

Developments May Influence Track of Chesapeake Bay Restoration Job

CHESAPEAKE BAY restoration efforts are at a critical juncture. The country's largest estuary is both environmentally significant (estimated to support over 3,600 plant and animal species) and economically important (valued at over a trillion dollars by a blue ribbon panel). But a recent University of Maryland report card gives the bay a "C" health score, based on 10 indicators that include dissolved oxygen, nitrogen, and phosphorus. The score reflects only a "slightly improving trend" over the last 35 years.

Whether progress can ramp up will hinge on the resolution of a bevy of recent developments, all of which highlight the governance challenges that mark the decades-long cleanup effort. To succeed, restoration efforts require not only interstate coordination among the watershed jurisdictions — Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia — but also federal and state partnerships, as well as collaboration with the watershed's 1,800 local governments.

Add to the mix private environmental governance initiatives which involve businesses and households doing their part, and the landscape is even more complex.

Today, watershed restoration efforts are governed, in part, by an EPA Total Maximum Daily Load level that sets out pollution reductions for nitrogen, phosphorus, and sediment designed to "ensure that all pollution control measures needed to fully restore the bay and its tidal rivers are in place by 2025." In addition, the TMDL is supported by an accountability framework that includes "rigorous accountability measures to ensure cleanup commitments are met, including short- and long-term benchmarks, a tracking and accountability system for jurisdiction activities, and

federal contingency actions that can be employed if necessary to spur progress."

However, EPA's assessment that the most recent Pennsylvania and New York Watershed Implementation Plans, known as WIPs, fail to achieve their cleanup commitments quickly laid bare the complicated governance dynamics at hand. This is not the first time that Pennsylvania — the state responsible for almost half of the nitrogen and a quarter of the sediment that enters the bay — has lagged behind. An implementation funding gap is causing additional consternation.

In the absence of EPA follow-up, the Chesapeake Bay Foundation and its partners, as well as several state attorneys general, filed lawsuits to require the federal agency to take actions to ensure the plans will achieve the required nutrient reductions and water quality goals. The litigation is pending.

Another developing situation involves the Conowingo dam WIP that was developed when it became clear that the reservoir behind the dam was reaching capacity

and could not continue to trap sediment and nutrient pollution — a situation that could lead to "catastrophic events," whereby "large slugs of pollution" escape into the bay, according to the CBF's Jon Mueller. EPA has flagged several concerns, noting its lack of confidence that the plan "will be fully implemented to meet the necessary nitrogen reductions without dedicated funding mechanisms in place" — a concern that remains unaddressed.

Also in flux are the Biden administration's overall efforts to chart a path forward in the wake of the prior administration's efforts to eviscerate bay restoration support and clean water regulatory protections. Mueller points out that "bedrock" pieces of the federal regulatory scheme that were under-



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mined during the last administration need to be in place for restoration efforts to succeed, citing the Waters of the United States rule as an example. In addition, according to Mueller, "It's crunch time if we are going to meet the 2025 targets," and that means the administration needs to quickly fill high-level government positions, in order to achieve necessary policy changes.

Another potential game changer is a recent Maryland court decision that the state is required to regulate air emissions of ammonia as a water pollutant pursuant to the Clean Water Act and state law. The court explained that millions of pounds of manure generated by concentrated animal feed operations release ammonia, which is blown out of poultry houses by industrial fans to settle on nearby land and water, "causing significant pollution to the bay." The opinion is stayed pending appeal.

Also subject to a recent stay order is a Maryland county's lawsuit against fossil fuel companies seeking to hold them liable for "climate crisis-caused environmental changes," including costs incurred for measures to protect the bay's "fragile ecosystems." The case follows similar actions brought by Baltimore and Annapolis that are winding through the courts.

These myriad pending policy, budget, personnel, and judicial decisions make the trajectory of bay restoration murky for now — hopefully they will resolve in a manner that allows cleanup efforts to rush forward rather than stagnate.