



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852

September 15, 2023

MEMORANDUM

SUBJECT: Response to Office of Inspector General Final Report No. 23-E-0023:
The EPA should Update its Strategy, Goals, Deadlines, and Accountability
Framework to Better Lead Chesapeake Bay Restoration Efforts

TO: Steve Hanna, Acting Director
Programs, Offices, and Centers Oversight Directorate
Office of Special Review and Evaluation
EPA Office of Inspector General

FROM: Adam Ortiz, Regional Administrator
EPA MidAtlantic Region (Region 3)

I am writing to provide EPA Region 3's (the Region) response to the Office of the Inspector General's (OIG) final evaluation report, "*The EPA Should Update Its Strategy, Goals, Deadlines, and Accountability Framework to Better Lead Chesapeake Bay Restoration Efforts*," Report No. 23-E-0023 (Report). This response provides the Region's position with respect to each of the recommendations and corrective actions in the OIG's final report and the Region's commitment to implement actions, or identify actions that have already been completed, and corresponding completion dates to address the recommendations in the Report.

The restoration of the Chesapeake Bay is one of my top priorities as Administrator for Region 3. For the previous two years, I have been working with the Bay partners, the agricultural community, environmental groups, and other stakeholders to accelerate restoration progress. Under my leadership, the Region has also increased its compliance assurance and regulatory activities in the Chesapeake Bay watershed, as well as funding and innovative programming to accelerate the implementation of best management practices at nonpoint source animal feeding operations (AFOs) in the watershed.

It is worth noting that in its response to the draft OIG report, the Region highlighted material factual inaccuracies in the report and provided information about efforts the Region is already undertaking, which address many of the concerns noted in the final report. The published final report did not correct several of the factual inaccuracies in the draft report and, to the contrary, presented findings that the Region believes are misleading. In addition, the factual inaccuracies were repeated on an OIG podcast and in direct quotes provided by OIG management to the Baltimore Sun and other news media. For example, the report states on page 15 that: "While the EPA has been aware as early as 2018 that the 2025 goals would likely not be met, the Agency has not led the Chesapeake Bay Program to adopt revised TMDL pollutant-reduction goals or the timeline for achieving those reductions." This statement ignores the technical assistance, data driven reporting, annual milestone

reporting, a diverse portfolio of funding, leading the Chesapeake Bay Program (CBP) partnership's Management Board and various critical scientific and modeling workgroups, and instituting various accountability efforts that EPA has taken over the years. Importantly, EPA has led the CBP partnership as Chair of the Executive Council and the Principals' Staff Committee (PSC) since early 2022 to explore what more can be done in the years before 2025 to accelerate progress in meeting pollutant-reduction goals, and what can be done post-2025 to meet the CBP partnership's water quality and other goals for the Chesapeake Bay.

I have included the Region's technical comments on the draft report as Attachment 1 of this response letter and I encourage the OIG to refer to this response and attachment when reviewing our proposed actions listed below. Furthermore, the Region requests that Attachment 1, along with this Memorandum, be made available on OIG's website with the Final Report.

- **OIG Recommendation 1:** Lead the Chesapeake Bay Program in developing a new strategy to specifically address nonpoint source pollution.

- ❖ **EPA Region 3 Response to OIG Recommendation 1:** In its comments on the draft report, Region 3 stated that, "EPA concurs with the three recommendations with suggested edits and has already begun progress and actions on these recommendations." While the OIG did not incorporate all of the Region's suggested edits and corrections, the OIG did revise its original language to have EPA *lead* the Chesapeake Bay Program in developing a new strategy to address nonpoint source pollution, as opposed to EPA having sole responsibility for this action. This is an important distinction as EPA is one of nine signatory parties to the *2014 Chesapeake Bay Watershed Agreement* and does not have unilateral authority to impose such a new strategy on the CBP partnership. The Region's responsive actions (see below) address this recommendation by providing specific content to what constitutes "leading" the CBP partnership on this issue.

