pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chesapeake Bay Restoration Strategy FAQs

February 1, 2016

Q: What happens if Pennsylvania does not meet its Chesapeake Bay goals?

A: The U.S. Environmental Protection Agency (EPA) has notified DEP that it would likely pursue the following options in the approximate order shown if it is necessary to ramp up federal actions to address the Pennsylvania Bay restoration shortfalls:

- EPA may redirect or withhold federal funding for Pennsylvania's Chesapeake Bay activities based on its evaluation of Pennsylvania's milestone progress.
- EPA would directly contract to conduct greater numbers of agricultural watershed assessments (e.g., high-priority farms).
- EPA would increase its compliance and enforcement presence in Pennsylvania by inspecting regulated sources, such as farms.
- EPA would enhance its review of NPDES permits, revoke the waiver for permit review of classes of minor sources (i.e., increase the potential for review of minor permits to require nutrient monitoring, to offset increased capacity, etc.), and take over permits if objections are not addressed in 90 days.
- EPA would seek to designate nonpoint sources as point sources, including farms.
- Modify the Pennsylvania-specific Total Maximum Daily Load (TMDL) allocations to sources and sectors to present more achievable options (i.e., transfer some portion of the regulated and unregulated urban load to another sector, such as agriculture).
- EPA could require greater pollutant reductions from significant wastewater treatment plants
- EPA could promulgate water quality standards for Pennsylvania for nutrients, which could result in enforceable numeric limits for phosphorus and nitrogen that must be included in NPDES permit limits where there is a reasonable potential for discharge.

Q: What are the goals? What are we trying to accomplish?

A: The goals are to create a culture of compliance by refocusing and increasing staff resources, reinvigorating partnerships, organizing for success, expanding data gathering, improving program coordination and capacity, and increasing technical assistance. The new strategy, developed by the Pennsylvania Department of Environmental Protection (DEP), in consultation with the Pennsylvania departments of Agriculture and Conservation and Natural Resources (DCNR), as well as the State Conservation Commission and other stakeholders, aims to improve local water quality in Pennsylvania, and by virtue of that, the Chesapeake Bay.

Q: What can be done to improve the conservation districts' role of being real conservation partners rather than in name only?

A: The districts are being asked to assist the Commonwealth in ensuring that agriculture operations are in compliance with current and long-standing regulatory requirements. Conservation districts are a vital and valued conservation partner in Pennsylvania, providing valuable natural resource and conservation services to a broad range of constituencies including the agricultural, rural, suburban and urban sectors for more than 70 years.

Q: Is the Chesapeake Bay reboot focused only on the agriculture community?

A: No. A culture of compliance applies to all point and nonpoint pollution sources. For example, many of Pennsylvania's significant wastewater dischargers in the Bay watershed have upgraded their treatment to meet more stringent discharge requirements necessary to restore the water quality of local streams and the Bay. Local municipalities are now being inspected and held accountable for MS4 stormwater requirements. For non-point sources of nutrients and sediment, agriculture erosion and sediment and manure management regulations have been in place since the 1970s, and yet our best available data shows that only about 50 percent of farms comply with these regulations today. DEP and conservation districts have conducted thousands of farm outreach and educational visits to discuss regulatory requirements over the years. In 2012, DEP, with the assistance of the National Agricultural Statistics Service, mailed educational information to 82,000 farms and agricultural businesses. The next logical step is to follow through with this effort and begin to inspect for compliance with Pennsylvania regulations and laws.

CBP Model

Q: Where/how is data gathered for the Chesapeake Bay Program model?

A: Data for the model are collected from multiple sources including satellite imagery, county land use maps, U.S. Department of Agriculture Ag Census reports, NASS annual reports, and U.S. Census reports. Pennsylvania reports annual Best Management Practice (BMP) data to the Chesapeake Bay Program Model to track our progress in meeting the TMDL. These BMP data are collected from state and federal agency sources and are principally from cost-share and permitting programs. Some of these agencies include FSA, NRCS, DEP, DCED, Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, other conservation organizations and local governments. These BMP data sets are assembled by DEP staff and reported electronically to the CBP. Approximately 80 percent of Pennsylvania's agricultural BMPs reported to the CBP Model are from NRCS and FSA cost-share programs. Conservation Districts may play a larger role in this reporting in the future.

Q: Are Agricultural Erosion & Sedimentation Plans included? If so, how are they reported/counted?

A: Agricultural E&S plans are required under Chapter 102 regulations. A USDA Conservation Plan can be used to meet these Chapter 102 requirements. An Ag E&S plan can be reported to the CBP Model as a Conservation Plan BMP. There is no current regulatory requirement to report Chapter 102 Ag E&S plans and there is currently no mechanism to collect these Chapter 102 Ag E&S plans to report to the CBP Model. DEP is working on developing a centralized repository for BMP data (plans included) that will be transmitted to EPA on a regular basis.

Q: How are conservation plans reported/ counted?

