EPA Deregulation Comments May 11, 2017

https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190
https://www.regulations.gov/comment?D=EPA-HQ-OA-2017-0190-0001

EPA's Office of Water Seeking Feedback on Reducing Regulatory Burden
Consistent with Executive Order 13777, EPA is seeking public input on existing regulations that could be repealed, replaced or modified to make them less burdensome.
As a part of this effort, we will be accepting written public comments through May 15, 2017, at docket EPA-HQ-OA-2017-0190.
Your Comment Tracking Number: 1k1-8wbv-tgx0
Help Desk Tracking Number: 37445

The Friends of Accotink Creek wish to echo the comments of the Chesapeake Bay Foundation, which we have attached. As a small volunteer organization, we lack the scientific and legal sophistication to produce an analysis like the Chesapeake Bay Foundation. However, we are daily witnesses to the impaired condition of Accotink Creek, similar to so many other streams in our region. These impaired conditions influence downstream waters of the Potomac River and Chesapeake Bay, contributing to their degraded state.

Every time there is a "compromise", the loser is Nature. Nature has already been asked to compromise far too much for our present economic benefit. It is now our turn to compromise in return, by adopting a stewardship ethos of accepting our duty of responsibility to our country, to the community of life, and to the future.

When counting costs, let us consider the cost to replace water bodies like Accotink Creek and like the Chesapeake Bay, compared to the cost of preserving what Nature has blessed us with.

We urge the preservation and full funding of the Chesapeake Bay Program Partnership and all EPA activities that contribute to the restoration of the health of our waters.

Philip Latasa
Friends of Accotink Creek : : www.accotink.org

RE: EPA-HQ-OA-2017-0190, Evaluation of Existing Regulations

Pursuant to Executive Order 13,777, the Environmental Protection Agency is seeking comments concerning regulatory inefficiencies, undue costs to industry, and adverse impacts on employment from existing regulations for which the Agency is primarily responsible. Given the charge to review and perhaps simplify its regulatory infrastructure, the Agency is conducting extensive outreach to solicit input, mostly from corporations and industry association representatives whose business is affected by such regulations, and from citizens and non-profit organizations with a political interest in deregulation.

The Chesapeake Bay Foundation (CBF) is the largest regional non-profit organization solely focused on restoring the waters of the 64,000 square-mile Chesapeake Bay watershed. The Bay proper is the largest estuary in the United States, with 4,500 square miles of surface area and nearly a 12,000-mile coastline (equivalent to that stretching from San Diego to Seattle). Representing our more than 240,000 members focused in the six states and the District of Columbia in which the watershed resides, CBF has been a trusted, expert voice for the Bay for 50 years. Since (1) we have witnessed firsthand the economic renaissance that has accompanied the restoration investments and hard work of Bay watershed states and the federal government, and (2) the watershed could be adversely affected by drastic deregulation, please accept for the record the following comments.

At the outset, it is important to set a marker. While a review of possible adverse economic *costs* due to regulations is not unreasonable, it must be accompanied by a weighing against the human health, economic, social, and environmental *benefits* associated with such regulations. We understand that such measurement is not easy: costs are readily represented in market effects, while some benefits (such as decreased human mortality or disease, species preservation, or simply, clean water to drink and for recreation) are not readily represented that way. There are, however, a variety of ways to measure benefit, and regulations should not be jettisoned merely because they represent a cost to business, nor because a particular ecological benefit cannot readily be measured economically. The economic and environmental costs of failing to regulate serious health and environmental impacts must also adequately be considered.

Collaboration through the Chesapeake Bay Program Partnership

EPA Administrator Pruitt has recognized that the collaborative partnership between the states and the federal government, organized around restoring the Chesapeake Bay, is a model for others to emulate: "But I really want to emphasize to you that process represents what should occur, for States to join together and enter into an agreement to address water quality issues and then involve the EPA to serve the role it is supposed to serve is something that should be commended and celebrated."[1] This collaboration has evolved into a truly integrated partnership, evidenced in the 2014 Chesapeake Bay Agreement, where state and federal partners have created shared strategies, workplans, and timelines to reach mutually valued goals. The federal statutory

[1] *Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency,* Hearing before the S. Comm. on Environment and Public Works, 115th Cong. 51-52 (January 18,2017) (response of Mr. Pruitt to Sen. Ben Cardin, Member).

framework which supports the federal side of this partnership has provided certainty and significant programmatic support to states for over thirty years and has helped states achieve improvements in their economies that they could never have achieved alone.

