

Congress of the United States

Washington, DC 20510

July 1, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Lt. Gen. Scott A. Spellmon
Chief of Engineers and Commanding General
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314

Dear Administrator Regan and General Spellmon:

We write to you, as representatives of Chesapeake Bay Watershed, to ask that you rescind the harmful Navigable Waters Protection Rule (“the Rule”)¹ and replace it with a rule that restores strong Clean Water Act protections to waterways and wetlands across the country. We were pleased to see the recent Executive Order directing review of the Rule², as well as the Environmental Protection Agency and the Department of the Army’s subsequent request that the Rule be remanded to the agencies.³ The remand is a step in the right direction for a Rule which has hindered efforts to restore the Chesapeake Bay watershed and is jeopardizing our ability to meet the federal-state partnership’s 2025 restoration goal. We are concerned, however, that the Rule remains in place in the interim.

The Chesapeake Bay is the largest estuary in the United States, with a watershed spanning more than 64,000 square miles across six states—New York, Pennsylvania, West Virginia, Maryland, Delaware, and Virginia—and the District of Columbia. The Chesapeake Bay is an economic engine for the region, providing recreational opportunities, critical habitat for fish and wildlife, and a much-needed buffer against flooding throughout the watershed. These essential ecological services are dependent on a healthy Bay and healthy tributaries.

As you know, pollution and our changing climate threaten the balance of the unique and diverse ecosystems of the Chesapeake Bay and its tributaries. Strong, science-based federal policy is needed to address these threats and to protect and restore this national treasure. The Rule, promulgated by the last Administration, is an abdication of federal responsibility. The Rule severely constricts the scope of Clean Water Act jurisdiction, the bedrock of federal water

¹ Final Rule, The Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020).

² Exec. Order No. 139990, 86 FR 7037 (Jan 25, 2021)

³ Conservation Law Foundation v. U.S. EPA, Case No. 20-cv-10820-DPW (2021) (Mem at Document 113)

policy, removing protections from streams and wetlands – such as Delmarva bays and pocosins in the Chesapeake Bay Watershed, which had for decades been considered to be jurisdictional “waters of the United States,” or WOTUS.

Implementation of the Chesapeake Bay Total Maximum Daily Load (TMDL) relies on the classification of wetlands and streams as WOTUS under the Clean Water Act to set limits on the discharge of nitrogen, phosphorus, and sediment into the Bay. Changes to the definition of WOTUS also impact several statutes used by states and tribal entities to protect critical water resources. Removing federal Clean Water Act Section 402 and Section 404 permits and TMDL requirements from these waterways under the Rule leaves the Chesapeake Bay subject to the uneven regulatory framework - increasing the burden on states with stronger state water protections and threatening the progress in Bay restoration made as a result of cooperative federal and multi-state partnership in recent decades.

Delaware, West Virginia, and the District of Columbia, for instance, rely entirely on the federal law to protect their waters, making it difficult for them to meet their obligations under the Chesapeake Bay Agreement without strong federal policy. Even for states that do not rely exclusively on the federal definition of WOTUS to protect their waterways, the abdication of federal responsibility creates an undue burden for states, many of which do not have the staff capacity for monitoring and enforcement. The Rule makes it extremely difficult to clean up and protect multistate resources like the Chesapeake Bay.

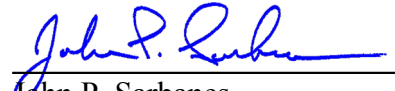
Millions of our constituents depend on clean water for drinking, fishing, swimming, and other recreation, and want a healthy Bay for their families and communities to enjoy. Likewise, tourism and fisheries businesses in our states depend on a clean, thriving Chesapeake Bay. The communities we represent – including state and local governments, farmers, waterpeople, and advocates – have invested far too much time, expense, and energy on Bay cleanup to see that progress undermined. Every day that the Rule remains in place further jeopardizes the Bay’s restoration.

We urge you to rescind the Navigable Waters Protection Rule as soon as possible and to replace it with a scientifically-informed rule based on sound science, in order to carry out the purpose of the Clean Water Act. We appreciate your commitment to stakeholder engagement and evidence-based policy and stand ready to work with you to restore the Chesapeake Bay.

Sincerely,



Robert C. "Bobby" Scott
Member of Congress



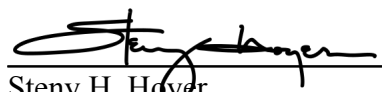
John P. Sarbanes
Member of Congress



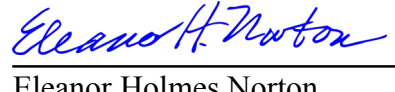
Benjamin L. Cardin
United States Senator



Chris Van Hollen
United States Senator



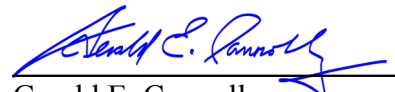
Steny H. Hoyer
House Majority Leader



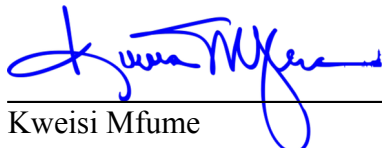
Eleanor Holmes Norton
Member of Congress



C. A. Dutch Ruppensberger
Member of Congress



Gerald E. Connolly
Member of Congress




Kweisi Mfume
Member of Congress



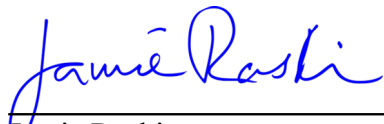
Lisa Blunt Rochester
Member of Congress



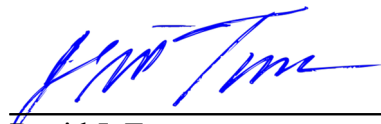
Anthony G. Brown
Member of Congress



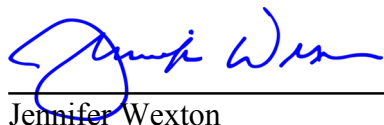
A. Donald McEachin
Member of Congress



Jamie Raskin
Member of Congress



David J. Trone
Member of Congress



Jennifer Wexton
Member of Congress



Thomas R. Carper
United States Senator



Kirsten Gillibrand
United States Senator



Donald S. Beyer Jr.
Member of Congress