

Bay Journal

EPA letter tells PA to increase progress in cleanup effort or it will take action

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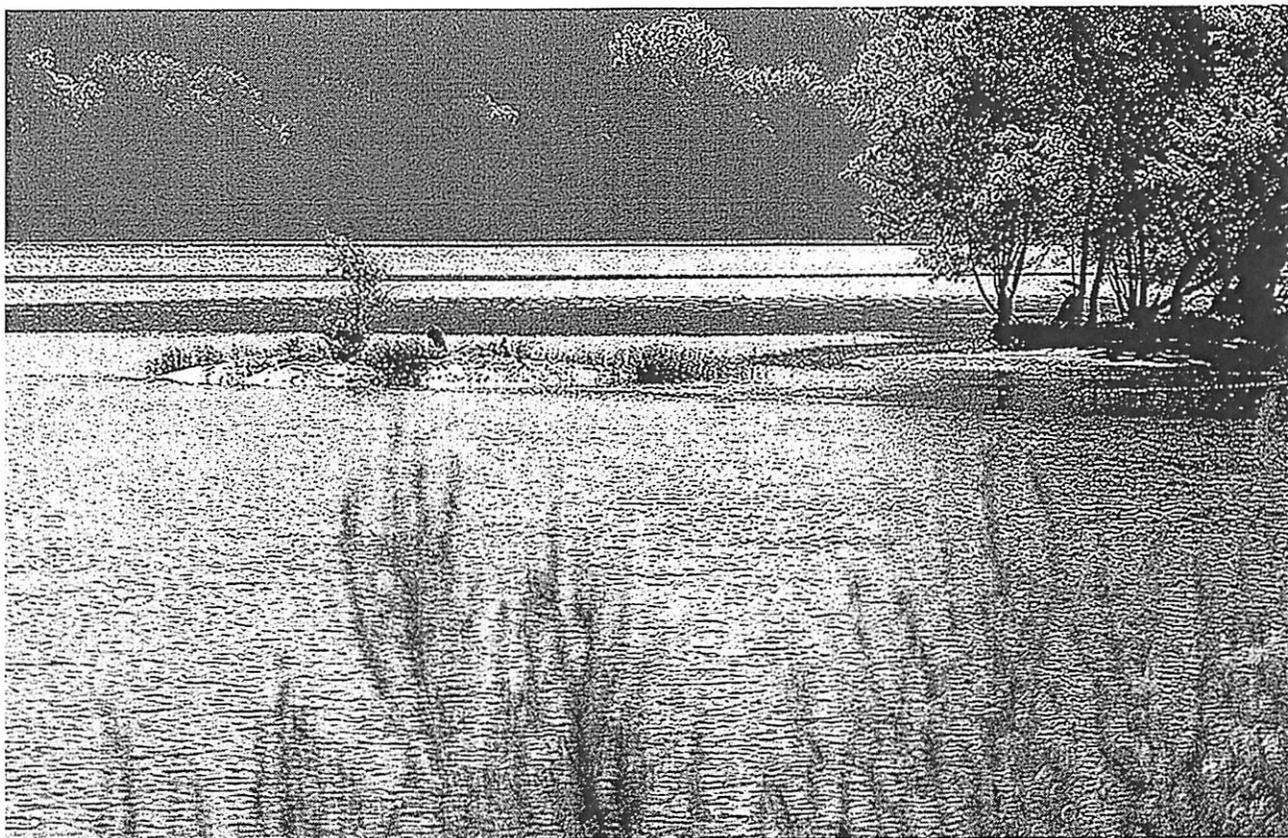
State is falling behind in goals as well as funding for programs to help meet them

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The Susquehanna River, the Bay's largest tributary, supplies half the freshwater entering it. Because the river's mouth is near the head of the Bay, its nutrients have a disproportionately large impact on the estuary's water quality. (Dave Harp)

Pennsylvania needs a realistic plan showing how it will provide enough funding and staff to dramatically ramp up its Bay-related pollution control efforts, or it could face a variety of

potentially costly federal actions within the next two years, the U.S. Environmental Protection Agency warned state officials in a recent letter.

Pennsylvania was the only state to get such a warning, and it illustrates mounting concern that if the Keystone state cannot get its nutrient control program on track, it will prevent much of the Chesapeake Bay from attaining its clean water goals. Pennsylvania delivers more nitrogen to the Bay than any other state.