Two statutes within EPA's purview, and their resulting sets of regulations, are of specific import to the Chesapeake Bay Program Partnership and, ultimately, the restoration of the Chesapeake Bay watershed, a region of intense study for more than four decades. In 1972, the federal Clean Water Act (CWA)[2] first set the permitting and regulatory structure for cleaning up and maintaining the quality of the nation's water bodies, and it has been amended in a bipartisan fashion several times since then. The federal Clean Air Act (CAA),[3] which was passed in 1977 and extensively amended in 1990, undergirds regulations to substantially reduce air pollution from utility, industrial, and mobile sources, sources which can negatively impact water quality. In addition, pursuant to statutory authority contained in the CAA, EPA plays an important role reviewing environmental impact statements produced pursuant to the National Environmental Policy Act (NEPA).[4] (The agency also has primary responsibility for regulating pesticides, herbicides, and fungicides,[5] and hazardous and solid waste[6], although such issues have not been CBF's, or the Chesapeake Bay Program Partnership's, primary focus over the years.)

Clean Water Act

Under the Act, Congress gave EPA the authority to establish "effluent limitations" (technology-based pollution caps on "point sources" of pollution from pipes and discrete conveyances) for polluted water entering waterways,[7] and provided that the States which have EPA-approved CWA programs may set water quality standards.[8] After standards have been set, states and EPA *together* ensure that pollutants discharged into waterways do not violate those standards.

Special attention to the Chesapeake Bay as a "national treasure"[9] has been focused in the Act since its amendment by the *Chesapeake Bay Restoration Act of 2000's* addition to §117, which mandates a Chesapeake Bay management program and its implementation under the supervision of EPA.[10] With Bay restoration progress lagging by the end of the first decade of the 21st century, at the request of the Chesapeake Bay watershed states and pursuant to §303 of the Act,[11] by regulation EPA in 2010 developed a Total Maximum Daily Load (TMDL) for the multi-state Chesapeake Bay watershed.[12] It is focused on the three pollutants most responsible for the

[2] 33 U.S.C. §1251 et seq.
[3] 42 U.S.C. §7401 et seq.
[4] 42 U.S.C. §4321 et seq.
[5] 15 U.S.C. §2601 et seq.
[6] 42 U.S.C. §9601 et seq.; 42 U.S.C.A. §6901 et seq.
33 U.S.C. §1311(b)(1)(A). Effluent guidelines for stream electric generating plants may be found at 40 CFR Part 423, for example.
[8] 33 U.S.C. §1313(c). Regulations concerning the establishment, review and revision of water quality standards are set out in 40 CFR Parts 130 and 131.
[9] Pub. L. 106-457, Title II, §202 (Nov.7, 2000), 114 Stat. 1967 at (a)(1); Exec. Order No. 13,508, 3 C.F.R. §13,508 (2009).
[10] 33 U.S.C. §1267(g).
[11] 33 U.S.C. §1313(d)(1)(C). Regulations setting out the process for identifying impaired segments of water bodies and setting TMDLs may be found at 40 CFR Part 130.7.
[12] U.S. EPA, *Chesapeake Bay Total Maximum Daily Load* (TMDL), https://www.epa.gov/chesapeake-bay-tmdl.

deteriorated state of the nation's largest estuary -- nitrogen, phosphorus, and sediment. (A TMDL is a scientifically established limit or "load" of a specific pollutant or pollutants in a water body, which pollution load would allow the water body to attain water quality standards.)[13]

