

**SETTLEMENT AGREEMENT**

WHEREAS, the Chesapeake Bay Program (“CBP”) partnership was formed to restore and protect the Chesapeake Bay;

WHEREAS, in 1987, Congress recognized the significance of the Chesapeake Bay and the need for a coordinated and cooperative effort to restore the Bay in Section 117 of the Clean Water Act;

WHEREAS, in the late 2000s, the CBP partnership agreed upon a goal of having all practices and controls installed by 2025 to achieve the Bay’s dissolved oxygen, water clarity/submerged aquatic vegetation and chlorophyll-*a* water quality standards (“2025 Goal,” also defined in Section II below);

WHEREAS, in collaboration with the Bay states (defined in Section II below), the U.S. Environmental Protection Agency (“EPA” or the “Agency”) developed an “Accountability Framework” to guide the partnership’s restoration efforts. The Accountability Framework has four elements: state Watershed Implementation Plans (“WIPs”), state and federal two-year milestones, EPA’s tracking and assessment of restoration progress, and the potential for specific EPA actions if Bay states do not meet their commitments (“Backstop Measures”);

WHEREAS, on December 29, 2010, EPA established the Bay Total Maximum Daily Load (“TMDL”) for nitrogen, phosphorus, and sediment;

WHEREAS, on June 16, 2014, the CBP partnership entered into the 2014 Chesapeake Bay Watershed Agreement;<sup>1</sup>

WHEREAS, in June 2018, EPA provided the Bay states with expectations for the final Phase III WIPs;

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<sup>1</sup> [https://www.chesapeakebay.net/what/what\\_guides\\_us/watershed\\_agreement](https://www.chesapeakebay.net/what/what_guides_us/watershed_agreement), amended in 2020.

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WHEREAS, in August 2019, the Bay states submitted their respective Phase III WIPs.<sup>2</sup> EPA provided evaluations of those WIPs in December 2019;

WHEREAS, after receiving EPA's evaluations of their Phase III WIPs which indicated that both WIPs were deficient in certain areas, both New York and Pennsylvania committed to revising their WIPs to meet the 2025 Goal;

WHEREAS, in its 2020-2021 two-year milestone commitments, Pennsylvania committed to amend its Phase III WIP by December 2021;

WHEREAS, on September 10, 2020, Chesapeake Bay Foundation, Inc., Bobby Whitescarver, Jeanne Hoffman, the Maryland Watermen's Association, and Anne Arundel County, Maryland ("CBF Plaintiffs") filed a complaint in the U.S. District Court for the District of Columbia against the United States of America, acting by and through the United States Environmental Protection Agency, Administrator Andrew Wheeler, and Regional Administrator Cosmo Servidio (collectively, "EPA" or "the Agency")<sup>3</sup>, Case No. 1:20-cv-02529, stating that EPA's alleged approval of New York's and Pennsylvania's 2019 Phase III WIPs failed to comply with the Clean Water Act ("CWA" or "Act") and the Administrative Procedure Act;

WHEREAS, the District of Columbia, the States of Delaware and Maryland, and the Commonwealth of Virginia ("State Plaintiffs") filed a similar complaint against EPA in the U.S. District Court for the District of Columbia on the same day, Case No.1:20-cv-02530-CJN;

WHEREAS, on November 20, 2020, EPA filed a Motion to Dismiss the Complaints for lack of jurisdiction and failure to state a claim;

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<sup>2</sup> The Bay states developed WIPs in three phases. The Phase I WIPs were developed prior to EPA establishing the Bay TMDL and, in large part, served as the basis for the TMDL allocations. The Phase II WIPs were developed in 2012. The Phase III WIPs were developed in 2019.

<sup>3</sup> Current EPA Administrator Michael S. Regan and Regional Administrator Adam Ortiz are automatically substituted for Andrew Wheeler and Cosmo Servidio as Defendants. Fed. R. Civ. P. 25(d).

