Agricultural Sector Comments

Comment 1. On Page 47 of the Phase III WIP, it is stated that long-term ambient water quality trends have been improving in the Susquehanna River Basin and have been declining in portions of the Chemung River Basin. Despite these trends, it is recommended that funding continue to be allocated evenly. The Phase III WIP argues that “forcing local planning goals to a smaller scale (i.e., county), New York’s agricultural program will become less efficient and will create unnecessary competition between individual Soil and Water Conservation Districts.” However, the rationale for this argument is not explained. Targeting funding for agricultural best management practices in high-priority areas (i.e., areas in watersheds with high levels of nutrient loading) could be considered as a viable strategy for reducing nutrient loading from the agricultural sector. Therefore, we request clarification how the even allocation of funding is more beneficial than a competitive process geared toward high priority areas.

Response to Comment: Funding has not been targeted to areas of high loading that are estimated by the Chesapeake Bay Watershed Model because they do not necessarily correspond to local ambient water quality data, local priorities for implementation, farmer willingness to implement, or capacity available to complete implementation projects. For example, even though declining water quality has been observed at one United States Geological Survey gauge station in the Chemung Basin, this basin does not have the highest level of nutrient loading per acre according to the Chesapeake Bay Watershed Model. More investigation is needed to determine why this trend is being observed in order to direct funding appropriately. The New York Department of Environmental Conservation (DEC) relies on individual soil and water conservation districts (SWCDs) to prioritize work based on the factors listed above as part of their AEM Strategic Planning process. In addition, since the majority of implementation is performed on a voluntary basis in the agricultural sector, it is important to make funding widely available to all counties. Supplemental federal funding has historically been used to support a watershed scale agricultural program that allows for sharing of resources, including funding, expertise, and equipment across county boundaries. Rather than targeting specific areas of the watershed, DEC and the Upper Susquehanna Coalition (USC) have targeted funding for specific Best Management Practice (BMP) types that are known to be cost effective and provide the greatest nutrient and sediment reductions, such as cover crops and riparian buffers.

Comment 2. Table 13 of the Phase III WIP documents the average landowner match requirement per best management practice. The Phase III WIP stresses the need for additional funding as the downturn in the agricultural economy will affect landowners’ willingness to pay to install on-farm conservation practices. In Section 5.10, it is recommended that funding streams like the Chesapeake Bay Implementation Grant or the Ag Nonpoint Source funds be used to lower farmer cost share rates. Additionally, the Phase III WIP calls for the expansion of technical assistance to farmers through the Agricultural Environmental Management program. Despite these recommendations, the Phase III WIP notes the difficulty in convincing landowners to invest money upfront to install best management practices. It is also acknowledged that the decline in the dairy sector will also adversely affect willingness to participate in conservation programs. The Phase III WIP does not discuss strategies to address this
problem, however. Therefore, we recommend including a discussion of how DEC will work with its partners to maintain farmer participation in voluntary conservation programs moving forward.

Response to Comment: Partners such as the USC, SWCDs, and NY Farm Bureau have identified multiple barriers to maintaining voluntary implementation in a challenging economic environment including cost share rates, cost and time to operate and maintain practices, and hesitancy to enter into long-term federal or state contracts. Additional discussion was added to Section 5.10 with descriptions of proposed initiatives to increase voluntary participation in the agricultural sector.

Comment 3. Given the fact that the downturn in the agricultural economy may affect participation in voluntary conservation programs and the fact that New York lacks funding for scaled-up best management practice implementation, it is unclear how New York State will meet nitrogen reduction targets by 2025. We recognize that it will take a massive increase in capital, technical staff capacity, and landowner participation to meet the 2025 targets, however—we argue that there needs to be a discussion on how these barriers could be overcome. Therefore, we recommend that subsequent drafts of the Phase III WIP include a discussion on how New York could develop the capacity to meet the nitrogen targets in the ag. sector.

Response to Comment: As stated in Section 5.8, DEC and its partners are committed to executing a level of implementation consistent with achievements made during the Phase II WIP period. Such goals are reasonably achievable with current levels of funding. New York cannot develop the capacity to meet the 2025 nitrogen targets in the agricultural sector without securing an estimated $92 million of funding annually. Increased technical staff capacity and financial incentives to maintain voluntary implementation will require additional funding. DEC’s highest priority will be to secure additional state and federal funding for agricultural sector implementation. Discussion regarding potential funding initiatives was added to Section 5.10.

