

REVISING THE FEDERAL WORKPLAN FOR RESTORING THE CHESAPEAKE BAY TO COMPLY WITH EXECUTIVE ORDER 13508 AND BETTER HELP MEET THE GOALS AND OUTCOMES OF THE 2014 CHESAPEAKE BAY WATERSHED AGREEMENT

THE NEED

The original federal workplan adoption statement agreed to in July 1987 by the signatories to the Chesapeake Bay Agreement committed the Environmental Protection Agency (EPA), acting for the federal government, to develop a coordinated, federal agency workplan which identified “specific federal programs to be integrated into a coordinated federal effort to support the restoration of the Chesapeake Bay”. That statement further called for the participating federal agencies to review and revise the workplan annually.

At that time, the emphasis of the Agreement was on restoration and the focus of the federal workplan was on the landowner federal agencies and the federal facilities they owned within the Chesapeake Bay watershed. The federal agencies identified as having a role in the restoration of the Bay in the first 1988 federal work plan were as follows: EPA, the USGS, USFWS, the Soil Conservation Services (forerunner to today’s NRCS), USACE, NOAA, DoD and the USDA Forest Service. The only reference to other federal agencies appeared on the 1988 workplan’s last page and it was written as an open invitation to any interested agencies to contribute information about their programs to future revisions of the plan. The expectation was that submittals would come from agencies that were developing new memoranda of understanding with the EPA Bay program and from other federal organizations that were interested in participating in the effort to reach the Bay goals. “Federal programs” were generally defined as compliance by federal facilities in meeting NPDES and other regulatory anti-pollution requirements. This was the standard by which federal agency partner participation was measured.

Executive Order (EO) 13508 signed by the President in 2009 however, significantly broadened the partnership responsibilities of the federal government in helping to meet the goals and outcomes of the Chesapeake Bay Agreement. President Obama referenced as the reason for his action the “furtherance of the purposes of the Clean Water Act of 1972, as amended (33 U.S.C. 1251 et seq.), and other laws, and to protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed”. The preamble of the Executive Order very specifically broadens the scope of the federal government’s program focus beyond federal facility compliance in controlling pollution. It says “Restoration of the health of the Chesapeake Bay will require a renewed commitment to controlling pollution from all sources as well as [emphasis added] protecting and restoring habitat and living resources, conserving lands, and improving management of natural resources, all of which contribute to improved water quality and ecosystem health.”

The EO goes on further to say “The Federal Government should lead this effort. Executive departments and agencies (agencies), working in collaboration, can use their expertise and resources to contribute significantly to improving the health of the Chesapeake Bay.” It also expands the list of federal agencies that are directed to participate in a “Federal Leadership Committee (Committee) for the Chesapeake Bay ... established to oversee the development and coordination of programs and activities, including data management and reporting, of agencies participating in protection and restoration of the Chesapeake Bay.” The Committee is charged with “the development of strategies and program plans for the watershed and

ecosystem of the Chesapeake Bay” and oversee[ing] their implementation.” Those agencies serving on the Committee are identified as EPA and “the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Homeland Security (DHS), the Interior (DOI), Transportation (DOT), and such other agencies as determined by the Committee.”

The EO calls upon federal agencies to join the Chesapeake Bay watershed jurisdictions in establishing two-year milestones, many of which are designed to support the jurisdictions in meeting their water quality milestones leading to the 2025 implementation goal of the Chesapeake Bay Total Maximum Daily Load (TMDL). In addition, the EO requirement to help protect and restore habitat and living resources, conserve lands, and improve management of natural resources, all of which contribute to improved water quality and ecosystem health aligns with the following strategic goals and outcomes of the 2014 Chesapeake Bay Watershed Agreement:

- *Healthy Watersheds*
 - Maintain local watersheds at optimal health across a range of landscape contexts.
 - Vulnerability: Threat of land conversion and the ecological impacts of conversion
- *Land Conservation*
 - Protected Lands
 - Land use methods and metrics development
- *Protect and Restore Water Quality*
 - Nutrient and sediments reduction
- *Activity Categories*
 - Regulation, Program Management, Information Management, Technical Support, Management Tool Development, TMDL Development, Enforcement, Assessment

In 2011, EPA issued the *Guide for Federal Lands and Facilities’ Role in Chesapeake Bay Jurisdictions’ Phase II Watershed Implementation Plans*, which describes EPA’s expectations for federal agency coordination with the Bay jurisdictions and participation in WIP implementation. EPA also developed the *Guide for Chesapeake Bay Water Quality Two-year Milestones*, which describes EPA’s expectations for federal agency development of numeric and programmatic water quality milestones and coordination with the Bay jurisdictions in the development of such milestones for individual federal facilities.