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WHEREAS, on November 23, 2020, the Court consolidated the two cases, designating Case No. 1:20-cv-02529 as the lead case;

WHEREAS, on January 28, 2021, the Court granted the unopposed motion filed by the State of New York and the New York Department of Environmental Conservation (“New York Intervenors”) to intervene as Defendants;

WHEREAS, on May 25, 2021, New York submitted a Final Amended Phase III WIP to EPA, and on August 5, 2021, EPA issued an evaluation of New York’s Final Amended Phase III WIP. In its evaluation, EPA indicated that New York’s Final Amended Phase III WIP is projected to meet New York’s portion of the 2025 Goal;

WHEREAS, on January 19, 2022, CBF Plaintiffs, State Plaintiffs, (together, “Plaintiffs”), EPA, and New York Intervenors stipulated that Plaintiffs’ claims for relief in their respective complaints concerning New York’s 2019 Phase III WIP and EPA’s evaluation of that WIP were dismissed without prejudice. On May 3, 2022, the Court granted New York Intervenors’ unopposed motion to withdraw as parties;

WHEREAS, on December 23, 2021, the EPA Region 3 Regional Administrator sent a letter to the Secretary of Pennsylvania’s Department of Environmental Protection (“PADEP”) stating that EPA expects Pennsylvania’s amended Phase III WIP to fully address the nitrogen shortfall in Pennsylvania’s original Phase III WIP and to provide confidence that Pennsylvania will meet its portion of the 2025 Goal, and that if the amended WIP does not do so, EPA will take additional steps to ensure adequate progress toward meeting the 2025 Goal;

WHEREAS, on December 30, 2021, Pennsylvania submitted to EPA its Draft Amended Phase III WIP. In January 2022, Pennsylvania supplemented that narrative submission with additional information and modeling scenarios;

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WHEREAS, on April 18, 2022, EPA provided its evaluation of the Draft Amended Phase III WIP to Pennsylvania. EPA indicated in its evaluation that the Draft Amended Phase III WIP did not meet Pennsylvania's portion of the 2025 Goal. EPA's evaluation included an analysis of the strengths of the draft plan, as well as its deficits, and EPA's expectation that these shortfalls would be addressed by Pennsylvania in its Final Amended Phase III WIP;

WHEREAS, Pennsylvania submitted a Final Amended Phase III WIP to EPA on July 18, 2022;

WHEREAS, on November 21, 2022, EPA provided its evaluation of the Final Amended Phase III WIP to Pennsylvania;

WHEREAS, pursuant to the Accountability Framework, EPA has taken several Backstop Measures, including increased and early engagement on National Pollutant Discharge Elimination System ("NPDES") permits, direction and redirection of grant funding to target resources in Pennsylvania toward areas with the greatest potential to achieve nutrient reductions, an increase of federal oversight inspections and investigations in Pennsylvania, and issued a written public statement of the Agency's expectations that the next issuance of the Pennsylvania small municipal separate storm sewer system ("MS4") general permit ("PAG-13"), which expired March 15, 2023, will be consistent with the Agency's expectations that MS4 permits follow an iterative process;

WHEREAS, although the parties continue to disagree whether EPA's oversight role under Section 117 of the CWA is mandatory or discretionary, EPA has agreed to take certain actions set forth herein;

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WHEREAS, EPA asserts that it continues to provide technical assistance to the Bay states and other local stakeholders, as well as CWA grants and other federal funding that will support reductions in nutrient and sediment loads;

WHEREAS, EPA asserts that it continues to work collaboratively with the agricultural community, including local agricultural professionals and farmers in the Bay states, on actions and funding that will support reductions in nutrient and sediment loads;

NOW, THEREFORE, Plaintiffs and EPA agree as follows:

### I. GENERAL PROVISIONS

A. The parties to this Settlement Agreement (“Agreement”) are the CBF Plaintiffs and State Plaintiffs (collectively, “the Plaintiffs”) and EPA (collectively with the Plaintiffs, “the Parties”). Nothing in this Agreement shall bind, obligate, or otherwise create any rights or duties applicable to or enforceable by, or impose any conditions or limitations upon, any person or entity that has not signed the Agreement, nor shall the Agreement be construed to make any such persons or entity a third-party beneficiary of the Agreement.

B. This Agreement applies to, is binding upon, and inures to the benefits of the Plaintiffs (and their successors, assigns, and designees) and EPA.