Wastewater Sector Comments

Comment 4. DEC has indicated they will contract with a provider of process expertise to assist treatment facilities specifically in achieving the 2025 target nutrient reductions. Cortland is grateful for the assistance but reiterates its observation, made at a meeting with DEC on March 25, that DEC would be well served to reconstitute the Facility Operator Assistance Section (FOAS). The New York wastewater profession is in a transitional period, with many operators who came into the field in the wake of the establishment of secondary treatment standards reaching retirement age or having already retired. When it was active, FOAS provided excellent basic operations training. Since the demise of FOAS, that type of training has been much less available outside of licensure training. FOAS personnel were also able to assist operators in heading off process problems before they became entrenched compliance issues. FOAS also provided a deep well of expertise that DEC inspectors could draw on in understanding process issues at SPDES-permitted facilities. For these reasons, Cortland respectfully recommends DEC reform the FOAS or its equivalent.

Response to Comment: DEC is in the process of releasing a Request for Qualifications to hire a contractor to provide technical assistance, optimization reporting, and operator training to wastewater facilities to fulfill this need in the short term to help facilities meet Chesapeake Bay
permit requirements. DEC recognizes the value of FOAS but does not have the current funding or staff levels to support such a dedicated section.

Comment 5. Section 6.3 states “final 2025 WLAs [waste load allocations] were primarily calculated based on design flow times a target concentration of 0.5 mg/l for phosphorus and design flow times a target concentration of 8 mg/l for nitrogen for the larger dischargers.” The draft does not make clear what defines “larger dischargers”, but for the sake of this comment Cortland will assume 2 MGD and above. Among the 10 facilities that meet that definition, the phosphorus WLAs are indeed equivalent to 0.5 mg/l for nine facilities. But for the largest facility, which constitutes more than 30% of the design flow capacity of all Bay-significant facilities combined, the WLA has an effective concentration limit of 1.0 mg/l phosphorus at design flow. The nitrogen WLAs among that same cohort vary from the equivalent of 6 mg/l to 24.5 mg/l concentration at design flow. Only three of the ten facilities of 2 MGD and above have WLAs equivalent to 8 mg/l nitrogen. The draft document mentions that WIP II WLAs “were assigned based on existing and applicable treatment technologies at each treatment plant and the site-specific feasibility of the waste load allocation.” Feasibility appears to have been the primary factor in nitrogen WLAs rather than a target concentration and [City of] Cortland recommends the document reflect that fact so the public is better informed regarding the rationale for the burdens each community is undertaking.

DEC Response: Noted, clarification was made in Section 6.3.

Comment 6. In Section 6.3.4, DEC suggests the possibility of future imposition of numerical concentration limits for phosphorus. Cortland has been relatively successful in achieving the interim 12-month total WLA for phosphorus, owing to the installation of a chemical precipitation system acquired and installed with the financial assistance of a NYS DEC Water Quality Improvement Project (WQIP) grant. Our engineer designed this system around the 12-month rolling total WLA limit incorporated in Cortland’s 2014 SPDES permit modification. Cortland’s influent phosphorus concentration is seasonally variable as an inverse function of flow. Cortland believes it may have difficulty reliably meeting a monthly numerical limit of 0.5 or 0.8 mg/l without a costly Inflow & Infiltration abatement project not only by the City of Cortland but also potentially by one or more of the three satellite communities for whom Cortland provides treatment services. As this is likely an issue common to many treatment facilities, Cortland would like to see language stipulating DEC will, prior to imposition of numerical phosphorus limits, work with facility owners and operators to determine technical feasibility of the limit and make state funding available for collection system and/or facility improvements that may be required to achieve target numerical limits.

DEC Response: As stated in Section 6.3.4, DEC will apply a “technology based” approach to assigning concentration limits for phosphorus. The purpose of assigning a concentration limit based on existing technology is to optimize nutrient removal using the facilities’ existing processes and not to require any additional capital upgrades. A concentration of less than 1.0 mg/L would only be proposed for facilities that have existing tertiary treatment (microfiltration), for which a concentration limit of less than 1.0 mg/L would be readily achievable. For facilities with secondary treatment (chemical addition), a 1.0 mg/L limit is readily achievable. DEC will work with each facility to include a compliance schedule in their individual permit to allow adequate time for a facility to meet the new limit. As stated in the response to Comment 4, DEC will be hiring a contractor to assist facilities with optimization and provide the necessary technical assistance to meet Chesapeake Bay limits.
Comment 7. Section 6.8.1 lists state funding sources and section 6.8.2 lists federal funding sources. Cortland, like many Upstate communities, is struggling to meet the challenges of deteriorating infrastructure amid a stagnant revenue environment. SRF funding is important, and Cortland financed its Chesapeake Bay treatment facility upgrade primarily through an SRF loan. But loans must be repaid and Cortland needs to reserve debt capacity for its other myriad responsibilities. As was discussed at the March 25 meeting, Cortland anticipates needing to make an additional $500,000 or more improvements to its aeration system and basins in order to reliably achieve 2025 nitrogen reduction goals. Grants would be the preferred vehicle for funding these improvements. DEC has stated its intention to give enhanced consideration to funding applications aimed specifically at achieving Chesapeake Bay nutrient reduction goals. Cortland plans to make an application for WQIP funding for these improvements in the next round and respectfully requests DEC give all possible consideration to granting such an application and at the lowest available match requirement.