With EPA's assistance after the TMDL was developed, the seven Bay states then developed their own Watershed Implementation Plans (WIPs), whose purpose was to put all state programs and policies in place by 2025 to achieve the pollution reductions required to meet the Bay TMDL: 24 percent, 25 percent, and 20 percent reductions in phosphorus pollution, nitrogen pollution, and sediment pollution, respectively. (This structure of the TMDL and the WIPs together is known colloquially as the "Chesapeake Clean Water Blueprint.") EPA, with the help of a slew of other federal agencies including the U.S. Geological Survey and the U.S. Department of Agriculture, and of course the seven state jurisdictions themselves (together collectively known as the Chesapeake Bay Program), provides the strong scientific base of region-wide data collection, research and analysis, complex computer modeling, an environmental enforcement backstop, and some funding assistance, to help states stay the course toward clean water restoration in the largest estuary in the United States.

Federal courts have recognized that the CWA and EPA's supporting regulations create a framework of cooperative federalism.[14] Indeed, two courts have recognized that in creating the Blueprint the federal and state partners took "significant efforts to preserve" that framework[15] – *and it is beginning to show results*. Recent independent scientific measurements of progress in the water separately by CBF and by the Chesapeake Bay Program have noted improvements in a variety of indicia, pushing the overall "grade" for these efforts to the highest it has reached in decades.[16] But such progress is fragile, there is still a long way to go to attain the TMDL's public health and water quality-based objectives, and the Bay is still an ecosystem dangerously out of balance.

Progress to date toward attaining water quality goals in the Chesapeake Bay watershed has been achieved through the operation of a variety of CWA programs and EPA's implementing regulations for various sections of the law, among them:

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[13] The 3rd Circuit, in its review of the Chesapeake Bay case challenging this structure, noted that EPA had the requisite authority to "fill the Clean Water Act's considerable gaps on how to promulgate a 'total maximum daily load…,'" with appropriate regulations setting out how such a process should operate. *Am. Farm Bureau Fed'n v. United States EPA*, 792 F.3d 281 (3d Cir. 2015).

[14] *See: Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). *Am. Farm Bureau Fed'n v. EPA*, 984 F.Supp.2d 289, 303 (M.D. Pa. 2013).

[15] *Am. Farm Bureau Fed'n v. EPA*, 984 F.Supp.2d 289, 344 (M.D. Pa. 2013), aff'd.

[16] Chesapeake Bay Foundation, *2016 State of the Bay* (November 2016); Chesapeake Bay Program, *Bay Barometer: Health and Restoration in the Chesapeake Bay Watershed* (2015-2016) (February 2017). While there is a recognized lag time between pollution reduction activities and in-water impacts, eminent scientists who have studied the Bay for decades are convinced that the response is due to the full suite of cumulative actions taken to date.

- regulations pertaining to the setting of TMDLs;[17]
- permit regulations defining and controlling "point sources" of pollution such as wastewater treatment plants, industrial sources, and municipal sources of polluted stormwater runoff;[18]
- permit regulations for dredged or fill material, especially concerning the preservation of wetlands through an avoidance, minimization, and mitigation set of "no net loss" principles;[19]
- technical and financial assistance programs to help control "non-point" sources of runoff pollution on farms;[20]
- state certification of activities requiring a federal license or permit;[21] and
- effective revolving loans to municipalities to upgrade public wastewater treatment and drinking water plants.[22] (It should be noted that "[m]ore than 11 million people in our region obtain their drinking water directly from the rivers and streams that flow through our cities, farms, and towns, and eventually into the Chesapeake Bay.")[23]

Each of these CWA sections has necessarily engendered a regulatory structure to support and implement it (some of these regulations are noted here in footnotes, as examples).

When necessary, enforcement actions against permit violators by state governments, citizens, and/or EPA have halted or reversed serious pollution problems and ensured that industrial, utility, and municipal sources of water pollution are fulfilling their CWA permit obligations. Without a doubt, it is primarily because of these interconnected regulations and assistance programs that our citizens trust that the days of raw sewage spills, dirty industrial discharges, and urban and suburban polluted runoff are largely (or, with continued EPA/Clean Water Act support, soon will be) over, that their health and the health of their children will be protected, and that their precious streams, rivers, lakes, and estuaries will be restored in accordance with the CWA mandate.