A: USDA Conservation Plans are reported to the EPA Chesapeake Bay Program (CBP) Model as a Conservation Plan BMP. For CBP Model purposes, data on the Conservation Plan BMP is collected from several sources including the Section 319 program, Growing Greener, REAP, CBIG, NRCS and FSA. The reported acreages under plan management are given load reduction efficiencies of approximately 5 percent for nitrogen, 10 percent for phosphorus and 15 percent for sediment.

Q: How is exported manure reported/counted?

A: Manure transport information is collected from nutrient balance sheets and reported by conservation districts to SCC/DEP via the Chapter 83 reporting (Attachment F). Manure transport is "counted" in the CBP Model as a "credit" which lowers the manure nutrient load (tons N and P) applied to fields within the exporting county.

Q: Specifically, what can we do to get the greatest return on reductions for our efforts?

A: Assist with placing the correct BMPs in the right places (solving local problems) and reporting those actions. Recent research has shown that approximately 80 percent of the non-point source pollution originates from approximately 20 percent of a given land area (farm, watershed, landscape, etc.). Conservation efforts should focus on these priority areas and strive to control, trap and treat nutrients and sediments with selected BMPs. This means controlling nutrients at the source through nutrient management planning for barnyards and nutrient applications. It also means trapping nutrients through practices such as conservation tillage, and treating nutrients using practices such as constructed wetlands or forested buffers.

Farm Inspections

Q: What are the goal(s) of farm inspections?

A: To verify compliance with Pennsylvania's Chapter 83, 91, 92a, and 102 Agricultural E&S and Manure Management regulations (as applicable), as well as the Clean Streams Law, and to collect BMP information for reporting in the CBP Model.

Q: Will these farm inspections influence the CBP Model? What "bean" will be counted?

A: Yes. DEP will collect BMP data and transmit it to EPA for use in the model. We believe that this effort will demonstrate that Pennsylvania is closer to meeting its TMDL pollutant reduction goals for the agricultural sector than currently thought.

Q: What exactly will be inspected? What constitutes a farm?

A: The details of the inspection process will be handled through a Standard Operating Procedure (SOP) that will be developed and shared with DEP regional offices and districts. The SOP will, among other things, explain the roles and responsibilities of DEP and districts, the data that will be collected during inspections, identify the conditions that constitute non-compliance, how data will be managed and other actions. The current regulations do not define the term "farm," but address the planning requirements for reduction of erosion and sedimentation from plowing/tilling and animal heavy use areas and manure handling. If a definition of a farm is essential, the Commonwealth may use the same definition that USDA uses when counting farms for the Census of Agriculture: ***A farm is defined as any place from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the year.***

Q: Is there a deadline for the first 50 inspections?

A: DEP is considering using the state fiscal year as the annual inspection cycle. As such, the 50 inspections per DEP-funded position would need to be completed by June 30, 2017. Districts will no longer be required to complete 100 farm outreach visits beginning with this new inspection component.

Q: What if a conservation district opts not to conduct the 50 inspections?

A: If the conservation district decides not to conduct the inspections, DEP (or EPA) will assume the inspection role. Chesapeake Bay funds will not be provided for the conservation district's Chesapeake Bay technician(s).

Q: Will DEP provide guidance to conservation districts on how we should prioritize our 50 inspections?

A: Yes. DEP will work directly with each district to establish inspection goals and priorities prior to the start of this inspection process. DEP will routinely communicate its inspection targets and goals with each district prior to each annual inspection cycle thereafter. DEP will also be conducting agricultural inspections, so a communication process will be developed that ensures there is no overlap between DEP and district inspections.

Q: What happens if/when an inspection reveals a farm has no written E & S Plan and/or Manure Management Plan? Will enforcement be sought even if no problems exist on the farm?

A: Yes. Not having a plan that is required by regulation is a violation, even if no water quality problems currently exist. Further, having required plans is essential to ensuring that problems do not occur in the future. Inspectors will work to bring the operation into compliance consistent with the SOP and ensure that all required plans are developed. If compliance cannot be obtained by the inspector consistent with the provisions of the SOP, then the case will be referred to DEP for enforcement actions.

Q: What if there is a waiting list for farmers to get a plan?

A: Waiting for a plan to be written is no longer considered an acceptable reason for non-compliance. Farm operations have been required to have written plans developed and implemented for several decades. There has been extensive education and outreach conducted regarding these requirements, as well as technical and financial assistance available to farmers to assist with these basic planning requirements. An emphasis is being placed on plans at this time to start with the basics and focus on the good work that is being done in the agricultural community. This is a reasonable approach that is needed to create a culture of compliance.

Q: If a farmer completes an agricultural E&S plan or a Manure Management Plan on PA One Stop is that plan considered adequate?

A: In general, yes. If the information entered into the PA One Stop system is accurate and appropriate to the operation's practices, a plan developed using the PA One Stop tool is adequate to meet the basic planning requirements. Inspections will confirm the validity of a plan and if that plan is being implemented.

Q: Will conservation districts be expected to address enforcement?

A: No. DEP will handle enforcement matters. Districts may be asked to assist with follow-up inspections to verify compliance with enforcement actions.

