



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure



March 1, 2022

Environmental Quality Board
Rachel Carson State Office Building
P.O. Box 8477
Harrisburg, PA 17105
Via eComment: <http://www.ahs.dep.pa.gov/eComment>

RE: Draft National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance Amendments to Chapter 92a section 51(a).

Dear Environmental Quality Board (EQB) members,

On behalf of the Chesapeake Bay Foundation (CBF) and its more than 300,000 members and e-subscribers, please accept these comments pertaining to the draft NPDES schedules of compliance amendments to Chapter 92a section 51(a).

CBF is a 501(c)(3) non-profit organization, founded in 1967. The organization's mission—carried out from offices in Maryland, Virginia, Pennsylvania (PA) and the District of Columbia—is to restore and protect the ecological health of the Chesapeake Bay, the nation's largest and one of its most vital estuaries. As such, and on behalf of our members, we are interested in matters that will impact the health of the Chesapeake Bay, the waters that feed into it, and the health of those who live and work within the Bay watershed.

Established in 1986, CBF's Pennsylvania office strives to protect and restore the waters of the Commonwealth through collaboration with a broad range of stakeholders from elected officials to farmers through our policy, planning, grassroots outreach and advocacy, and education. Our nationally recognized, multiple award-winning watershed restoration program has helped thousands of farmers design, build, and maintain critical conservation practices. And, in 2018 the office launched the Keystone 10 Million Trees Partnership (K10) with the goal of planting 10 million trees alongside Pennsylvania's streams, streets, and other high priority areas by the end of 2025. To date, CBF, the over 200 K10 partners, and others have planted over 3 million trees towards that goal.

Pennsylvania is currently in the process of implementing the final Phase 3 Watershed Implementation Plan (WIP3) to achieve nitrogen, phosphorus, and sediment reductions to our local waters and ultimately the Chesapeake Bay. Pennsylvania has made great progress to date;

but substantial work remains, and the state is eagerly searching for opportunities to reduce nutrient and sediment pollution across the bay watershed.

In 2020 CSOs within the Pennsylvania's portion of the Chesapeake Bay Watershed (PACBW) constituted 0.88 percent of the nitrogen load (927,495 lbs), 3 percent of the phosphorus load (112,983 lbs), and 0.33 percent of the sediment load (9,421,540 lbs)¹ while impairing 117 miles of streams in the state². In order to meet the WIP3, Pennsylvania forecasts implementing practices that will reduce CSO nitrogen loads by 787,369 pounds, phosphorus loads by 95,937 pounds, and sediment loads by 8,000,789 pounds by the end of 2025.³

In addition to the sediment and nutrients targeted in the WIP3, the estimated total annual discharge of 25,882 million gallons⁴ by PACBW CSOs can also contain a myriad of pollutants which have ecological and human health impacts, such as fecal coliforms, pharmaceuticals and their byproducts, antimicrobial compounds, insecticides, flame-retardants, polycyclic aromatic hydrocarbons, metals, and anything else that enters the sanitary or storm sewer system. Many of these compounds are known or suspected endocrine disruptors. In fact, a study in Vermont found endocrine disrupting compounds were ten times greater in CSO discharges than in treated wastewater.⁵

The ecological and human health impacts of CSOs are likely to intensify due to the impacts of climate change. Pennsylvania's projected increases in total annual precipitation and intensification of events promises to add greater strain on these systems. In fact, the Chesapeake Bay Program projects that by 2055 annual nitrogen and phosphorus loads to the Bay by PACBW CSOs may increase by 3.2 percent and 3.1 percent from the 1991-2000 mean load, respectfully.⁶ CBF appreciates the unique and complicated situation of CSOs in Pennsylvania. Our Commonwealth has one of the most numbers of CSOs in the country that scored a "D-" in the condition of the state's wastewater infrastructure, according to the American Society of Civil Engineers.⁷ It does not appear that the proposed revision will impact the Commonwealth's ability to meet the WIP3 or further prolong the CSO's ecological and human health impacts by extending the implementation schedules of Long-Term Control Plans. However, should this occur, it would be of significant concern.

Furthermore, this regulatory change should not be a stepping stone for all water quality discharge violators to request longer compliance schedules. The proposed regulation change to §92a.51(a)

¹ Chesapeake Assessment Scenario Tool (CAST), 2021

² Pennsylvania Department of Environmental Protection. (2022, February 10). *Draft 2022 Pennsylvania Integrated Water Quality Report*. ArcGIS StoryMaps. Retrieved February 24, 2022, from <https://storymaps.arcgis.com/stories/b9746eec807f48d99decd3a583eede12>

³ Ibid

⁴ Bertani, I., Bhatt, G., Shenk, G., & Linker, L. (2019, May 7). *CSO Projections Under Climate Change in the Chesapeake Bay Watershed*. Wastewater Treatment Workgroup Conference Call 7 May 2019. Retrieved February 24, 2022, from https://www.chesapeakebay.net/channel_files/37084/bertani_cso_wwtwg_7may2019.pdf

⁵ Phillips, P. J., Chalmers, A. T., Gray, J. L., Kolpin, D. W., Foreman, W. T., & Wall, G. R. (2012). Combined sewer overflows: An environmental source of hormones and wastewater micropollutants. *Environmental Science & Technology*, 46(10), 5336–5343. <https://doi.org/10.1021/es3001294>

⁶ Bertani, I., et.al.

⁷, according to the American Society of Civil Engineers, American Society of Civil Engineers. 2018 *Pennsylvania Infrastructure Report Card*. Retrieved February 24, 2022 from <https://infrastructurereportcard.org/state-item/pennsylvania/>

is concerning for the potential precedent it may create with other NPDES dischargers that are not in compliance with water quality standards and need to implement schedules of compliance under the regulations. These non-CSO discharge violators may easily claim that they too need compliance schedules longer than five years due to technical and financial needs. This regulatory change may create an equity argument for others not in compliance to receive the same treatment and subsequent regulatory change as CSOs.

For these reasons, we recommend considering additional options and tools to assist CSOs in reaching the milestones in their compliance schedules more efficiently. Tools such as consent decrees, legislative support for CSO infrastructure investments and more may be other options that don't create precedent for other dischargers violating water quality standards.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Gorty". The signature is written in black ink and is positioned to the left of the typed name.

Shannon Gorty
Pennsylvania Executive Director
Chesapeake Bay Foundation