### II. DEFINITIONS

Terms used in this Agreement that are already defined in the CWA or EPA’s implementing regulations have the meaning expressed in those definitions. The following terms used in this Agreement are defined as follows:

“**2025 Goal**” means the CBP partnership agreement to have all practices and controls installed by 2025 to achieve the Bay’s dissolved oxygen, water clarity/submerged aquatic

vegetation and chlorophyll-*a* water quality standards, which was reaffirmed in the 2014 Chesapeake Bay Watershed Agreement.

**“Bay states”** means the six Chesapeake Bay states (Virginia, Maryland, Delaware, West Virginia, Pennsylvania, and New York) and the District of Columbia. The District of Columbia is considered a “state” for purposes of the Clean Water Act. 33 U.S.C. § 1362(3).

**“Chesapeake Bay Program (“CBP”) partnership”** refers to the partnership focused on restoring the Chesapeake Bay, the principal partners of which are the Bay states, EPA, and the Chesapeake Bay Commission, as well as other federal agencies, state agencies, local governments, academic institutions, and non-governmental organizations.

**“Effective Date of this Agreement”** means the date it is signed by the Parties.

**“Tier I Counties”** means the counties identified in Pennsylvania’s 2019 Phase III WIP’s local planning goals as the counties that have the most nutrient load to reduce. Tier I Counties are Lancaster and York Counties.<sup>4</sup>

**“Tier II Counties”** mean the counties identified in Pennsylvania’s 2019 Phase III WIP’s local planning goals as having the second most nutrient load to reduce after Tier I Counties. Tier II Counties are Franklin, Lebanon, Cumberland, Centre, and Bedford Counties.

### **III. EPA ACTIONS**

Subject to the terms of this Agreement and consistent with the provisions of Section VII below, EPA agrees to the following:

#### **1. EPA Oversight of Pennsylvania’s Progress Toward Meeting Its 2025 Goal**

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<sup>4</sup> Pennsylvania categorized counties into four tiers based on the load reductions needed to meet the 2025 planning goal. The following Pennsylvania factsheet identifies what counties are in which of the four tiers: [https://files.dep.state.pa.us/Water/ChesapeakeBayOffice/WIPIII/2020/Summary\\_Documents/Local%20Clean%20Water%20Planning%203020-HD-DEP5257.pdf](https://files.dep.state.pa.us/Water/ChesapeakeBayOffice/WIPIII/2020/Summary_Documents/Local%20Clean%20Water%20Planning%203020-HD-DEP5257.pdf).

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EPA will continue to annually evaluate Pennsylvania's progress toward meeting its portion of the 2025 Goal and make this evaluation publicly available online at [www.chesapeakeprogress.com](http://www.chesapeakeprogress.com).

### **2. Enhanced Oversight of Pennsylvania NPDES Permits**

- a. Within sixty (60) days after the Effective Date of this Agreement, and annually thereafter until December 31, 2025, EPA will determine whether there are any PADEP-issued general NPDES permits or individual NPDES permits within the Pennsylvania portion of the Bay watershed that have been administratively extended and make the list of any such permits publicly available on its website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed>. Should any such permits be identified, EPA will request in writing that Pennsylvania develop, in consultation with EPA, a permit reissuance strategy designed to significantly reduce the number of administratively extended permits, and EPA will make any such strategy publicly available on EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed>.
- b. Within one hundred and twenty (120) days after the Effective Date of this Agreement, EPA will complete its update of the Agency's MS4 permitting guide for the Bay watershed, called the Urban Stormwater Approach for the Mid-Atlantic Region and the Chesapeake Bay Watershed, last issued in July 2010. In updating the permitting guide, EPA will consider incorporating ideas for climate resiliency.