Q: How is DEP staff going to handle the additional compliance workload and will DEP hire additional compliance specialists to handle enforcement?

A: DEP has made addressing the Commonwealth's pollutant reduction deficiencies related to the Chesapeake Bay a top priority. The agency will be adding additional staff, including compliance specialists, to address this priority.

Q: In the past, DEP has directed farmers to the conservation districts for plan assistance. Under this "reboot," conservation districts will be doing both the inspections and the technical assistance. Is there any guidance on how districts will play both roles?

A: Playing both enforcement and compliance assistance roles is something with which DEP has a great deal of experience. DEP will provide training to districts and playing both roles will be an important element of that training.

Q: How will Pennsylvania address the loss of technical assistance resources and the reduction of installation of new Ag BMPs when district staff is required to reduce the installation of BMPs and, instead, conduct the 50 inspections?

A: District staff will not be required to reduce the installation of BMPs, but will be required to conduct 50 inspections if the position is funded with Chesapeake Bay funds (in place of the 100 informational visits). It is recognized that a compliance visit may be more time consuming than an informational visit, so the total number required was reduced by one-half. As such, staff time committed to other portions of the Chesapeake Bay Program agreement should not be impacted. If the districts desire the same level of technical assistance for those positions, districts will need to find methods to improve efficiency of staff in completing work or otherwise will need to partner with other organizations to assist with education and outreach activities.

Other Issues

Q: There will need to be extensive, ongoing communication between conservation districts and DEP. Does DEP anticipate using work groups to address conservation district concerns regarding: goals/expectations; SOP development; etc. Does DEP anticipate establishing new workgroups to address conservation district concerns?

A: DEP does anticipate additional opportunities for communications between DEP regional staff implementing ag compliance activities and individual conservation districts to discuss specific implementation concerns. This process will develop more fully over time as DEP implements the reboot strategy.

Q: How will DEP coordinate inspections with conservation districts to avoid the possibility of different agencies showing up at the same farm?

A: DEP anticipates multiple opportunities for communication between DEP regional staff and individual conservation districts to discuss specific implementation concerns.

Q: Is there any way to simplify/speed up the regulatory framework of Chapter 105 General Permits?

A: All regulatory requirements, including those found in Chapter 105, must be met when constructing any type of project. Projects with permit applications that are correct and address all regulatory requirements upon first submission proceed through the review process very quickly. Deficient applications slow down the review process.

Q: Is there support for adequate funding for the necessary technical assistance needed? Has a recent analysis on the amount of technical assistance been done to meet the needs? Is the amount of technical assistance needed being balanced with a similar amount of cost-share assistance?

A: Establishing a culture of compliance requires new and innovative thinking to accomplish the goal. This is a Pennsylvania problem that will require both public and private partners to pull together in order to respond to the need and required work to be done. In order to undergo a fundamental change of this scale, both funding and resources have been designated as priorities in order to accomplish goals of the reboot. Access to adequate levels of technical assistance is vitally important to farmers and landowners who are required to develop and implement plans necessary to control non-point sources of pollution. Traditionally, this technical assistance has been provided by network of county, state and federal agencies; with county conservation districts promoting, coordinating and or implementing many of these services. In addition, over the last two decades, private sector technical service providers have also developed significant capacity to help meet these needs. The significant challenges of the Chesapeake Bay TMDL requirements and the levels of plan development and BMP design and installation called for by 2025 will require conservation districts, state and federal agencies, as well as the private sector service providers to cooperate and collaborate in innovative ways to create public/private partnerships that are capable of meeting such a historic increase in the demands for technical and financial assistance. DEP and its partners are committed to exploring new opportunities and new models for technical service delivery.

Q: Some farms will still need Ag E&S plans or Manure Management plans. Some counties do not have a good pool of private sector companies or individuals who can write these plans. Are there plans to address this real concern?

A: As stated above, DEP recognizes that access to technical assistance for planning and BMP design and installation are vitally important and will be required at levels not previously experienced. The Commonwealth challenges the conventional wisdom that there is not an adequate consultant capacity to develop required plans and then to design and construct the necessary BMPs. We believe that this reboot strategy and culture of compliance approach will create a new market demand for private sector plan development, and that the capacity to address that demand will develop. DEP and its partners are committed to exploring new and expanded opportunities and models for technical service delivery.

Q: Does DEP recognize that the quality of consultant work varies and that adequate training and standards/quality controls need to be provided? Once a plan is written, who will be responsible for verifying if those plans are being implemented and actually resulting in water quality improvements?

A: DEP is very aware of the variation in the quality of consultant services. DEP processes over 40,000 applications for various types of authorizations every year. One of the purposes of the inspection program is to verify compliance with regulatory requirements, which includes both development and implementation of the required plans. Initially, our goal is to see that all farms have the required plans.

Q: For improved reporting/data collection, would DEP support statewide use of PracticeKeeper Database system currently used by five Pennsylvania counties and in Virginia, Delaware and Ohio?

A: Yes. A multi-use data collection system, like PracticeKeeper or something similar, will be necessary to track BMPs and planning requirements.