While most other states are generally on track to meet their required pollution reductions, Pennsylvania faces "serious deficits," the EPA letter said, especially when it comes to controlling nitrogen from farm fields and stormwater from developed areas.

Federal and state officials now generally acknowledge that Pennsylvania never had a viable plan to reach its goals, as plans written in 2010 and 2011 hinged on unrealistic assumptions, such as taking huge swaths of agricultural land out of production.

All of the states in the watershed have to complete new plans next year to show how they expect to have all of the measures in place needed to restore a healthy Bay – such as planting forest buffers, building stormwater controls and upgrading wastewater treatment plants – by 2025.

In its letter, though, the EPA spells out in greater detail what agency officials want to see in the state's next plan: local nutrient reduction goals; increased efforts to engage local officials; and identifying high-priority pollution control actions which are targeted to areas with high amounts runoff.

The letter also said the EPA wanted the state to outline needed policy, legislative and regulatory changes, such as identifying high-priority watersheds for targeted cleanup, and restricting the wintertime application of manure on farm fields.

And, critically, the agency wants to see how the state will pay for cleanup actions.

The letter was sent by EPA Region III Acting Administrator Cecil Rodrigues to the Pennsylvania secretaries of environment, natural resources, and agriculture.

If the state doesn't show enough progress, the EPA letter said that "no later than 2019," the agency will consider taking further actions. Those could include forcing wastewater treatment plants to install costly additional nutrient controls beyond what's already required, or setting nutrient limits for stormwater discharges and concentrated animal feeding operations. And, it could specify how federal grants are spent to address Bay issues.

Dana Aunkst, deputy secretary for water programs at the state Department of Environmental Protection, said such “backstop” actions, as the EPA calls them, would “definitely” be problematic in Pennsylvania.

The state recently began working on a new cleanup plan, enlisting local officials, conservationists and others representing stormwater, agriculture, wastewater and other pollution sources. “It is too early in the process to say whether we concur or not with the statements or recommendations” in EPA’s letter, Aunkst said.

EPA’s letter said that Pennsylvania faces “serious challenges” in meeting its commitments under the 2010 Chesapeake Bay Total Maximum Daily Load, which assigned pollution reductions to all Bay watershed states. By the end of 2025, measures must be installed that would reach the levels of nitrogen, phosphorus and sediment deemed necessary to restore the Bay’s water quality.

The TMDL, commonly called a “pollution diet,” also set interim goals for watershed states to install measures that would achieve 60 percent of the reductions by the end of this year.

But through 2015, Pennsylvania had taken actions to achieve only 10 percent of the nitrogen reductions it needs to account for by 2025. To meet its goal, it must curb nitrogen pollution by another 34 million pounds – 70 percent of the total remaining reduction for the entire Bay watershed.

Pennsylvania faces some unique challenges. Unlike Maryland and Virginia, which have achieved most of their nutrient reductions by upgrading wastewater treatment plants, only a fraction of Pennsylvania’s nutrients come from wastewater. Instead, most is runoff from more than 33,000 farms – which are subject to few regulatory controls – and stormwater from nearly a thousand small cities and towns.

But any shortfall in Pennsylvania is particularly problematic for meeting Bay water quality goals. The Susquehanna River, which drains nearly half of the state’s land area, is the Chesapeake’s largest tributary, supplying half of the freshwater entering it. And because the river’s mouth is near the head of the Bay, its nutrients have a disproportionately large impact on the estuary’s water quality.

Computer modeling shows that a pound of nitrogen from the Susquehanna typically has a greater impact on dissolved oxygen in the Upper Bay than a pound from most other places. It is therefore difficult to offset nutrient reduction shortfalls in the Susquehanna by doing more someplace else.

Since taking office in January 2015, Gov. Tom Wolf has acknowledged the state's problems. More than a year ago, his administration unveiled a plan to "reboot" Pennsylvania's Bay effort, which recognized the need to increase funding and staffing.

Since then, the state has made some progress, such as increasing the pace of farm inspections by requiring county conservation districts to help, or forfeit state grants. A recent survey also suggested that farmers may have implemented more conservation practices than previously thought.

Still, Pennsylvania's nitrogen reduction gap is daunting, and the state's funding to deal with it is less than in other states. Complicating the problem, Wolf, a Democrat, has been embroiled in protracted budget battles with the Republican-controlled General Assembly, which has hindered any significant new spending on Bay efforts.

Pennsylvania figures supplied to the state-federal Chesapeake Bay Program show that funding for all of its Bay-related programs has actually decreased, from \$53.9 million in 2014 to \$33.7 million this year.