Clean Air Act

This statute has been another of the crowning successes in the infrastructure of federal environmental law. It continues to play a crucial role in remedying the severe public health and environmental impacts of the air pollution that comes out of smokestacks (stationary sources), various mobile sources (e.g. cars, trucks, railroad engines, construction equipment), agriculture, and natural sources. In the Chesapeake Bay ecosystem, more than a third of the nitrogen polluting the Bay comes from the air.[24]

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[17] Id., note 10.
[18] 33 U.S.C. §1342. Regulations setting criteria and standards for the National Pollutant Discharge Elimination System (NPDES) for industrial and municipal point sources of water pollution can be found at 40 CFR Parts 122, and 125, and 133.
[19] 33 U.S.C. §1344. For example, *see* 40 CFR 230.5.
[20] 33 U.S.C. §1329 (h)).
[21] 33 U.S.C. §1341.
[22] 33 U.S.C. §§1281-1301.
[23] Letter from Senators Cardin, Carper, Casey, Jr. Warner, Gillibrand, Manchin, Coons, Kaine and Van Hollen to Senators Shelby, Alexander, Murkowski, Hoeven, Shaheen, Feinstein, Udall and Merkley (March 17, 2017).
[24] U.S. EPA, http://www.chesapeakebay.net/issues/issue/air_pollution#inline .

There is no doubt that this law has made a huge, positive difference in the nation's air quality over the past four decades, but there are still significant air pollution challenges to meet. More than 125 million Americans still live in counties which have not attained carefully articulated public health standards for ozone or particulate pollution.[25] And, since nitrogen oxides (NOx) are an important ingredient in ozone formation, meeting national ambient air quality standards will mean significant improvements for critical nitrogen pollutant loading to the Chesapeake Bay watershed. Additionally, while greenhouse gas-induced climate change may not be on this Administration's agenda, it is a very real issue confronting the Chesapeake Bay region even as this is being written. A warming regional climate is measurably beginning to adversely affect keystone underwater grasses and water quality -- for example, via carbon-induced acidity and salinity changes stimulated by warming waters, which are altering fish and shellfish species survivability, and through sea level rise -- markedly impacting the biggest naval facility in the world, in Norfolk, Virginia and other communities around the Bay, as well as actively submerging existing tidal wetlands, which are critical Bay filters.[26].

Regulations developed under the following CAA provisions are crucial to achieving Chesapeake Bay restoration objectives under the Blueprint, as they are intended to control the amount of pollutants such as NOx permitted to be emitted into the air -- and thus deposited on the land and directly into the Bay watershed's water bodies, for example:

- the development of air quality criteria for pollutants of note, the setting of primary and secondary national ambient air quality standards,[27] and the development of state implementation plans to attain them;[28]
- control of air pollution from mobile sources (Tier 2, Tier 3, and Tier 4 [heavy duty diesel]) motor vehicle emissions standards, and fuel requirements regarding sulfur content);[29]
- permit processes and requirements for stationary sources such as industrial activities and public utilities;[30]
- classification of ozone non-attainment areas and control of interstate ozone pollution[31];
- emissions and fuel standards for mobile sources;[32] and

[25] American Lung Association, *State of the Air® 2017* (2017), 4.

[26] Scientific and Technical Advisory Committee, Chesapeake Bay Consortium, *Climate Change and the Chesapeake Bay: State-of-the-Science-Review and Recommendations* (2008); *And see*: http://www.chesapeakebay.net/issues/issue/climate_change#inline.

[27] Implementing regulations can be found at 40 CFR Parts, 50, 51 and 58. *Also note*: With respect to this particular regulatory process, and pursuant to the statute, *EPA is prohibited from considering costs*. This is sometimes the case with science and health-based pollution abatement standards, *Whitman v. American Trucking Associations Inc.*, 531 U.S. 457(2001), 4-11, although with respect to certain clean water standards, the Supreme Court has, for example, permitted EPA to use cost-benefit analyses to establish technology-based standards for power plant cooling water intake structures. *Entergy Corp. v. Riverkeeper Inc.*, 556 U.S. 208 (2009), 7-9.