### **3. Enhanced Compliance-Assurance Activities**

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- a. Within sixty (60) days after the Effective Date of this Agreement, EPA will, subject to resource availability, maintain or increase compliance-assurance activities over its FY2022 baseline (prorated on an annual basis as appropriate) within Pennsylvania's Tier I and Tier II Counties (for example, federal inspections, investigations, and/or compliance evaluations) to assess the compliance of NPDES-permitted sources (including concentrated animal feeding operations ("CAFOs"), MS4s, and other NPDES-permitted facilities) with their existing NPDES permit requirements. EPA may, in its discretion, respond to particular instances of noncompliance with actions including but not limited to notices of violation, notices of noncompliance, and administrative and judicial enforcement actions.
- b. In maintaining or increasing compliance-assurance activities as described in Paragraph III.3.a, EPA will consider typical compliance-assurance targeting criteria when selecting NPDES-permitted sources for review, including but not limited to:
  - i. Location, including whether the location discharges to a regulated water body and is within a Tier I or Tier II County, and whether Pennsylvania has listed the stream segment as impaired for nutrients (nitrogen or phosphorus) and/or sediment;
  - ii. Compliance status, including whether NPDES-permitted sources with nutrient or sediment discharges are in significant noncompliance with existing NPDES permits and/or have a history of noncompliance in the past three (3) years;



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- iii. NPDES-permitted sources identified through tips and complaints;
  - iv. Inspection history, including whether NPDES-permitted sources have been inspected by either EPA or PADEP in the past five (5) years; and
  - v. Permit status, prioritizing individual NPDES permits with nutrient or sediment discharges that have a permit that has been administratively extended.
- c. Within sixty (60) days after the Effective Date of this Agreement, EPA will issue a public statement of the Agency's planned maintenance or increase in compliance-assurance activities in Pennsylvania, as described in Paragraphs III.3.a and b.
- d. Every six (6) months beginning on January 1, 2023 through December 31, 2025, EPA will post on EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed> a summary of compliance-assurance activities (for example, federal inspections, investigations, and/or compliance evaluations) to assess the compliance of NPDES-permitted sources that EPA has concluded during the previous six (6) months in Pennsylvania's Tier I and Tier II counties, and the results of any concluded enforcement action, collected penalty, and/or required corrective measures to address nutrient and sediment reductions based on statutory and regulatory violations, to the extent that EPA is permitted by law to make such information publicly available.
- e. If based on its evaluation in Paragraph III.1 EPA determines that additional compliance-assurance activities are appropriate, EPA may further increase compliance-assurance activities within Pennsylvania's Tier I and Tier II Counties

(for example, federal inspections, investigations, and/or compliance evaluations) to assess the compliance of NPDES-permitted sources (including CAFOs, MS4s, and other NPDES-permitted facilities) with their existing NPDES permit requirements, and may, in its discretion, respond to particular instances of noncompliance with actions including but not limited to notices of violation, notices of noncompliance, and administrative and judicial enforcement actions.

**4. Evaluation of Potential Designation Targets for Discharge Permitting**

- a. Within one hundred and twenty (120) days after the Effective Date of this Agreement, EPA will identify Animal Feeding Operations (“AFOs”) as defined by 40 C.F.R. § 122.23(b) in Tier I Counties that may meet the regulatory criteria for designation found in 40 C.F.R. § 122.23(c). In identifying such AFOs, EPA’s considerations will include:
  - i. Proximity of the AFO to surface waters;
  - ii. Number of AFOs in the watershed or sub-watershed;
  - iii. Severity of potential impact on water quality of manure generation, sufficiency of manure management practices and/or available storage capacity based on individual farm operations;
  - iv. Compliance history with state environmental laws evidenced by state inspections, investigations and/or complaints; and
  - v. Inspection frequency, including whether Pennsylvania has inspected the AFO in the previous five (5) years.
- b. EPA will evaluate whether each AFO identified in Paragraph III.4.a meets the regulatory criteria for designation found in 40 C.F.R. §122.23(c). If EPA

determines that an AFO is a significant contributor of nutrients and/or sediment to a water of the United States, EPA will, at a minimum, confer with Pennsylvania to reduce the contributions from such AFO and regarding the possibility of Pennsylvania designating such AFO as a point source subject to NPDES permitting, as appropriate under 40 C.F.R. § 122.23. EPA may, in its discretion, designate such an AFO as a point source subject to NPDES permitting, as appropriate and consistent with 40 C.F.R. § 122.23. Following consultation with PADEP, EPA will post each evaluation on EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed> no later than sixty (60) days after the evaluation is complete to the extent that EPA is permitted by law to make such information publicly available.

