

MODIFICATION OF SETTLEMENT AGREEMENT
Fowler et al. v. EPA

WHEREAS, in January 2009, numerous parties (collectively “Plaintiffs”) filed suit against the United States Environmental Protection Agency (“EPA;” EPA and Plaintiffs are referred to herein as the “Parties”) alleging that EPA failed to comply with the Clean Water Act, the Administrative Procedure Act, and the Chesapeake Bay Agreements with respect to restoring and preserving Chesapeake Bay water quality and living resources; and

WHEREAS, on May 10, 2010, the Parties executed a settlement agreement (“Agreement”) resolving this lawsuit; and

WHEREAS, Paragraph IV.A. of the Agreement provides that the Parties may modify any term of the Agreement in writing; and

WHEREAS, the Parties are agreed that certain terms of the Agreement should be modified,

NOW, THEREFORE, the Parties agree as follows:

1. Paragraph III.D.13 of the Agreement, as subsequently amended, is hereby stricken.

2. The following new paragraph III.E.21 is hereby added to the Agreement:

21. a. **Animal Feeding Operation (“AFO”) and Concentrated Animal Feeding Operation (“CAFO”) program assessment.** By June 27, 2015, EPA will assess each Bay Watershed jurisdiction’s AFO and CAFO programs to determine whether they are consistent with Clean Water Act NPDES requirements and are implemented effectively to achieve the jurisdiction’s animal-agriculture Watershed Implementation Plan (WIP) commitments to reduce nitrogen, phosphorus, and sediment. EPA will complete at least three assessments by the end of 2014.

If EPA determines that a jurisdiction's AFO and CAFO programs are not consistent with NPDES requirements and are not being implemented effectively to achieve the WIP commitments, EPA will identify any inconsistencies in writing to such jurisdiction. Following consultation with the jurisdictions, EPA will make these assessments publicly available by no later than 60 days after the assessment is complete.

For jurisdictions with identified inconsistencies, EPA will take appropriate actions in the context of its ongoing oversight of WIP and milestone implementation. Actions may include working with the jurisdictions to jointly develop a Management Plan outlining actions and deadlines for correcting program inconsistencies, including annual reporting of progress, or taking actions identified in the December 29, 2009 letter from the Region III Administrator to the Chair of the Principals' Staff Committee. If EPA and a jurisdiction agree to jointly develop a Management Plan, EPA will undertake best efforts to complete development of such plan within six months of agreeing to develop a Management Plan.

b. AFO reviews. EPA will undertake AFO reviews in four Bay subwatersheds with significant manure generation; one subwatershed per year beginning in 2013 and ending in 2016. At least three of the subwatersheds will be in different jurisdictions. EPA will assess no less than four AFOs in each subwatershed. EPA will review AFOs to determine whether they are in compliance with applicable legal requirements for reducing nitrogen, phosphorous, and sediment.

As it undertakes these assessments, EPA will evaluate whether any assessed AFOs in the subwatershed should be designated as CAFOs. If EPA determines that an assessed AFO is a significant contributor of pollutants to a water of the United States, EPA will take appropriate

action which may include, but is not limited to, working with the permitting jurisdiction to reduce the contribution or designate that AFO as a CAFO, or having the Regional Administrator exercise authority under 40 C.F.R. § 122.23(c)(1)(i) or (ii) to designate that AFO as a CAFO.

As they are completed and following consultation with the jurisdictions, EPA will make each assessment publicly available no later than 60 days after the assessment is complete.

c. CAFO permit reviews. The Chesapeake Bay TMDL and associated Bay Watershed Jurisdiction WIPs establish the pollution reductions needed to meet applicable water quality standards in the Bay and its tidal rivers. By the end of 2016, EPA will review no fewer than four CAFO permits and their associated Nutrient Management Plans within each jurisdiction and assess whether those permits and plans are enforceable and consistent with applicable legal requirements. Additionally, EPA will assess whether the permits and plans - and how they are implemented - are effectively achieving the jurisdictions' WIPs. EPA will complete at least two such assessments per jurisdiction by June 27, 2015 as part of the assessments of the Bay Watershed Jurisdictions' programs described in Commitment 1. The results of reviews completed by June 27, 2015 will be included in EPA's Commitment 1 reports and made publically available as described in Commitment 1. EPA will make the results of any reviews completed after June 27, 2015 publically available upon their completion

d. CAFO regulation assessment. Based upon the results of the activities and assessments undertaken pursuant to Commitments 1, 2, and 3, and the progress made by the Bay jurisdictions in meeting their two-year milestone commitments, EPA will assess, by no later than June 30, 2018, whether revisions to its CAFO regulations under the Clean Water Act are necessary to achieve the objectives of the animal agriculture commitments

in the WIPs as part of the overall Chesapeake Bay TMDL. EPA will make the result of that assessment publically available by no later than June 30, 2018.

3. The modifications identified above change only the above-specified text, and do not change any other requirement or term of the Agreement.

4. Each undersigned representative of the Parties certifies that he or she is fully authorized by that Party to enter into and execute the terms of this modification, and to legally bind such Party to this modification.

5. This modification may be executed in any number of counterpart originals, all of which shall collectively constitute one agreement.

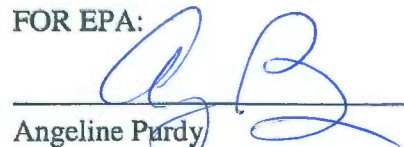
FOR PLAINTIFFS:



Jon A. Mueller
Vice President for Litigation
Chesapeake Bay Foundation, Inc.
6 Herndon Ave.
Annapolis, MD 21403

Dated: 5/28/13

FOR EPA:



Angeline Purdy
U.S. Department of Justice
Environment and Natural Resources
Division
P.O. Box 23986
Washington, D.C. 20026-3986

Dated: 5/27/2013