CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

December 20, 2013

On behalf of the Chesapeake Bay Foundation (CBF) and our more than 200,000 members, we offer the following comments on the draft Federal Milestones for 2014-2015. In preparing these comments, we reviewed the commitments that were made in Executive Order 13508 Strategy for Protecting and Restoring the Chesapeake Bay Watershed (EO Strategy), as one purpose of the milestones is to ensure these actions are achieved. Our review was focused on those commitments that are critical to achieving water quality goals.

As highlighted below (by EO Strategy page number and responsible agency), we identified several commitments made by federal agencies that have not been accomplished, nor are actions to achieve them included in what is proposed in the 2014-2015 milestones. We urge the responsible federal agencies to revise their milestones accordingly.

p. 27. Implement improvements to the current stormwater program and initiate new national stormwater rulemaking with Chesapeake Bay watershed provisions. EPA's proposed milestone goal for the national stormwater rule is: "Propose actions on revisions to the national stormwater rule." **We recommend more definitive language: "In 2014, EPA will propose a revised national stormwater rule."** The other stormwater related milestone indicates EPA and the jurisdictions will develop workplans. **The original EO Strategy commitment indicated EPA would ensure "...permits meet regulatory requirements, are enforceable, and will meet water quality requirements." (p. 28). We suggest a stronger milestone that conveys this commitment** and note that the recent court decision on the Montgomery County, Maryland Municipal Separate Storm Sewer System (MS4) permit highlights the need to strengthen MS4 permits.

p. 29. Reduce pollution from atmospheric deposition (EPA): We are concerned that the significant nitrogen reductions assumed from the implementation of the Cross-State Air Pollution Rule (that replaced the Clean Air Interstate Rule) are uncertain and therefore EPA should pursue reductions from other air sources. As noted in Appendix L, "Setting the Chesapeake Bay Atmospheric Nitrogen Deposition Allocations," of the Chesapeake Bay Total Maximum Daily Load document, the air allocation assumed that the Clean Air Interstate Rule would be in place.

Like the Clean Air Interstate Rule, the Cross-State Air Pollution Rule, if implemented would result in significant (roughly 54%) NOx reductions from power plants in the affected area from 2005 levels. This rule was legally challenged, however, and recently argued before the U.S. Supreme Court. In the face of the uncertainty of getting these reductions, which at a minimum will be delayed, we believe EPA should employ adaptive management and explore reductions from other sources.

Specifically, we recommend that EPA establish a milestone commitment to work with USDA to evaluate opportunities and where appropriate, begin implementation, to reduce ammonia emissions from agriculture, as this source continues to be one that is largely uncontrolled. In addition, we encourage EPA to adopt a milestone what would commit them to use air modeling to

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identify large sources of nitrogen deposition to the Bay and then consider designating them as point sources under the Clean Water Act, as there is precedent for this approach in National Cotton Council of America v. EPA, 553 F.3d 927 (6th Cir. 2009). In the absence of a comprehensive regulation governing power plant emissions, such as the Cross-State Air Pollution Rule, these additional milestones will ensure that progress to reduce nitrogen deposition from large air sources, continues.

p. 35. Identify the most effective conservation practices (USDA): USDA committed to align program delivery to emphasize the priority practices used by the states to reach their two-year milestone commitments. As noted below, forest buffers is one of the priority practices, but there is little indication this prioritization of program delivery occurred. We acknowledge that the USDA's Conservation Effects Assessment Program (CEAP) report indicates increased rates of implementation of conservation measures between 2006 and 2011; however, it is not clear if the implementation was targeted by practice in way that is consistent with this EO Strategy commitment.

We recommend that USDA include a 2014-2015 milestone commitment to help the states implement priority conservation practices that will yield the greatest sediment and nutrient reductions.

Forest Buffer Outcome:
All Bay states are relying heavily on forest buffers to achieve their water quality goals as outlined in their Watershed Implementation Plans (WIPs). For example, according to an analysis by the Chesapeake Bay Program, watershed-wide, forest buffers are the second most important practice in terms of expected nitrogen reductions. State WIPs call for roughly an additional 185,000 acres of forest buffers by 2025, an average of 14,200 acres/year. Implementation progress in 2012 was roughly an additional 2,600 acres. In addition, USDA's CEAP report indicated that buffers are in place on less than one third of cropped acres.

USDA made several EO Strategy commitments (noted below) that should have accelerated the implementation of forest buffers. In addition, it is worth noting that buffers were identified as a priority practice for implementation under the Chesapeake Bay Watershed Initiative in the 2008 Farm Bill. Instead, the number of new forest buffers being planted is at the lowest point since the late 1990s. This is alarming, given the importance of this practice to achieving Chesapeake Bay restoration goals. **We strongly encourage USDA to include 2014-2015 milestone commitments that will lead to achievement of these EO strategy commitments and accelerate implementation of forest buffers across the watershed. Furthermore, we welcome the opportunity to meet with USDA to discuss ways that CBF can help achieve the following outcomes.**

p. 51. Accelerate application of CREP to help achieve state goals for riparian forest buffer adoption [1]
p. 51. Restore forest buffers in priority watersheds.
p. 51. Explore funding incentives for installation of targeted riparian forest buffers.

Lastly, with the release of the recent CEAP report, we were reminded of the commitments that USDA and EPA made to work together on data sharing and model coordination. These commitments are outlined in the *USDA and EPA Chesapeake Conservation Data Collaboration Workplan (June 2011).*

[1] We understand that the current Farm Bill has expired and therefore, currently, there is no CREP. There are, however, other Farm Bill programs that could be used to pay for forest buffers if CREP is not renewed.

To ensure that progress continues to be made and that the process is transparent to the public, we recommend that USDA and EPA include milestone commitments consistent with the tasks outlined in this workplan.

CBF is a strong supporter of the milestone process because it is critical to ensuring state and federal agencies are held publicly accountable for progress toward long-term Chesapeake Bay restoration goals. We have identified specific areas where proposed milestones are not consistent with federal commitments in the original EO Strategy. We urge you to seriously consider our recommendations for reconciling these differences.

Thank you for the opportunity to provide comment. We would be glad to discuss any of these recommendations with you in more detail, if you desire.

Sincerely,

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