



LARRY HOGAN  
GOVERNOR

STATE OF MARYLAND  
OFFICE OF THE GOVERNOR

January 8, 2020

The Honorable Brian E. Frosh  
Attorney General, State of Maryland  
Office of the Attorney General  
200 Saint Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202

Re: Commencement of Litigation Relating to Upstream Pollution of the Chesapeake Bay

Dear Attorney General Frosh:

In August 2018, I asked you to prepare a strategy for litigation against parties who fail to deliver on promised reductions of pollution entering the Chesapeake Bay via the Susquehanna River. Due to recent developments, I am directing you to take two legal actions: (1) commence litigation against the Commonwealth of Pennsylvania for repeatedly falling short of necessary pollution reduction goals; and (2) commence litigation against the U.S. Environmental Protection Agency (EPA) for failing to enforce the Chesapeake Bay Total Maximum Daily Load (TMDL).

Our administration has committed a historic \$5 billion toward wide-ranging Chesapeake Bay initiatives. To achieve our cleanup goals, all jurisdictions must meet their pollution reduction commitments under the TMDL regime by the agreed 2025 target date. The EPA, as the TMDL approving authority under the federal Clean Water Act, must exercise robust oversight to ensure that jurisdictions are held accountable for those commitments.

Pennsylvania, which is under “enhanced” or “backstop” federal oversight due to failed pollution reduction efforts, has proposed a draft Phase III Watershed Implementation Plan (WIP) under which it would fall drastically short of its agreed-upon 2025 pollution reduction targets. EPA does not, however, appear particularly concerned by the obvious inadequacy of Pennsylvania’s draft WIP. In an evaluation of the WIP released in December 2019, EPA made excuses for Pennsylvania’s alleged “unique challenges” and suggested that Pennsylvania could merely make some “potential enhancements” in its final WIP. To make matters worse, EPA officials have made recent public statements downplaying the enforceability of the TMDL. The EPA currently appears to have no intention of taking the necessary action to ensure Pennsylvania’s compliance with its commitments.

Maryland is a leader in Bay restoration and plans to continue to fight to enhance and preserve this national treasure. Our farmers are pioneers in modern nutrient management practices, our wastewater treatment plants employ enhanced nutrient removal technologies, and our counties and municipalities are making enormous investments in stormwater management and impervious surface restoration. Pennsylvania and the EPA must hold up their end of the TMDL bargain.

As chairman of the Chesapeake Executive Council, I have fostered a constructive dialogue with our partners and will continue to work with them to pursue our shared goal: a cleaner and healthier Chesapeake Bay. However, we have a generational responsibility to protect the Bay, and we simply cannot afford to fall short of these shared obligations. Therefore, I ask that you commence litigation against the EPA and Pennsylvania, and in close coordination with the Maryland Department of the Environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Hogan". The signature is fluid and cursive, with a large initial "L" and "H".

Larry Hogan  
Governor