- c. Based on the Pennsylvania reports identified in Paragraph III.5.d and EPA's evaluation in Paragraph III.1, beginning on March 21, 2024 and continuing until December 31, 2025, if EPA believes that Pennsylvania is not making sufficient progress toward its portion of the 2025 Goal, EPA will continue to identify and evaluate certain AFOs in Tier I Counties, and begin to evaluate AFOs in Tier II Counties that may significantly contribute nutrients and/or sediment to a water of the United States and contribute to an impairment in a downstream state, as described in subparagraph a. above, and take action as specified in subparagraph b.
- d. Within two hundred and forty (240) days after the Effective Date of this Agreement, EPA will begin to evaluate whether a certain source(s) or category(ies) of stormwater discharges not currently subject to federal point

source discharge regulations within the Pennsylvania portion of the Chesapeake Bay watershed, as identified by EPA, contributes to a violation (i.e., an exceedance) of applicable water quality standards for nitrogen, phosphorus or sediment or is a significant contributor of nitrogen, phosphorus or sediment to waters of the United States. EPA will post each evaluation on EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed> no later than sixty (60) days after the evaluation is complete to the extent that EPA is permitted by law to make such information publicly available.

- e. Based on the outcome of the evaluation(s) described in Paragraph III.4.d, if EPA determines that a particular source contributes to a violation (i.e., an exceedance) of applicable water quality standards for nitrogen, phosphorus or sediment or is a significant contributor of nitrogen, phosphorus or sediment to waters of the United States, EPA will, at a minimum, confer with PADEP regarding the possibility of designating certain source or source categories as needing to obtain a point source permit and, may, in its discretion, exercise its authority to designate certain sources or source categories for NPDES permitting consistent with 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D).

#### **5. EPA Oversight of Clean Water Act State-Assistance Agreements**

- a. Within sixty (60) days after the Effective Date of this Agreement, EPA will evaluate funding vehicles and opportunities to direct funding appropriated under Section 117 of the CWA to target technical assistance to priority areas in Tier I and Tier II Counties that have the greatest potential to reduce nutrient discharges to meet Pennsylvania's portion of the 2025 Goal. Based upon that evaluation and

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in accordance with federal statutory and regulatory requirements, guidance, policy, and Agency priorities, EPA will target funding at the following activities:

- i. Annual or periodic workshops for potential grant applicants about grant opportunities and application processes in areas in Tier I and Tier II Counties that EPA determines have the greatest potential to reduce nutrient loads to the Chesapeake Bay; and
  - ii. Technical assistance to potential grant applicants in Tier I and Tier II Counties to increase their awareness and understanding of grant programs for implementation of best management practices that reduce nutrient loads to the Chesapeake Bay and improve local water quality.
- b. EPA will increase its efforts to work with and encourage other agencies of the federal government to target federal funding, consistent with federal statutory and regulatory requirements, guidance, policy, and Agency priorities, to implement agricultural conservation practices in Tier I and Tier II Counties. EPA will begin increasing its efforts promptly after the Effective Date of this Agreement.
- c. EPA will offer further assistance to federal and state agencies with a role in reducing nutrient loads to the Bay from Tier I and Tier II Counties by providing tools and data necessary to identify where to target the funding for the greatest benefit to the Chesapeake Bay as well as improved local water quality. EPA will begin offering further assistance promptly after the Effective Date of this Agreement.
- d. In the next grants cycle after the Effective Date of this Agreement, EPA will propose a grants workplan that: (1) includes Pennsylvania providing annual

numeric and programmatic commitments and (2) includes Pennsylvania providing to EPA a written report every six (6) months detailing Pennsylvania's progress toward achieving its portion of the 2025 Goal, which EPA will make publicly available on EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed>.

- e. Beginning with the next grants cycle after the Effective Date of this Agreement and continuing through December 31, 2025, EPA will (1) annually review relevant grant guidance and update it as needed and (2) monitor Chesapeake Bay assistance agreements for proper and timely obligation and utilization of federal funds. EPA grant guidance specific to the Chesapeake Bay is published at [www.epa.gov/restoration-chesapeake-bay/chesapeake-bay-program-grant-guidance](http://www.epa.gov/restoration-chesapeake-bay/chesapeake-bay-program-grant-guidance).

