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May 20, 2020

By Certified Mail

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr. Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Mr. Cosmo Servidio
Regional Administrator
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

The Honorable William P. Barr
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: **Notice of Intent to Sue—Failure to Ensure That the Phase III
Watershed Implementation Plans of Pennsylvania and New York
Meet the Chesapeake Bay TMDL**

Dear Administrator Wheeler, Regional Administrators Lopez and Servidio, and Attorney General Barr:

The State of Delaware hereby gives notice of its intent to sue the Administrator of the United States Environmental Protection Agency (“EPA”) for failing to ensure that the Commonwealth of Pennsylvania and the State of New York develop Phase III Watershed Implementation Plans (“WIPs”) that achieve and maintain the nutrient reductions required of those states to meet the Chesapeake Bay Total Maximum Daily Load (“Bay TMDL”). 33 U.S.C. § 1365(b)(2). That failure constitutes a breach of the Administrator’s nondiscretionary duty to “ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain” the Bay TMDL. *Id.* § 1267(g)(1).

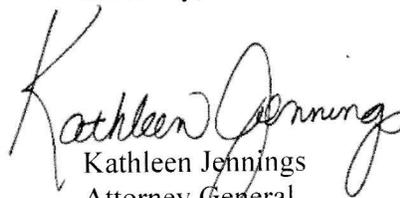
On December 19, 2019, the EPA concluded that Delaware’s Phase III WIP “meets its numeric planning targets for nitrogen and phosphorus at the state and state-basin

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(Eastern Shore) levels through the submission of Best Management Practices (BMPs) and wastewater reductions.” It also concluded that Delaware’s Phase III WIP provides confidence “that it will attain the necessary load reductions by 2025 through the suite of BMPs and wastewater reductions proposed.” *See* EPA Evaluation of Delaware’s Phase III Watershed Implementation Plan (Dec. 19, 2019) at 1 (available online at <https://www.epa.gov/sites/production/files/2019-12/documents/de.pdf>).

Like the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, Delaware has relied on its fellow Chesapeake Bay watershed jurisdictions to achieve their respective fair shares of reductions in the pollution entering the Bay, and on the EPA to discharge its duty to ensure that they do so. For the reasons explained by Maryland, Virginia, and the District in their May 18, 2020 letter, which Delaware adopts and incorporates by reference herein, the EPA has failed to do so with respect to Pennsylvania’s and New York’s Phase III WIPs. Delaware likewise gives notice of its intent to sue the Administrator pursuant to 33 U.S.C. § 1365(a)(2), and this letter constitutes notice of such suit.

Sincerely,


Kathleen Jennings
Attorney General

KJ/cdw

cc: The Honorable John C. Carney, Governor of Delaware
The Honorable Larry J. Hogan, Governor of Maryland
The Honorable Ralph S. Northam, Governor of Virginia
The Honorable Muriel Bowser, Mayor of the District of Columbia
The Honorable Brian E. Frosh, Attorney General of Maryland
The Honorable Mark R. Herring, Attorney General of Virginia
The Honorable Karl A. Racine, Attorney General for the District of Columbia
The Honorable Shawn M. Garvin, Secretary, Delaware Department of Natural Resources and Environmental Control
The Honorable Benjamin H. Grumbles, Maryland Secretary of the Environment
The Honorable Matthew J. Strickler, Virginia Secretary of Natural Resources
The Honorable Tommy Wells, Director, District of Columbia Department of Energy and Environment