pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER MANAGEMENT

September 4, 2014

Mr. Jon Capacasa, Director
Water Protection Division
USEPA Region III
Mail Code: 3WP00
1650 Arch Street
Philadelphia, PA 19103-2029

RE: NPDES Permit No. PA0232513
Kelly Township
Union County

Dear Mr. Capacasa,

I received a copy of your letter dated August 7, 2014 to Marcus Kohl, the Regional Director in our Northcentral Regional Office, regarding specific objections of the U.S. Environmental Protection Agency (EPA) to the above-captioned draft National Pollutant Discharge Elimination System (NPDES) permit issued by the Department to Kelly Township Union County. In your letter, you assert that the basis for your objections are the nonpoint source agricultural baseline requirements in Pennsylvania's trading program regulations, which you contend are below the Chesapeake Bay TMDL allocations, and therefore inconsistent with the federal Clean Water Act. In a letter to me dated July 25, 2014, you state that EPA provided its documentation for this finding at a meeting in November 2012.

In its review of Pennsylvania's trading program documented in a report dated February 17, 2012, EPA questioned whether Pennsylvania's agricultural nonpoint source baseline requirements are consistent with the EPA's TMDL load allocation for these sources. EPA asserted that Pennsylvania should make a "quantitative demonstration" that its agricultural nonpoint source baseline requirements achieve the TMDL agricultural load allocation.

EPA acknowledged in its 2012 report that Pennsylvania's agricultural baseline requirements in its nutrient trading program "are enhancing compliance with legal requirements for the agricultural sector, and enhanced compliance is a primary strategy by which the agricultural section will meet its load allocation." EPA further recognized that implementation of the agricultural baseline and threshold requirements "results in significantly fewer pollutants being discharged to Pennsylvania waters and ultimately the Bay."

As you know, the Department has been actively working to address the concern expressed by EPA in the 2012 report. We are currently evaluating several modeling tools that can be used to provide quantitative estimates of nutrient loadings from agricultural operations meeting Pennsylvania's regulatory baseline and threshold requirements. The modeling performed by EPA to support the Chesapeake Bay TMDL, which was also used in the documentation you provided in November 2012, is not useful in determining the nutrient loading at a specific location for the

purpose of establishing an agricultural nonpoint source baseline. The process of developing a modeling tool that can effectively quantify such loadings is complex and further complicated by the need to calibrate such a model with EPA's ever-changing Chesapeake Bay model. Despite this complexity, the Department is making progress in this regard.

Your assertion in your specific objections that Pennsylvania's agricultural nonpoint source baseline is not consistent with the Bay TMDL is premature at best, and the timing of your objections given the Department's ongoing efforts to develop a quantitative model to support its baseline requirements is certainly questionable. Given this assertion, the Department is requesting that EPA hold a public hearing on its objections at a location in Lewisburg, Pennsylvania, for the convenience of the public interested in the Kelly Township Union County NPDES permit and the agricultural community involved in Pennsylvania's trading program.

We will continue to work with EPA to complete the important work of developing a performance-based model for use in calculating agricultural nonpoint source baseline for use in Pennsylvania's nutrient trading program. The Department remains committed to this useful tool in achieving the goals of the Chesapeake Bay TMDL and improving water quality in Pennsylvania.

If I can be of further assistance, please contact me by e-mail at kheffner@pa.gov or by telephone 717.783.4693.

Sincerely,

Kelly Jean Heffner
Deputy Secretary