[28] 42 U.S.C. §§7408,7409, 7410.

[29] 42 U.S.C. §§7521, 7545. Regulations can be found at 40 CFR Parts 80, 85, 86 (Revision).

[30] 42 U.S.C. §7503.

[31] 42 U.S.C. §§7511-7514a.

[32] 42 U.S.C. §§7521-7574.

- the development of open and transparent NEPA environmental impact reviews by federal agencies.[33]

Again, each of these *statutory* requirements has created a set of *administrative regulations* that enable them to function, and these regulations are extremely important to the degree to which keystone, Bay-impacting air pollutants such as mercury and nitrogen oxides will be adequately controlled within the Chesapeake Bay watershed and its larger air-shed. Before amending, reducing, or eliminating any parts of these current regulatory requirements and administrative processes, it is incumbent to perform rigorous benefit-cost analyses to determine the impact of such actions on the key goals and desired outcomes of the 2014 Chesapeake Bay Agreement, in which states and federal partners have invested x$ and whose economies and residents have so much at stake.

Significant Economic Benefits from Bay Watershed Partnership Investments

Partners of the 2014 Chesapeake Bay Agreement are well aware that the above-noted statutory and regulatory framework is a key element in the Bay Agreement, and has and will continue to provide significant benefits to the Chesapeake Bay watershed – in very real economic terms. While it is clear from the studies cited below that the economic benefits vastly exceed the significant investments in Bay restoration which all the Chesapeake Bay Partners have made to date, it is also clear that the State partners continue to shoulder the bulk of that burden. For example, in fiscal 2016, the last year data were available, the states invested more than $1.3B, to the federal government's $500M, in total resources.[34] The Partners' continued robust – and increasing -- commitment to Bay restoration is an important testament to the value of this endeavor.

Studies have been conducted over the years attempting to put an economic value on a well-functioning, restored Chesapeake Bay. For example, in 2004, a special expert panel was convened to estimate the economic value of a functioning, restored Chesapeake Bay; the study estimated that worth at more than a trillion dollars.[35]

In 2012, information was compiled by CBF on the then-current value of specific economic benefits from various independent activities and industries requiring clean water, such as commercial and recreational fishing (which in Maryland and Virginia in 2014 produced $3.9B in sales, $950M in income, and almost 45,000 jobs in local economies)[36]; the employment impacts of improving sewage treatment plants (in 2008, one dollar of investment was calculated to yield $6.35 in private, long-term economic output [GDP], and one water/sewer job helping to create or build the necessary treatment plant upgrades was estimated to create 3.68 support jobs);[37] reducing pollution from farms (at the level necessary in Virginia, the implementation of new practices was estimated in 2010 to create some 12,000 jobs and have a $1: $1.56 multiplier

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[33] 42 U.S.C. §7609.

[34] http://www.chesapeakeprogress.com/funding. Data made available via analyses required under the Chesapeake Bay Accountability and Recovery Act.

[35] Chesapeake Bay Watershed Blue Ribbon Finance Panel, *A Report to the Chesapeake Executive Council: Saving a National Treasure: Financing the Cleanup of the Chesapeake Bay* (October 2004).

[36] https://www.st.nmfs.noaa.gov/Assets/economics/publications/FEUS/FEUS-2014/Report-and-chapters/FEUS-20

[37] Krop. R.A. et al, *Local Government Investment in Water and Sewer Infrastructure: Adding Value to the National Economy* (2008).14-FINAL-07-MidAtl-V2.pdf

effect);[38] the drinking water utility costs that are avoided with cleaner source water (in 2012, a study calculated that every $1 spent on source water protection would yield $27 in savings for water treatment costs);[39] and additional, related local economic benefits.[40]

In 2014, CBF sponsored a peer-reviewed evaluation of the nature-derived economic benefits gained specifically by implementing the Blueprint. With partial implementation of the Blueprint at that point, the Bay watershed's natural economic value was estimated in the report to be worth $107.2B annually in the seven-state region. The study further estimated a value of $129.7B annually should the Blueprint's full implementation be realized by 2025 -- or an initial *loss* of $5.6B annually if progress is not made by 2025, with larger annual decreases in value to accrue thereafter.[41] The return on investment from implementation of the Blueprint showed Virginia realizing more than $8.3B in value annually, while Pennsylvania would garner $6.2B annually and Maryland $4.6B annually.

