April 30, 2015

Via e-mail to agreement@chesapeakebay.net
Mr. Nicholas DiPasquale
Chair, Chesapeake Bay Program Management Board
410 Severn Avenue, Suite 109
Annapolis, MD 21403

Choose Clean Water COALITION

RE: 2017 WIP, 2025 WIP and Water Quality Standards Attainment and Monitoring Outcomes Comments

Dear Mr. DiPasquale and Management Board Members:

The undersigned members of the Choose Clean Water Coalition—a coalition of organizations from Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia with the common goal of restoring the thousands of streams and rivers flowing to the Chesapeake Bay—respectfully submit the following comments on the draft 2017 WIP, 2025 WIP, and Water Quality Standards Attainment & Monitoring Outcomes Management Strategy.

We strongly support the incorporation of the 2017 WIP Outcome, the 2025 WIP Outcome, and the Water Quality Standards Attainment & Monitoring Outcomes in the Chesapeake Watershed Agreement. Inclusion of these outcomes reinforces the importance of our long-term water goals and the incremental local strategies and investments needed to achieve those water quality goals. We provide the comments below to strengthen the management strategy and to support the attainment of these critical outcomes.

A. The 2017 WIP, 2025 WIP, and Water Quality Standards Attainment & Monitoring Outcomes Management Strategy Should Incorporate the Phase III Watershed Implementation Plans as Part of the Management Approaches.

The 2017 WIP, 2025 WIP, and Water Quality Standards Attainment & Monitoring Outcomes management strategy does not include the Phase III Watershed Implementation Plans in the management approaches. According to materials prepared by the Bay Program, the Phase III WIPs will be submitted by state agencies in 2017 as an update to the Phase II WIPs and with an emphasis on establishing realistic implementation expectations over the 2018 – 2025 timeframe. The Phase III WIPs are therefore an important tool to achieving the 2025 WIP Outcome and should be included as a management approach.

B. The Bay Program Must Require That Two-year Milestones are Aggressive Enough to Make Significant Progress Towards the 2025 Goals.

The two-year milestones are an important tool to ensure that jurisdictions are making progress towards implementing practices that will meet the 2017 and 2025 goals. However, jurisdictions have not consistently been setting two-year milestones that make significant progress towards the ultimate water quality goals. Meeting conservative two-year milestones may provide jurisdictions with small victories, but also sets them up to face huge implementation requirements in the future to meet 2017 and 2025 goals. EPA needs to ensure that jurisdictions ramp up best management practice implementation, so that we can meet 2017 and 2025 WIP Outcomes.

C. The 2017 WIP, 2025 WIP, and Water Quality Standards Attainment & Monitoring Outcomes Management Strategy Must Recognize the Current Monitoring Results and Use Monitoring to Measure Progress.

1. The "Baseline and Current Conditions" Should Include Recent Monitoring Results.

The management strategy reports that "As of 2013, based on the CBP partnership modeling tool estimates, practices are in place to achieve 27 percent of the nitrogen reductions, 43 percent of the phosphorus reductions, and 37 percent of the sediment reductions…. that are necessary to attain applicable water quality standards in the Bay." Unfortunately, these statistics convey an overly optimistic picture of the current status of the Bay's water quality. The management strategy should acknowledge that the proof of attaining water quality standards will be actual water quality monitoring, not modeling, which is only a predication, or estimate, based on a variety of information and assumptions. Recent monitoring data, as EPA knows, show little or no improvement in water quality. *See* U.S. Geological Service, *Understanding Nutrients in the Chesapeake Bay Watershed and Implications for Management and Restoration – The Eastern Shore* (March 2015). The language in the first paragraph on page 4 should include a cautionary sentence following the recitation of the modeling results stating that, unlike the modeling estimates, actual sampling in the Bay suggests that little if any improvement in water quality has actually been achieved so far.

2. The "Monitoring Progress" Section Should Recognize that Our Success Will Ultimately Be Measured Using Water Quality Monitoring Data.

The "Monitoring Progress" section includes a discussion of "Modeled Loads." Given the importance of monitoring data to determine actual progress, the third sentence of the "Modeled Loads" paragraph on page 12 should be revised to insert the underlined text, as follows: "The estimated modeled loads, <u>together with all relevant monitoring data,</u> will be used to track progress with achieving the 2017 WIP outcome." Without this change, the statement in this paragraph on measuring progress would be inaccurate and misleading.

3. Monitoring Data Should be Used When Evaluating 2017 WIP Outcomes.

The strategy states that it will evaluate the "2017 WIP Outcomes" by using modeling. There is no mention of the use of monitoring data. Given the Bay Program's recognition that actual monitoring data is what provides the true measure of progress on improving water quality (*see* pp. 2, last par.; 3; 4 (2d par); 13; and 12 and 14, each under the heading "Water Quality Standards Attainment and Monitoring Outcome"), the "2017 WIP Outcomes" should be evaluated by reviewing all relevant monitoring data, which will determine actual progress towards meeting the WIP and Water Quality Standards goals. This point is vital because, if actual water quality remains polluted, the health of the fish will not be improved by the fact that Bay Program has produced a model simulation indicating that the water is clean.

4. The "Water Quality Monitoring System Understanding" Activities Should Be a High Priority.

The strategy's discussion on "Water Quality Monitoring System Understanding" is excellent. We hope that at least some of the results of the listed activities will be available in time to be used during the 2017 mid-course assessment. These actions should be given a high priority.