Both of these guides as well as the June 26, 2014 EPA report: *Evaluation of Federal Agencies’ 2012-2013 and 2014-2015 Water Quality Milestones and WIP Support* however, continue to focus primarily on federal facilities owned and operated within the Chesapeake Bay Watershed. Federal agencies’ broader, holistic leadership responsibilities inherent in the directive of EO 13508 and the intent of the desired goals and outcomes of the signatories to the 2014 Chesapeake Bay Watershed Agreement (CBWA) are still not addressed.

For example, the Federal Energy Regulatory Commission (FERC) and the Department of Energy are notably absent from the list of federal agencies identified as participants in the Federal Leadership Committee created by EO 13508. This is an oversight that should be corrected. There have been several recent examples of planned and existing large-scale energy infrastructure projects impacting the Chesapeake Bay watershed where FERC authorization is/was required, such as the Conowingo Dam (Maryland Chesapeake Bay pollution load concerns), Maryland’s Cove Point Liquified Natural Gas Storage

and Shipping Terminal (Virginia DEQ request that FERC permit require Chesapeake Bay goals compliance), the Myersville compressor station (environmental justice within a low income community), and the Atlantic Coast Pipeline (landscape-scale ecological, economic and cultural resources impacts).

Such large infrastructure projects have the potential to hinder state and federal efforts to meet EO 13508's objective to "protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed". The DOE does not own federal facilities in the Chesapeake Bay watershed but its energy programs and FERC's regulatory permitting authority over linear landscape scale infrastructure projects can have a potentially significant impact on the 2014 Chesapeake Bay Watershed Agreement and the TMDL's desired goals and outcomes. (For example, currently pending and recently approved natural gas pipeline in the watershed has conservatively been estimated to be more than 500 miles in length, not including access roadways, compressor stations, and other associated infrastructure.) Alignment with Chesapeake Bay Watershed Agreement and TMDL goals and outcomes should be a requirement in this planning, design, permitting, construction, and maintenance. A cooperative approach to implement CBWA goals and outcomes among EPA, DOE and FERC modeled after the recently agreed to (August 2015) "EPA-DOE-FERC Coordination on Implementation of the Clean Power Plan" could be very beneficial and would meet the directives of EO 13508.

DOT is another example of a federal agency with programs that provide funding to large infrastructure projects; many of which can have a potentially significant impact on the 2014 CBWA desired goals and outcomes and therefore should be included under the directives of EO 13508. DOT currently funds major transportation facilities throughout the Bay watershed while transportation agencies including the Federal Highway Administration conduct environmental impact statement and environmental assurance reviews prior to major project construction. However, in general, DOT's support work has no apparent direct linkage to Bay policy objectives or the federal work plan despite the Department being a member of the Committee.

A third example relates to agriculture. Progress on reducing the impacts of agriculture has depended largely on voluntary government conservation programs to change how the land is managed. The current strategy aims at restoring agricultural acres to wetlands, encouraging less-intensive land uses, and implementing farm-specific plans for managing animal waste. The legal rigidity pertaining to what is and is not allowable for funding under various USDA programs, the inability to get technical assistance in the field, and intra-agency differences in how programs should or can be implemented all have the potential to negatively contribute to meeting the Bay Agreement pollution reduction goals, its riparian forest buffer goals and its land conservation goals. However, USDA's federal workplan report is still focused primarily on only agency actions pertaining to the federal facilities it owns in the Chesapeake Bay Watershed. It is relatively silent with regard to its federal program contributions or constraints that impact its efforts to meet Executive Order 13508's directives.

CONCLUSION

Broadening the scope of the Federal Agency Work Plan beyond its current primary focus on federal facilities within the Chesapeake Bay Watershed is necessary to comply with Executive Order 13508 and to

meet the goals and desired outcomes of the 2014 Chesapeake Bay Watershed Agreement and the Chesapeake Bay TMDL.

RECOMMENDED ACTIONS

1. Request EPA as chair of the Federal Leadership Committee to seek Committee agreement to invite FERC and DOE to participate as a member of the Committee and extend such invitation, pursuant to the President's Executive Order, to FERC and DOE.
2. Request EPA to pursue a cooperative agreement with FERC and DOE focused on EO 13508 directives modeled after the recently approved "EPA-DOE-FERC Coordination on Implementation of the Clean Power Plan".
3. Request EPA to convene a multi-agency workgroup of the Federal Leadership Committee to evaluate on a section by section basis, which program-related priorities established in EO 13508 are not currently or adequately being addressed, and develop a department by department action plan to do so, including with respect to federal agencies already participating in the Strategy. As necessary, formal invitations to agencies not currently involved in the TDML work effort, pursuant to the Executive Order, would also follow, with subsequent assignments of responsibilities and an appropriate participation process to be established.
4. Coordinate effort with Chesapeake Bay Partnership Program management.