The Region has been taking actions in Pennsylvania to assist the Commonwealth and its farmers to develop nonpoint source management practices and strategies to reduce nutrient-loading to local waters, and in turn, the Chesapeake Bay such as: partnering with Pennsylvania to co-fund nearly 80 nutrient management and conservation technicians that provide on-the-ground technical support to nonpoint sources across the Commonwealth's portion of the watershed; and supporting the Pennsylvania legislature's decision to fund an agricultural cost-share program, which it did through the passage of the Clean Streams Fund, specifically the Agriculture Conservation Assistance Program.

- ❖ **EPA Region 3 Action in Response to OIG Recommendation 1: Lead the development of a strategy to address nonpoint sources of pollution, in coordination with the Chesapeake Bay Program.** Corrective Action: As suggested above, since 2021 EPA has been leading these efforts including successful and innovative programming and partnerships with small farmers. However, EPA commits to make a motion to the CBP partnership's Management Board at a meeting held before the end of calendar year 2024, proposing that the partnership develop a strategy to address nonpoint sources of pollution in the Chesapeake Bay watershed.

Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.

Customer Service Hotline: 1-800-438-2474



Since EPA has limited authority under the Clean Water Act to regulate or manage nonpoint sources, this action is more appropriately taken within the structure of the CBP partnership. Given the unique governance structure of the CBP partnership, and the fact that EPA does not have unilateral authority over the partnership’s decision-making, the Region cannot commit to a date for when such a strategy would be developed, adopted, and/or implemented. EPA will take this corrective action according to and within the governing structure of the CBP partnership (see Attachment 3, the Governance and Management Framework for the Chesapeake Bay Program). Specifically, that means that EPA will add this motion to an agenda and raise it for Management Board discussion and decision. It is important to note that any decision on the creation and adoption of such a strategy would be made by the CBP partnership; the Region cannot guarantee whether a decision occurs or the outcome of any such decision. (See Attachment 3 pp. 12-13 “Decision-making at the MB will be done by members through a unanimous or consensus based approach.”)

❖ **Completion date:** December 31, 2024.

➤ **OIG Recommendation 2:** Lead the Chesapeake Bay Program in setting new jurisdictional goals and a new deadline to have all pollution controls and practices in place to meet Total Maximum Daily Load pollutant-reduction goals.

❖ **EPA Region 3 Response to OIG Recommendation 2:** In its comments on the draft report, the Region stated that: “By January 15, 2026, EPA Region 3 will report to the OIG on the three actions below with a statement describing the CBP partnership’s decisions on these issues¹.” The Region did not commit to or agree to the completion date of January 15, 2026, that is reflected in the OIG’s final report for this recommendation.

The Region has completed its action responding to this recommendation as described below. The CBP partnership has already launched a “Beyond 2025” planning effort, co-led by the Region and the Chesapeake Bay Commission. The “Beyond 2025” planning effort is in response to the Executive Council charge that the PSC recommend a critical path forward that prioritizes and outlines the next steps for meeting the goals and outcomes of the Chesapeake Bay Agreement leading up to and beyond 2025. (See Attachment 2).

It is important to note that these water quality goals, agreed to by the CBP partnership, are the overarching commitments by the Partnership members. The Chesapeake Bay TMDL is critical for the Bay states and EPA to drive specific restoration activities in each state and subwatershed so that the overall water quality goals can be achieved. Using backstop measures and strategic programming and funding are important components for implementation to achieve the water quality (and other) goals.

¹ The three actions refer to the three OIG recommendations reflected in its draft report, “The EPA should Update its Strategy, Goals, Deadline and Accountability Framework to Better Lead Chesapeake Bay Restoration Efforts,” Project No. OSRE-FY22-0139. It is anticipated that the partnership will make decisions as to setting new water quality goals and any associated deadlines in the 2028 timeframe.



