EPA's expectations and/or the Bay TMDL's WLAs, request that the State's or the District's NPDES permit authority require these facilities to apply for an individual permit.[12]

Option 5. Require additional reductions of loadings from point sources

Under existing authority, EPA may establish (or revise) the Bay TMDL to provide smaller wasteload allocations for existing point sources, leading to more stringent controls on permitted discharges, if any of the States and/or the District do not meet EPA's expectations for controlling nitrogen, phosphorus or sediment loading allocations consistent with the allocations developed in their Watershed Implementation Plans or their two-year milestones. EPA will pay particular attention to whether State or District control programs for nonpoint source reductions are implemented consistent with the State's or the District's reasonable assurance documentation and whether those reductions occurred in a timely manner. In the implementation of such programs, EPA supports trading of nutrient and sediment among point and nonpoint sources, consistent with EPA's guidance on water quality trading. This guidance calls for utilization of

[12] 40 CFR 122.28(b)(3)

appropriate accountability mechanisms verifying that any nonpoint source reductions would be in addition to nonpoint reductions required by a TMDL load allocation.[13] In this case, the permitted point source would remain legally responsible for the reductions, even though they might be implemented by nonpoint sources.

Option 6. Increase and target federal enforcement and compliance assurance in the watershed

As described in the draft Section 203 Strategy developed pursuant to Executive Order 13508, EPA expects to implement a Chesapeake Bay Compliance and Enforcement Strategy (Strategy) that focuses on four key pollutant source sectors—stormwater, CAFOs, municipal and industrial wastewater facilities, and stationary and mobile air sources.[14] The implementation of this Strategy is an ongoing commitment of the Agency being carried out in consultation with the States and the District. EPA can, however, exercise its enforcement discretion to further target enforcement and compliance reviews to jurisdictions that are not meeting the projected goals in their Plans and their two-year milestones or conducting timely and appropriate enforcement of NPDES permits.

In addition, the Strategy identifies appropriate opportunities for compliance and enforcement activities related to the CWA section 404 program regulating dredge and fill operations, federal facilities, and Superfund sites, including remedial action and removal sites and Resource Conservation and Recovery Act (RCRA) corrective action sites. EPA will also examine opportunities for the use of imminent and substantial endangerment authorities in each of the statutes it administers to address significant pollution problems affecting the Bay.

Option 7. Condition or redirect EPA grants

EPA maintains various grant programs which are designed to assist the States and the District in carrying out their Bay watershed and water quality management objectives. Conditioning and redirecting EPA grants could be applied in a targeted way to fill gaps in program capacity and delivery.

This action may be employed if a State or the District has committed to incorporate the elements of the Watershed Implementation Plan or milestones into the grant workplan and does not adequately perform the activities identified in the EPA approved workplan.

To avoid the unintended effect of reducing capacity in a state, potential funding actions may be targeted to improve the existing program or workplan deliverables within a state or across watershed jurisdictions. EPA intends to work with the States and the District to negotiate

[13] EPA Water Quality Trading Toolkit for permit writers. August 2007; EPA Office of Water, Water Quality Trading Policy. January 13, 2003.

[14] Executive Order 13508 Chesapeake Bay Protection and Restoration Section 203 Draft Strategy and Section 202 Federal Agency Reports, Monday, November 9, 2009. Federal Register Vol. 74, No. 215. accessed at <http://executiveorder.chesapeakebay.net>.

grant workplans to include State or District goals that are consistent with the Watershed Implementation Plans and the two-year milestones, and targeted where they will have the greatest benefit in reducing nutrient and sediment pollution.

EPA Region III expects to issue Regional Grants Guidance to the States and the District Programs for 2010 clarifying its expectations for how "supplemental" CWA 117 funds, derived from the Congressional authorized budget, would be used to support the new accountability framework and Watershed Implementation Plans. The guidance can be developed to include requirements that the funding is to be used exclusively for fulfilling the Executive Order objectives. Following the initial CWA 117 grant award, mid-year and end-of-year evaluations of the States and the District's grants performance will be done to inform a determination of whether future funds in these categories should be continued or redirected.

Where Request for Proposals (RFP) competitions are used by EPA, EPA expects to include criteria for such RFPs that would link funding with satisfactory progress of each jurisdiction in meeting the Bay TMDL, Watershed Implementation Plans and two-year milestone commitments.

EPA's Section 319 Non-Point Source Program funding requires that EPA make a determination of "satisfactory progress" prior to awarding the following year's Section 319 grant funds.[15] EPA intends to utilize this authority to ensure that the States or the District are making "satisfactory progress" in implementing the associated activities of their Watershed Implementation Plans and milestones that are incorporated into 319 Program workplans.

Option 8. Federal Promulgation of local nutrient water quality standards

Currently, the Bay watershed States and the District generally have narrative nutrient criteria to protect local, fresh water stream water quality. EPA regulations require the States or the District to adopt water quality criteria that are sufficient to protect the designated use, .[16] In its review of the States or the District's water quality standards, EPA may determine that a jurisdiction's local water quality criteria do not protect local or downstream designated uses.[17] Pursuant to Section 303(c) of the CWA and 40 CFR 131.5(b), EPA has the authority to promulgate federal standards where EPA has made a determination that existing State or District water quality standards are not sufficient to protect the designated water uses. EPA may use this authority to promulgate numeric criteria for nutrients as appropriate.

[15] CWA 319(h)(8)
[16] 40 CFR 131.11
[17] 40 CFR 131.5(a)(2)