**6. EPA Evaluation of Each Bay State's Progress Toward the 2025 Goal**

- a. In addition to the two-year milestone evaluations, and the annual evaluations of Pennsylvania as required by Paragraph III.1, by December 31, 2026 EPA will evaluate each Bay state's progress toward meeting the 2025 Goal. EPA will make the results publicly available through EPA's website at <https://www.epa.gov/chesapeake-bay-tmdl/key-developments-chesapeake-bay-watershed>.
- b. EPA will deliver any recommendations it might have as a result of its evaluation to the CBP partnership within one hundred and twenty (120) days after its completion of the evaluation described in Paragraph III.6.a.

**IV. STIPULATION OF DISMISSAL**

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Within fourteen (14) days after the Effective Date of this Agreement, Plaintiffs and Defendants shall jointly file voluntary dismissal stipulations without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) in the lawsuits styled as *Chesapeake Bay Foundation, Inc. et al. v. U.S. EPA et al.*, 1:20-cv-2529, and *State of Maryland et al. v. Regan et al.*, 1:20-cv-2530. Plaintiffs shall be barred from reinstating those lawsuits except pursuant to the terms and on the conditions specified in Paragraphs VI.C and D, below.

### **V. MODIFICATION AND TERMINATION**

- A. Any term set forth in this Agreement may be modified only by written agreement of the Parties.
- B. This Agreement will terminate on April 30, 2027.

### **VI. RELEASES, DISMISSAL AND REMEDIES**

- A. This Agreement shall constitute a complete and final settlement of all claims which were asserted, or could have been asserted, by Plaintiffs against the United States in the complaints filed in these cases, provided, however, that nothing in this Paragraph VI.A shall affect Plaintiffs' remedy under Paragraph VI.C and Paragraph VI.D, below.
- B. In exchange for EPA's commitments in Part III of this Agreement, Plaintiffs hereby release, discharge, and covenant not to assert (by way of the commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity against the United States based upon matters which were asserted, or could have been asserted, by Plaintiffs in the complaints in the lawsuits styled as *Chesapeake Bay Foundation, Inc. et al. v. U.S. EPA et al.*, 1:20-cv-2529, and *State of Maryland et al. v. Regan et al.*, 1:20-cv-2530, or any

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similar claims regarding EPA's evaluation of Pennsylvania's July 18, 2022 amended Phase III WIP. Nothing in this Paragraph VI.B shall affect Plaintiffs' remedy under Paragraph VI.C.

C. 1. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Agreement, the dissatisfied Party (or Parties) shall provide the other Parties with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within thirty (30) days after the written notice, or such time thereafter as is mutually agreed.

2. If the Parties are unable to resolve the dispute within sixty (60) days after such meeting, Plaintiffs' sole remedies are to reinstitute the lawsuits styled *Chesapeake Bay Foundation, Inc. et al. v. U.S. EPA et al.*, 1:20-cv-2529, and/or *State of Maryland et al. v. Regan et al.*, 1:20-cv-2530 and/or bring any claims, causes of action, suits or demands of any kind whatsoever in law or in equity against the United States based upon matters which could have been asserted by Plaintiffs against the United States based upon EPA's evaluation of Pennsylvania's July 18, 2022 amended Phase III WIP. EPA does not waive or limit any defense relating to such litigation. The Parties agree that contempt of court is not an available remedy under this Agreement.

D. The Plaintiffs' sole remedy concerning any action taken by EPA pursuant to this Agreement is to seek judicial or administrative review of such action. Such actions include, but are not limited to, a decision by EPA not to designate an AFO or certain sources or categories of stormwater discharges as a point source subject to NPDES permitting where such source or sources contribute to water quality violations. Nothing in this Agreement shall be construed to limit any defense EPA may have to any such challenge or to confer jurisdiction on any court to review such action where it would otherwise be lacking.



## VII. SAVINGS PROVISIONS

A. Nothing in this Agreement shall constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers or agencies, or any person affiliated with it. This Agreement shall not be used or admitted in any proceeding against a Party over the objection of that Party.

B. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to EPA by the Clean Water Act or by general principles of administrative law, nor shall it in any way be deemed to limit EPA's discretion in taking any final agency action or adopting any rule, policy, or guidance.

C. Nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise any regulations, guidance, policy, or interpretation EPA may issue in accordance with, or on matters related to, this Agreement from time to time or to promulgate or issue superseding regulations, guidance, or interpretations, or to limit any right that Plaintiffs may have to seek judicial or administrative review in a subsequent case of any such action by EPA.

D. To the extent this Agreement provides that EPA will request, recommend, or otherwise encourage any jurisdiction or federal agency (other than EPA) to take any action, or provide any information, the Parties agree that the jurisdiction's or agency's failure to comply with EPA's request, recommendation, or encouragement shall not constitute a breach of this Agreement by EPA.

E. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C.

§§ 551–559, 701–706, the Clean Water Act, or any other law or regulation, either substantive or procedural.

F. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with deadlines stated in this Agreement. Such situations include, but are not limited to, a government shut-down such as occurred in 1995, 1996, 2013, and 2018–2019, or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the deadlines set forth herein shall not constitute a failure to comply with the terms of this Agreement, and any deadlines shall be extended one day for each day of the delay. EPA will provide Plaintiffs with notice as soon as is reasonably possible under the circumstances in the event that EPA invokes this term of the Agreement and will provide Plaintiffs with an explanation of EPA’s basis for invoking the provisions of this Paragraph.

### **VIII. NOTICES**

A. Any notices required or provided for by this Agreement shall be made in writing, via electronic mail, or if electronic mail is infeasible due to the nature of the notice, by U.S. mail. In addition, to be effective, any such notice must be sent to the following:

For EPA:

Dawn Messier  
Deputy Associate General Counsel  
Water Law Office  
Environmental Protection Agency  
WJC Building North, Room 1448K  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Email: messier.dawn@epa.gov

Cecil Rodrigues  
Regional Counsel  
US Environmental Protection Agency, Region 3

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Four Penn Center  
Philadelphia, PA 19103  
Email: rodrigues.cecil@epa.gov

For DOJ:

Sarah A. Buckley  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
Email: sarah.buckley@usdoj.gov

For the State of Maryland:

Matthew P. Clagett  
Assistant Attorney General  
Office of the Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 6048  
Baltimore, Maryland 21230  
Email: matthew.clagett@maryland.gov

D. Lee Currey, Director  
Water and Science Administration  
Maryland Department of the Environment  
Montgomery Park  
1800 Washington Blvd., Ste. 4502  
Baltimore, MD 21230-1718  
Email: lee.currey@maryland.gov

For the District of Columbia:

Jeffrey Seltzer, P.E.  
Deputy Director  
Natural Resources Administration  
Department of Energy and Environment  
1200 First Street NE, 5th Floor  
Washington, D.C. 20002  
Email: jeffrey.seltzer@dc.gov

David S. Hoffmann  
Wesley Rosenfeld  
Office of the Attorney General for the District of Columbia  
400 Sixth St. N.W., Washington, D.C. 20001  
Email: david.hoffmann@dc.gov

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wesley.rosenfeld1@dc.gov

For the State of Delaware:

Christian Douglas Wright  
Deputy Attorney General  
Director of Impact Litigation  
Division of Fraud & Consumer Protection  
Department of Justice  
State of Delaware  
820 N. French St.  
Wilmington, DE 19801  
Email: christian.wright@delaware.gov

Ralph K. Durstein III  
Deputy Attorney General  
Division of Fraud & Consumer Protection  
Department of Justice  
State of Delaware  
820 N. French St.  
Wilmington, DE 19801  
Email: ralph.durstein@delaware.gov

For the Commonwealth of Virginia:

Katherine E. Kulbok  
Assistant Attorney General  
Virginia Office of the Attorney General  
202 N. 9th Street  
Richmond, Virginia 23219  
kkulbok@oag.state.va.us

For the Chesapeake Bay Foundation, Bobby Whitescarver, Jeanne Hoffman, and the Maryland Watermen's Association:

Hilary H. Falk  
President  
Chesapeake Bay Foundation, Inc.  
6 Herndon Ave.  
Annapolis, MD 21403  
hfalk@cbf.org

Jon A. Mueller  
Vice President for Litigation  
Chesapeake Bay Foundation, Inc.  
6 Herndon Ave.