EPA Region 3 Action in Response to OIG Recommendation 2: As described above, EPA has completed action addressing Recommendation 2. Corrective Action: Complete. In October 2022, under EPA’s leadership as Chair of the CBP partnership’s Executive Council, the Council charged the CBP partnership’s PSC with “recommending a critical path forward that prioritizes and outlines the next steps for meeting the goals and outcomes of the Watershed Agreement leading up to and beyond 2025.” In designing this path forward, the Executive Council charged the partnership to address the following considerations:

- Identify new and emerging scientific data and studies which could modify our progress reporting and adaptive management approach, as well as the goals and outcomes under the Watershed Agreement.
- Enhance our monitoring and reporting capabilities to improve our understanding of existing conditions and trends.
- Define the existing and emerging challenges (e.g., climate change conditions, increasing growth, diversity, equity, inclusion and justice considerations) to accomplishing the partnership’s work under the Watershed Agreement, and how addressing those challenges might alter our collective restoration priorities, including the possibility of extending the target date for completing restoration of water quality beyond 2025.
- Identify opportunities to leverage action across multiple goals and outcomes of the Watershed Agreement.” (Attachment 2)

With respect to reaching 2025, the Executive Council charged the CBP partnership’s PSC to develop “recommendations on how to best address and integrate new science and restoration strategies leading up to 2025.” (Attachment 2) An [action team](#) has been established to fulfill this charge, which has developed a [draft report](#). The PSC expects to share a finalized progress summary with the Executive Council at the next Executive Council meeting, which should occur no later than the end of calendar year 2023.

With respect to beyond 2025, the Council charged the CBP partnership to “prepare recommendations that continue to address new advances in science and restoration, along with a focus on our partnership for going beyond 2025.” (Attachment 2). These recommendations are expected to be presented at the Executive Council’s 2024 meeting. The [Beyond 2025 Steering Committee](#) has been established to fulfill this charge. This charge includes assessing how existing and new challenges can be addressed beyond 2025. As part of this effort, the CBP partnership will examine (re)prioritizing the goals and outcomes under the *2014 Chesapeake Bay Watershed Agreement*, including establishing new deadlines.

As a key member of both the Executive Council and the larger CBP partnership, EPA will necessarily apply its efforts and leadership throughout this process. The CBP partnership, including EPA, will continue to evaluate progress toward achieving water quality goals and to assess existing numeric water quality goals based on new science and information. As an integral part of this Beyond 2025 effort, it is anticipated that the CBP partnership will establish updated partnership water quality goals and associated timelines, either as part of a new or revised agreement or separately.



❖ **Completion date:** Complete. See Attachment 2 (October 2022 EC directive).

➤ **OIG Recommendation 3:** Lead the Chesapeake Bay Program in developing an effective assurance mechanism to ensure that nonpoint source load reductions will be achieved by jurisdictions under the Chesapeake Bay Total Maximum Daily Load.

❖ **EPA Region 3 Response to OIG Recommendation 3:** In its comments on the draft report, the Region stated that, “EPA concurs with the three recommendations with suggested edits and have already begun progress and actions on these recommendations.” The Region noted in its comments on the draft report that the Clean Water Act does not give EPA significant authority over nonpoint sources. In addition, it is important to recognize that the Accountability Framework agreed to by the CBP partnership has been instrumental in the progress to date, as is evident from the following: the Bay jurisdictions developed the three phases of WIPs as agreed; the Bay jurisdictions and federal partners developed two-year milestones during each two-year period; the Bay jurisdictions and federal partners implemented those WIPs and two-year milestones; EPA evaluated and provided feedback on each WIP and set of two-year milestones; and EPA took many federal actions as necessary and appropriate over the years. Nonetheless, we recognize the need for additional and more robust measures for future progress. Further, the word “assurance” must be used carefully as it could be misunderstood to refer to “reasonable assurance,” which is a legal term of art, or to “compliance assurance”. The Region understands Recommendation 3 to be using the term “assurance” in a general sense, to mean “confidence,” “security,” or “relief from doubt.”

The Region also notes that the CBP partnership already has numerous mechanisms to provide accountability. In addition to the partnership’s Accountability Framework, the CBP partnership provides public accountability via the Reducing Pollution Indicator and Chesapeake Progress. The [Reducing Pollution Indicator](#) provides an overall status of where the Bay jurisdictions are with respect to the CBP partnership’s 2025 water quality targets. Bay jurisdictions submit point and nonpoint source data annually that is published in [Chesapeake Progress](#), which provides the public with information regarding all of the Bay Agreement’s goals and outcomes. The [Bay Barometer](#) is another tool to publicly share information on progress within the Chesapeake Bay watershed.