EPA officials, based on figures from other states that are close to meeting their agricultural goals, have estimated that Pennsylvania needs to provide between \$50 million and \$80 million in additional cost-share funding annually to help farmers get on pace to install the needed number of conservation practices. The agency wants the state's plan to show where that money will come from.

Bills in the legislature could raise funding for Bay-related needs through water-use fees or other mechanisms.

But their outlook is unclear.

"It is going to require some hard work on the part of legislators to get any increase in funding for water-quality improvement projects," said Dave Hess, a former secretary of the state DEP who's now a lobbyist in Harrisburg. "It's not out of the realm of possibility, but it is certainly pushing a rock up hill."

The EPA letter also said that the state needs to shift some of the nutrient reductions assigned to stormwater in its current plan — which are considered unachievable — to other sources, either agriculture or wastewater. But the agency said farm programs must be bolstered before they could be used to offset pollution elsewhere.

Aunkst acknowledged that the state's proposed stormwater reduction, which was greater than Maryland's and Virginia's combined, was "unrealistic" and that reallocating some of it to other sectors would be considered as a new plan is drawn up.

The EPA said that "as long as Pennsylvania remains far off track" for meeting its goals, the agency would conduct more oversight and would require the state to provide updates more frequently than the annual reporting required of other states.

Federal officials offered to help figure out staffing and funding needed to achieve the state's goals and work with it to pursue "innovative partnerships" that would promote economic growth while pursuing nutrient reductions.

Aunkst said state officials want time to engage with the stakeholders participating in its new plan development before saying how they will respond to the concerns raised by the EPA.

If progress continues to lag, the EPA letter said the agency could take other actions by the end of 2019. Those could include setting nutrient goals for individual regulated entities, such as concentrated animal feeding operations, municipal stormwater systems, and industrial wastewater dischargers. Right now, nutrient goals for those sources are established as a group, not individually.

The EPA has already ramped up enforcement and compliance in the state, and the letter said it would continue to do so if progress is not forthcoming.

In May, it fined the City of Wilkes-Barre and Kingston Borough a total of \$37,000 for not complying with stormwater programs aimed at protecting the Bay. Hess, the former DEP secretary, said that "if that's the first of many, that will certainly get people's attention."

In addition, the letter said the EPA could require further action by wastewater treatment plants if nutrient reductions are lagging from other sectors, such as stormwater and agriculture.

Right now, only municipal wastewater treatment plants are on pace — ahead of schedule, actually — to meet their cumulative nitrogen reduction goals in Pennsylvania. They account for almost all of the state's nitrogen reductions.

It's doubtful much more could come from wastewater plants — their overall nitrogen discharges were 8.3 million pounds in 2015, just 7 percent of the state's total load of 117 million pounds.

John Brosious, deputy director of the Pennsylvania Municipal Authorities Association, said treatment plants have already invested \$1.4 billion in Bay-related upgrades. Most of that cost was borne by local ratepayers, he said, in contrast with Maryland and Virginia, where state funds covered much of the upgrade costs.

There is little political will in communities with treatment plants to do more, Brosious said. "Of particular concern is the failure of the other sectors, specifically the agricultural sector, to make serious reductions in their share of nutrients and sediments," he said. "Additional costly reductions from a sector in compliance will be vigorously opposed."

To meet its 2025 totals, Pennsylvania needs to reduce its nitrogen pollution at a rate of nearly 4 million pounds a year – a pace that exceeds the cumulative annual reductions for the entire Bay watershed in recent years.

Nonetheless, Harry Campbell, Pennsylvania director of the Chesapeake Bay Foundation, said he believes such reductions are possible. Pilot projects have yielded local water quality improvements in small watersheds, he noted, but the state has never had the funding, nor the staff, to scale up those projects.

"What we haven't seen is systemic implementation of those successful projects across the board, and sufficient resources to make them happen," Campbell said

New computer models and new tools such as precision satellite imagery, he added, can help better identify where nutrients are coming from, and pinpoint where controls could be the most effective – things that could accelerate progress if they were incorporated into the decision-making process.

The state's new Bay cleanup plan needs that greater level of detail, Campbell said, along with the engagement of stakeholders and local communities who can become advocates for the restoration of local waters and the Bay.

"This has largely been an agency-driven effort which didn't have much community engagement or education around it," Campbell said. "It was a large basin-scale approach that was largely administered from a central office. All of that, coupled with a lack of resources and funding, leads us to where we are today."



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