Annapolis, MD 21403  
jmueller@cbf.org

For Anne Arundel County, Maryland:

Hamilton F. Tyler, Esquire  
Deputy County Attorney  
Anne Arundel County Office of Law  
2660 Riva Road, 4th Floor  
Annapolis, Maryland 21401  
Email: htyler@aacounty.org

Christine Anderson  
Office of the County Executive  
Chief Administrative Officer  
44 Calvert Street  
Annapolis, Maryland 21401  
Email: exande22@aacounty.org

B. Notice provided pursuant to Paragraph VIII.A shall be deemed effective (1) upon the date sent if sent by email or (2) upon receipt if sent by U.S. mail.

## **IX. MISCELLANEOUS PROVISIONS**

A. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

B. This Agreement is the entire agreement between the Plaintiffs and EPA in this case. To the extent this Agreement references other documents, those documents are referenced for informational purposes only and are not thereby incorporated by reference into, and do not constitute a part of, this Agreement. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Agreement.

C. It is hereby expressly understood and agreed that this Agreement was jointly drafted by the Plaintiffs and EPA. Accordingly, the Parties hereby agree that any and all rules of

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construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretations of this Agreement.

D. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

E. The Parties shall bear their own costs of these actions, including attorneys' fees.

APRIL 2023 PROPOSED SETTLEMENT AGREEMENT FOR PUBLIC COMMENT

For the Chesapeake Bay Foundation, Inc., Bobby Whitescarver, Jeanne Hoffman, and the Maryland Watermen’s Association:

Date: \_\_\_\_\_

\_\_\_\_\_  
Hilary H. Falk  
President  
Chesapeake Bay Foundation, Inc.  
6 Herndon Ave.  
Annapolis, MD 21403  
hfalk@cbf.org

For Anne Arundel County, Maryland:

Date: \_\_\_\_\_

\_\_\_\_\_  
Christine Anderson  
Chief Administrative Officer  
Office of the County Executive  
Chief Administrative Officer  
44 Calvert Street  
Annapolis, Maryland 21401  
exande22@aacounty.org

APPROVED FOR FORM AND LEGAL  
SUFFICIENCY  
GREGORY J. SWAIN, COUNTY  
ATTORNEY

Date: \_\_\_\_\_

\_\_\_\_\_  
Hamilton F. Tyler  
Deputy County Attorney

APRIL 2023 PROPOSED SETTLEMENT AGREEMENT FOR PUBLIC COMMENT

For the District of Columbia:

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian L. Schwalb  
Attorney General  
Office of the Attorney General for the  
District of Columbia  
400 Sixth St., N.W., Suite 9000  
Washington, D.C. 20001  
brian.schwalb@dc.gov

For the State of Delaware:

Date: \_\_\_\_\_

\_\_\_\_\_  
Kathleen Jennings  
Attorney General of Delaware  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
attorney.general@delaware.gov

For the State of Maryland:

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Lee Currey, Director  
Water and Science Administration  
Maryland Department of the Environment  
Montgomery Park  
1800 Washington Blvd., Ste. 4502  
Baltimore, MD 21230-1718  
lee.currey@maryland.gov

Date: \_\_\_\_\_

\_\_\_\_\_  
Matthew P. Clagett  
Assistant Attorney General  
Office of the Attorney General



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Maryland Department of the Environment  
1800 Washington Boulevard, Suite 6048  
Baltimore, Maryland 21230  
matthew.clagett@maryland.gov

For the Commonwealth of Virginia:

Date: \_\_\_\_\_

\_\_\_\_\_  
Katherine E. Kulbok  
Assistant Attorney General  
Virginia Office of the Attorney General  
202 N. 9th Street  
Richmond, Virginia 23219  
kkulbok@oag.state.va.us

For EPA:

Date: \_\_\_\_\_

\_\_\_\_\_  
Sarah A. Buckley  
Elliot Higgins  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 616-7554 (Buckley)  
(202) 598-0240 (Higgins)  
sarah.buckley@usdoj.gov  
elliot.higgins@usdoj.gov