D. The 2017 WIP, 2025 WIP, and Water Quality Standards Attainment & Monitoring Outcomes Management Strategy Should Increase Transparency and Better Involve the Public and Local Government Officials.

1. Nutrient Management Plans and Other Best Management Practices Must Be Verified and this Information Should Be Publicly Available.

In the "Factors Influencing Success," the strategy recognizes that reviewing and updating historical implementation data is integral in calibrating the model and planning and assessing progress. This discussion should be expanded to the need to verify the full implementation of any nutrient management plans or other best management practices is also a factor in influencing success. The discussion includes steps currently being taken or processes being developed for verification. Anticipated reductions from nutrient management plans and best management practices should not be credited in assessing progress unless implementation has been verified. Otherwise, progress will be overstated.

This discussion characterizes data from 1993-1995 as "critical." There is no explanation of why data from this period is critical nor what use will be made of the data. The strategy should explain these points.

Further, much of the information necessary for verification is not generally available to the public. To assist in verifying best management practice implementation and assessing progress, nutrient management plans and other information necessary for verification should be made available to the public.

2. Management Approaches Should Include Timely Dialog With Local Government Officials.

Under Section V – Management Approaches – the document has a placeholder for "Approaches Targeted to Local Participation". Here is some language you might consider including in this section:

> Much, if not most, of the implementation of the load reduction measures required by the Bay TMDL and the WIPs will be carried out at the local level. This includes municipalities, counties, soil and water conservation districts (which in some states coincide geographically with counties) and local private sector groups and individuals. For some measures, such as stormwater controls and agricultural BMPs, these will be both designed and implemented at the local level, often in consultation with a state agency. Therefore, management approaches should be designed to include timely dialogue with the responsible persons or agencies at the local level, and provision of funding and technical support should take this into account as well.

3. Meetings of Expert Panels Should Be Open to the Public.

The "Monitoring Progress" discussion on page 11 describes the work done by the Bay Program's "expert panels." The meetings of those panels should be open to the public so that the public can observe the process and provide timely comments. There will likely be a number of knowledgeable scientists attending at least some of those meetings with relevant experience and good ideas.

D. The Strategy Should Use Recent Reviews to Improve Modeling Simulations.

In order to monitor progress towards the Water Quality Standards Attainment and Monitoring Outcome, the strategy says that findings from a 2009 EPA review of its monitoring programs will be "used to improve CBP model simulations." We hope and assume that the Bay Program would include the use of post-2009 reviews of any aspect of its monitoring programs as well. If this is the case, the strategy should say so.

E. The Strategy Should Use Caution in Using Filter Feeders.

In the "Factors Influencing Success," the strategy includes "Assessing the implementation potential of filter feeders for nutrient and sediment reductions." We advise caution in assessing the use of oysters or other filter-feeders as a pollution reduction measure. The oyster population remains low and vulnerable to disease, overfishing and adverse effects of pollution. We do not support the use of oysters to comply with permit requirements.

F. The Strategy Should Use Different Language in a Few Places to Be Accurate and Correct.

1. The Strategy Should Consistently Refer to Water Quality Standards.

In the "Baseline and Current Conditions" section, the strategy discusses the goal of "attaining applicable water quality standards." In the next to last line of the second paragraph on page 3, the strategy uses the term "water quality *criteria"* (emphasis added). For consistency, "criteria" should be changed to "standards." This change is important because the term "water quality criteria" under the Clean Water Act refers to "criteria" recommended by EPA under Section 304(a), whereas the "water quality standards" are developed under Section 303 by either a state or EPA and are legally enforceable, and it is the "standards" that are the subject of this management strategy.

2. The Strategy Should Fix the Following Word Choices.

On page 6, under the first bullet, 6th line down, the word "principles" should be changed to "methods" or "procedures." On page 8, in the first line of the first full paragraph, the word "currently" should be changed to "current."

We are happy to discuss our comments on the draft 2017 WIP, 2025 WIP, and Water Quality Standards Attainment and Monitoring Outcomes Management Strategy further. Please contact Jill Witkowski by phone at 443-842-7525 or by email at witkowskij@nwf.org.

Respectfully submitted,

American Rivers

Anacostia Watershed Society

Audubon Naturalist Society

Blue Water Baltimore

Clean Water Action

Conservation Pennsylvania

Conservation Voters of Pennsylvania
Delaware Nature Society
Eastern Pennsylvania Coalition for Abandoned Mine Reclamation
Friends of the North Fork of the Shenandoah River
Friends of the Rappahannock
Izaak Walton League of America
James River Association
Lackawanna River Corridor Association
Maryland Conservation Council
Maryland Sierra Club
Mid-Atlantic Council of Trout Unlimited
National Aquarium
National Parks Conservation Association
Nature Abounds
Neighbors of the Northwest Branch, Anacostia River
New York League of Conservation Voters
NWF Mid-Atlantic Regional Center
Penn Future
Potomac Riverkeeper Network
Rock Creek Conservancy
Sleepy Creek Watershed Association
South River Federation
St. Mary's River Watershed Association
Susquehanna Greenway Partnership
Virginia Conservation Network
Waterkeepers Chesapeake
West Virginia Rivers Coalition