❖ **EPA Region 3 Action to OIG Recommendation 3: Lead, in coordination with the Chesapeake Bay Program, the exploration of different and/or additional accountability mechanisms.** Corrective Action: The Region will make a motion to the CBP partnership’s Management Board at a meeting held before the end of calendar year 2024 that the CBP partnership develop additional accountability measure(s) for nonpoint source reductions beyond the existing Accountability Framework and other public accountability tools. The Region will take this corrective action according to and within the governing structure of the CBP partnership (see Attachment 3, the Governance and Management Framework for the Chesapeake Bay Program). Specifically, the Region will add this motion to an agenda and raise it for Management Board discussion and decision. It is important to note that any decision would be made by the CBP partnership and the Region cannot guarantee whether a

Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.

Customer Service Hotline: 1-800-438-2474



decision occurs or the outcome of any such decision. (See Attachment 3 pp. 12-13 “Decision-making at the MB will be done by members through a unanimous or consensus-based approach.”)

❖ **Completion Date:** December 31, 2024.

At the same time that the OIG was conducting its evaluation, the CBP partnership has been moving forward with addressing many of the issues articulated in the final report; indeed, the CBP partnership has already begun to act on many of these recommendations through the work being conducted as part of fulfilling the Executive Council charge of reaching 2025 and beyond 2025. These actions have been taken under EPA’s leadership, as EPA has held the chair of the Executive Council and the PSC since early 2022. In addition, the CBP partnership has already formally recognized, through the October 2022 Executive Council meeting, that the partnership’s water quality goals will not be met by 2025. In furtherance of these steps already taken, the following table provides a summary of the recommendations and specific corrective actions and dates that the Region proposes in this response:

OIG Recommendation	EPA Corrective Action	Due Date
Lead the Chesapeake Bay Program in developing a new strategy to specifically address nonpoint source pollution.	EPA Region 3 will make a motion to the CBP partnership’s Management Board before the end of calendar year 2024 that the partnership develop a strategy to address nonpoint sources of pollution in the Chesapeake Bay watershed.	12/31/2024
Lead the Chesapeake Bay Program in setting new jurisdictional goals and a new deadline to have all pollution controls and practices in place to meet Total Maximum Daily Load pollutant-reduction goals	In October 2022, under EPA’s leadership as Chair of the CBP partnership’s Executive Council, the Council charged the CBP partnership’s PSC (see Attachment 2) with “recommending a critical path forward that prioritizes and outlines the next steps for meeting the goals and outcomes of the Watershed Agreement leading up to and beyond 2025.” (See Attachment 2).	Complete
Lead the Chesapeake Bay Program in developing an effective assurance mechanism to ensure that nonpoint source load reductions will be achieved by jurisdictions under the Chesapeake Bay Total Maximum Daily Load.	EPA Region 3 will make a motion to the CBP partnership’s Management Board before the end of calendar year 2024 that the CBP partnership develop additional accountability measure(s) for nonpoint source reductions beyond the existing Accountability Framework and other public accountability tools.	12/31/2024



The Region, along with the larger CBP partnership, has worked over 40 years to restore and protect the Chesapeake Bay and its watershed, a collaborative effort that has been cited as a model of cooperative federalism. Some notable accomplishments include jurisdictions meeting their 2025 sediment reduction goals ahead of schedule, implementing the largest oyster restoration program in the world, opening 619 stream miles over the last two years for fish passage for key aquatic species, establishing 21 new public access sites throughout the Chesapeake Bay watershed per year, and permanently protecting nearly 1.36 million of acres of land across the Chesapeake Bay watershed since 2010. While the CBP celebrates these successes, the CBP partnership recognizes the challenges in meeting the partnership's 2025 water quality goals and is currently engaged in efforts to make progress between now and 2025, as well as beyond 2025.

Thank you for your interest in the CBP partnership and our work in protecting and restoring this national treasure.

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*



Attachment 1: PLACEHOLDER – Draft Report Technical Comments

Attachment 2: PLACEHOLDER – EC Charge on Reaching 2025 and Beyond 2025

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