Finally in this regard, in 2015, the National Center for Environmental Economics (NCEE) published a stated preference (contingent valuation) study which found citizens' "willingness to pay" for specific water quality improvements in the watershed of up to $6.5B annually.[42]

Conclusions

The resource-based economic vitality of the Chesapeake region today is something we could barely imagine 50 years ago. It is the result of incredible vision, commitment, trust and investment by Bay watershed Partners and the federal government. Federal partnership and support has been an important part of this success and is woven into the 2014 Chesapeake Bay Agreement.[43] The success of this Agreement and return on Partners' significant investments depends on the achievement of all goals and outcomes – many of which depend on a longstanding federal regulatory framework accompanied by federal funding. Indeed, the Chesapeake Bay's survival, and the course of its restoration, is in large part *dependent* upon a strong, functioning set of federal environmental laws and regulations, many of the latter promulgated pursuant to specific sections of the Clean Water and Clean Air Acts and administered by EPA, as noted in this commentary.

Decisions concerning whether any of these regulations should be substantially changed or possibly eliminated need to be based not only on their purported cost to industry, but also the cost to communities and citizens of *not* implementing them. If there is interest in *positive* employment impacts, the clear evidence is that such are multiplied by actions taken to comply

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[38] Rephann, T.J., *Economic Impacts of Implementing Agricultural Best Management Practices to Achieve Goals Outlined in Virginia's Tributary Strategy* (2010).
[39] US EPA, Winiecki, E., *Economics and Source Water Protection*, Presentation (2012).
[40] Chesapeake Bay Foundation, *CBF Reports: The Economic Argument for Cleaning up the Chesapeake Bay and its Rivers* (May 2012).
[41] Phillips, S. and McGee, B. *Ecosystem Service Benefits of a Cleaner Chesapeake Bay,* J. Coastal Management 44:3 (May 2016).).
[42] Moore, C. et al., National Center for Environmental Economics, *A Stated Preference Study of the Chesapeake Bay and Watershed Lakes* (November 2015). (Stated preference valuation is a common method utilized by economists to measure benefits of a non-market nature; it uses a stated preference survey that examines households' "willingness to pay" for a particular outcome, in this case, specific water quality improvements.)
[43] http://www.chesapeakebay.net/chesapeakebaywatershedagreement/page

with these regulations in our watershed. If there is interest in avoiding air and water pollution that has serious negative public health and environmental implications, *and substantial costs*, associated with them, the substantial evidence is that these regulations do that. If there is interest in obtaining high economic returns from ecosystem services which clean water in the Chesapeake Bay watershed will return, peer-reviewed analysis provides strong evidence of that as well.

We applauded Administrator Pruitt's recognition of the special state-federal cooperative process for restoring the Bay, as well as his later written pledge to enforce the Chesapeake Bay TMDL.[44] We submit these comments to underscore the substantial economic benefits which accrue to Chesapeake Bay restoration efforts from this statutory and regulatory framework.

As demonstrated by the Chesapeake Bay Program Partnership, this statutory and regulatory structure, built over the course of several decades, is working, as the evidence just now appearing in the water itself is showing. In our considered view, these recognized benefits accruing from Chesapeake Bay restoration efforts demonstrate why Bay Partners value this special federal partnership. We urge continued support for this program, and the regulations that support it, to ensure our states obtain the environmental and economic returns on investments which our seven-state region and its 17.5 million citizens expect and deserve.

Thank you for the opportunity to provide these comments.

Kim Coble, Vice President
Chesapeake Bay Foundation

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[44] *Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency*, Hearing before the S. Comm. on Environment and Public Works, 115th Cong. 19, (January 18,2017) (Questions for the Record for the Honorable E. Scott Pruitt).