

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**CHESAPEAKE BAY FOUNDATION, INC.,** )  
a non-stock corporation, 6 Herndon Avenue, )  
Annapolis, MD 21403, )

CIVIL ACTION No.

**MARYLAND WATERMEN'S ASSOC., INC.,** )  
a non-stock corporation, P.O. Box 436, )  
Chester, MD 21619, )

**ANNE ARUNDEL COUNTY, MARYLAND,** )  
a Body Corporate and Politic, 2660 Riva Road, 4<sup>th</sup> Floor, )  
Annapolis, MD 21401, )

**ROBERT WHITESCARVER,** )  
120 Trimbles Mill Road, )  
Swoope, VA 24479, )  
**and** )

**JEANNE HOFFMAN,** )  
120 Trimbles Mill Road, )  
Swoope, VA 24479, )

**Plaintiffs,** )

**v.** )

**UNITED STATES ENVIRONMENTAL** )  
**PROTECTION AGENCY,** )  
1200 Pennsylvania Avenue, N.W., Washington, DC 20460 )

**ANDREW R. WHEELER,** )  
**Administrator, United States Environmental** )  
**Protection Agency,** )  
1200 Pennsylvania Avenue, N.W., Washington, DC 20460 )

**and** )

**COSMO SERVIDIO, Regional Administrator,** )  
**United States Environmental Protection Agency** )  
Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029 )

**On behalf of** )  
**THE UNITED STATES OF AMERICA,** )  
**Defendants.** )

## COMPLAINT

### INTRODUCTION

1. The Chesapeake Bay Foundation, Inc., the Maryland Watermen's Association, Inc., Anne Arundel County, Maryland, Robert Whitescarver, and Jeanne Hoffman (hereinafter "Plaintiffs") bring this action pursuant to the Clean Water Act (CWA), 33 U.S.C. §1365(a)(2), the Administrative Procedure Act (APA), 5 U.S.C. §§ 551, *et seq.*, and the Chesapeake Bay Agreements, against Defendants the United States Environmental Protection Agency (EPA) and Andrew R. Wheeler, Administrator, on behalf of the United States of America, and Cosmo Servidio, in his official capacity as Regional Administrator for EPA Region 3, for their failure to perform obligatory duties and failure to abide by the terms and conditions of the CWA, the APA, and the Chesapeake Bay Agreements. Plaintiffs seek declaratory and injunctive relief and costs of litigation, including attorney and expert witness fees.

2. The Chesapeake Bay (the Bay) is North America's largest and most biologically diverse estuary, home to more than 3,600 species of plants, fish and animals. For more than 300 years, the Bay and its tributaries have sustained the region's economy and defined its traditions and culture. EPA and the nation have recognized the Chesapeake Bay as a resource of extraordinary productivity, worthy of the highest levels of protection and restoration.

3. In 2010, EPA issued a Total Maximum Daily Load for the Chesapeake Bay and its tributaries (Bay TMDL). The Chesapeake Bay jurisdictions (District of Columbia, Delaware, Maryland, New York, Pennsylvania, Virginia and West Virginia) adopted load

caps for discharges of nitrogen, phosphorous, and sediment. Each jurisdiction was directed to issue Watershed Implementation Plans (WIPs) in three phases - 2010, 2012, and 2019 – that were to be designed to attain Bay water quality goals by 2025.

4. EPA and the Bay jurisdictions agreed that EPA would oversee and evaluate TMDL progress by each jurisdiction and that EPA would take action(s) necessary to ensure that the Bay jurisdictions adhered to the terms of the Chesapeake Bay Agreement consistent with 33 U.S.C. §1267(g).

5. In 2014, EPA and the Bay jurisdictions signed the fourth Chesapeake Bay Agreement. The Agreement requires, among other things, that by 2025 the parties would “have all practices and controls installed to achieve the Bay’s dissolved oxygen, water clarity/submerged aquatic vegetation and chlorophyll-a standards as articulated in the Chesapeake Bay TMDL document.” 2014 Chesapeake Bay Agreement, Water Quality Goal.

6. In 2019, Pennsylvania and New York submitted Phase III WIPs that, on their face, failed to attain levels of pollution reduction required by the Bay TMDL by 2025. EPA approved these WIPs without significant change or changes to the Bay TMDL, ensuring that Bay water quality will not be restored by 2025.

7. The failure of the United States to comply with the Chesapeake Bay Agreements and the Clean Water Act will lead to the continued degradation of water quality in the Chesapeake Bay. EPA’s failure to act has harmed the Bay’s natural resources and the citizens of the Chesapeake Bay region who enjoy and use the Chesapeake Bay and its rivers and streams and make a living from its natural resources.

8. The degradation of water quality in the Chesapeake Bay and its rivers and streams has harmed and will continue to harm the cultural, economic, and quality of life interests of all Chesapeake Bay watermen and their families.

9. The degradation of water quality in the Chesapeake Bay and its rivers and streams has harmed and will continue to harm the aesthetic, educational, recreational, and restoration interests of the plaintiffs, their members, and their constituents.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction of this action pursuant to 33 U.S.C. § 1365(a)(2) and 28 U.S.C. § 1346(a)(2).

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because EPA headquarters are located in Washington, D.C., a substantial part of the events or omissions giving rise to the claims occurred in Washington, D.C., and CBF maintains an office in this district at 1615 M Street, NW, Washington, DC.

12. On May 18, 2020, Plaintiffs provided written notice as required by the CWA, 33 U.S.C. § 1365(b), to the United States of its violations of the CWA, the APA, and the Chesapeake Bay Agreements and Plaintiffs' intention to file suit. The Notice Letter was provided to the Attorney General, the Administrator of EPA, and the Regional Administrator of EPA Region III. The United States, including but not limited to the EPA, has not responded to Plaintiffs' letter nor has it commenced or diligently prosecuted a court action to redress the violations alleged in this complaint. More than the requisite 60 days have passed since the Notice Letter was issued and this action may now go forward.

## PARTIES

13. Defendant Andrew R. Wheeler is the Administrator of EPA. Defendant EPA is the federal agency responsible for enforcing the environmental laws of the United States. The EPA is also the agency that issued the Bay TMDL and is a signatory to the Chesapeake Bay Agreements on behalf of the United States. Thus, the United States is also a Defendant to this action.

14. Defendant Cosmo Servidio is the Regional Administrator for the Mid-Atlantic Region (Region 3) of the EPA and the signatory on EPA's review and approval of Pennsylvania's and New York's Phase III Watershed Implementation Plans. He is sued in his official capacity.

15. Plaintiff Chesapeake Bay Foundation, Inc. (CBF) sues on its own behalf and on behalf of its members. The CBF is a 501(c)(3), non-stock, Maryland corporation with offices in the District of Columbia; Annapolis and Easton, Maryland; Harrisburg, Pennsylvania; Richmond and Virginia Beach, Virginia. CBF is the largest conservation organization dedicated solely to protecting the Chesapeake Bay watershed and its tributaries. Since CBF's founding over 50 years ago, its goal has been to improve water quality in the Bay and its tributaries by reducing pollution.

16. CBF is the only independent organization dedicated solely to restoring and protecting the Bay and its tributary rivers. Its goal is to improve water quality by reducing pollution including nitrogen and phosphorous. CBF's vision for the future is a restored Bay with healthy rivers and clean water; sustainable populations of crabs, fish, and oysters; thriving water-based and agricultural economies; and a legacy of successful protection and restoration of the Chesapeake Bay ecosystem for our children and grandchildren.

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