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Subject: A Death Warrant For The Chesapeake Bay

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Deputy Administrator McCabe,

Thank you for reading the columns I wrote and my messages to you and others at EPA. Your short response that EPA was "working on various projects and programs and will be continually focused on making sustainable progress" was the only one I received from EPA.

Indicative of the collapsing EPA directed Bay Program, established under President Reagan in 1984, is the abandonment of the TMDL and its requirements for which the states were given 15 years to comply. This was after repeated failures to meet the terms of Bay Agreements beginning back in 1987 when a goal of a 40% reduction in N and P was agreed upon to be met by 2000.

In 2009, when the TMDL was being set, Shawn Garvin, then the Region III EPA Administrator, responded to an inquiry from the Chair of the Principals Staff Committee inquiring about sanctions for failure of a state to comply with the TMDL. Mr. Garvin responded with a 12-page letter detailing the sanctions that could be used to seek compliance under the Clean Water Act.

I attach this December 29, 2009 sanctions letter. A second attachment is a brief summary of the more significant sanctions that EPA could use to gain compliance.

The big question is why has the EPA failed to use any of these significant sanctions for noncompliance instead of "recalibrating" the entire TMDL and its requirements and taking two years to do so without any requirements for new action to achieve Clean Water Act TMDL compliance? Can you answer this?

Your agency's Inspector General's July 18, 2023, report castigates EPA's failed leadership in not steering the states to meet the TMDL and significantly reduce the largest sources of

remaining pollution — nonpoint sources, mostly agricultural pollution. The report found that the EPA had data as early as 2018 documenting how off-track bay restoration was, and yet the EPA failed to push the states or impose any meaningful sanctions to gain compliance.

Adam Ortiz and others at EPA continue to falsely tout how well the Bay Program is succeeding, masking the reality. This is evidenced by his column in The Baltimore Sun of last week. In my response published in The Sun, *A Death Warrant For The Chesapeake Bay* (attached), Mr. Ortiz paints a distorted picture and ignores actual water quality facts. The best barometer of success or failure is the most critical end goal of the Clean Water Act driven TMDL: removing 100% of Bay waters from the CWA impaired waters list.

The EPA Bay Program's own data in 2022 showed that 72% of the bay's waters remain impaired under the Clean Water Act. This means that these waters are in violation of basic CWA requirements. In 1985, 73.5% of waters were impaired. After 36 years and billions spent, a this is a marginal improvement.

The TMDL was dictated to achieve 100% attainment by 2025, so please explain to me how attaining 28% compliance is a success and why the EPA would abandon the TMDL and refuse to enforce the CWA with meaningful sanctions?

The Bay Program's Scientific and Technical Advisory Committee (STAC) in their May report reviewed by 50 scientists, refutes Mr. Ortiz's claims of major phosphorus reductions: "While Chesapeake Bay Program modeling suggests that phosphorus reductions are nearly achieved, analysis of water quality at riverine monitoring stations finds limited evidence of observable reductions in P concentrations."

They also disputed significant gains in nitrogen reductions particularly from agriculture and other nonpoint sources using SPARROW analysis. After \$2 billion given to farmers for voluntary BMPs, STAC found that "Additional funding of existing implementation efforts is unlikely to produce the intended nutrient reduction outcomes ... the extensive history of nonpoint policy illustrates the limits of relying on voluntary actions...Current research suggests that the estimated effects of Best Management Practices (BMP) have not been linked to water quality improvements in most streams."

And yet you, Mr. Ortiz, and others at EPA in abandoning the TMDL are proposing only to continue the failed strategy of paying farmers to implement BMPs which are never monitored for proper implementation nor for effectiveness. You at EPA are suggesting no new mandatory programs, even for CAFOs, to reduce ag nutrients.

Mr. Ortiz and others at EPA also ignore the published studies by Scott W. Ator of USGS and colleagues using actual monitoring of water quality at in situ monitoring stations around the Bay and its rivers. These USGS scientists use the SPARROW methodology preferred by STAC.

Ator et al. concluded in their May 20, 2020 published peer reviewed report that EPA Bay Program computer models overstate nutrient reductions, in some cases by wide margins. Rivers dominated by ag have shown little if any improvement in N including in the Choptank.

A summary of the study published in the *Bay Journal* of Oct 2020 by Karl Blankenship notes:

**“Most worrisome, though, it found no overall nitrogen or phosphorus reductions from the region’s vast agricultural lands. The Bay Program model estimates a 17 percent nitrogen reduction from farms and an even larger phosphorus reduction during that 20-year period.**

**And while the Bay Program considers phosphorus reductions to be largely on track to meet cleanup goals, the USGS analysis showed that overall phosphorus loads actually increased 9% during the study period. The Bay Program estimates phosphorus declined by nearly a third during that time.”**

<https://bloximages.newyork1.vip.townnews.com/bayjournal.com/content/tncms/assets/v3/editorial/e/c1/ec166338-1fa5-11eb-b3f8-bbe7e2c02a47/5fa4616356c4c.pdf.pdf>

Mr. Ortiz comments in The Sun overstate reductions and ignore the Ator findings covering 20 years of actual in situ water quality monitoring (1992-2012). He does the same with the STAC findings.

USGS has much more recent data if you care to obtain it.

I should also note that Ator et al. also found that “Regardless of upstream trends, phosphorus flux to the bay from its largest tributary has increased due to sediment infill in the Conowingo Reservoir. In general, recent research emphasizes the utility of input reductions over attempts to manage nutrient fate and transport at limiting nutrients in surface waters.”

In other words, stop putting N and P onto the land in agriculture and from other sources.

Back in 2004, Congressional Bay leaders found EPA committing the same Greenwashing in overstating Bay Program success. The Washington Post front page of July 18, 2004 headlined: **Bay Pollution Progress Overstated.** Maryland and Virginia U.S. Senators requested a 2004 GAO study which confirmed how EPA was overstating progress and called EBPA out.

Two Maryland Senators then sent a letter to President Bush noting how the GAO report “raises serious concerns about the Bay Program’s ability to achieve the goal of restoring the health of the Bay.” They asked for a White House task force for a top-to-bottom review of all federal programs, resources, and regulatory tools that can be directed toward expediting restoration of the Chesapeake Bay.”

It appears the EPA and Bay states are in the same mode of Greenwashing the results of the failing Bay Program and significant progress in meeting the TMDL outside of wastewater treatment N and P removal.

A further indication of EPA’s lack of prioritizing Bay restoration is that the Bay Program, with its \$88 million budget, is currently without an appointed Director and has been since May 3, 2023. Before that, there was no appointed Director from March 2021 to June 2, 2022. That’s when Kandis Boyd was appointed who was totally unqualified to serve in this position and was relieved of her duties after 11 months. I met her and tried to discuss Bay restoration with her. Her lack of knowledge about Chesapeake Bay was striking.

Instead of her dismissal, she was appointed Adam Ortiz's "Senior Advisor." My question: On what does she advise Mr. Ortiz? Her background is as a meteorologist. Certainly, you at EPA can ascertain the weather and tides around the Bay without an on-staff meteorologist.

I welcome your response to my inquiries. Ms. McCabe, you can call me at <private phone number redacted> as I would welcome your feedback to my harsh commentary that is born out of my frustration and sadness over the plight of the Chesapeake after my 50 year of advocacy.

Gerald Winegrad