Response to Comment: In the current round of DEC’s Water Quality Improvement Project program released in May 2019, priority scoring is given to watershed plan implementation projects to upgrade municipal facilities to meet Total Maximum Daily Load (TMDL) nutrient requirements. These types of projects are considered “high priority” projects that require a 25% match compared to “secondary priority” projects that require a 60% match. Applications are scored based on set criteria statewide.

Developed Sector Comments

Comment 8. No mention of the MS4 permit update. There are details on the updates in regards to data collection; however, there should be information on the permit updating process. What are the implications? Will it make it easier or more difficult in regards to meeting Phase III goals?

Response to Comment: Currently, the MS4 general permit is undergoing revisions and will go through a second public comment period. Any impact the new general permit will have on meeting the Phase III WIP goals will be communicated to regulated communities located in the Chesapeake Bay watershed and will be included as an addendum to the final Phase III WIP.

Comment 9. Municipal governments in New York State are confined by a 2% cap on property taxes, while also having varying abilities to raise revenue to fund stormwater management projects. As discussed below, many communities in New York State do not have full time planning staff and often rely on volunteer boards and committees to conduct planning activities. This creates a challenge for county governments to develop the capacity to meet local planning targets in the developed sector. we recommend that subsequent drafts of the Phase III WIP include a discussion of the capacity of New York’s 19 counties to meet local planning targets and recommends strategies for local governments to meet their planning targets.

Response to Comment: DEC chose to develop local planning goals for the developed sector at the county geographic scale. Local planning goals were not specifically assigned to county governments or any other local political jurisdiction (e.g. cities, towns). Developed sector goals at both the county and watershed scale are expected to be achieved by a combination of implementation of stormwater permit permits and voluntary BMP implementation on both public and private lands. New York has not reported any voluntary BMP implementation that has occurred in the developed sector to EPA and it is a DEC priority to develop and implement a mechanism to report voluntary project.
implementation. Additional language was added to Section 7.10 regarding strategies that can be implemented by local governments to further voluntary BMP implementation.

Natural Sector Comments

Comment 10. According to Page 105 of the Phase III WIP, load sources in the natural sector include forests, open space, stream beds and banks, and wetlands. The reduction targets identified in the Phase III WIP include a 43% reduction in sediment loading and a 10% reduction in nitrogen loading respectively. While the Phase III WIP notes that the USC’s Stream Team and Wetland Team will be working on streambank and wetland restoration, it does not describe how such substantial reductions will be implemented.

Response to Comment: Clarification was added to Section 8.1. References to sediment reductions were removed from the final Phase III WIP pending assignment of final sediment targets to the jurisdictions. Discussion of final sediment targets will be added as an addendum to the final Phase III WIP document.

Comment 11. The Phase III WIP also lacks a breakdown of land ownership (private, public, institutional, etc.) in New York’s segment of the Chesapeake Bay watershed. Having this data should help the USC, DEC, and other partners better prioritize areas for best management practice implementation. It is stated that much of the loading from the natural sector is considered “uncontrollable,” as it is attributed to non-tidal water deposition. However, considering that the natural sector contributes 22%, 39%, and 62% of nitrogen, phosphorous, and sediment loading respectively, it is critical to address how this will have an effect on meeting the overall target reductions. Therefore, we recommend including a gap analysis on how to meet nutrient and sediment reduction targets on natural lands in subsequent drafts of the Phase III WIP.

Response to Comment: A breakdown of land ownership was added to Section 1. At this time, New York is expected to easily achieve the reductions assigned to the natural sector, therefore a gap analysis was not completed for this sector at this time. DEC will review progress annually and may perform a gap analysis at a later date if reductions are not on track for this sector.

General Comments

Comment 12. The document states that, if funded, the hired consultant would address the BMPs that were not reported for Phase II. Will the consultant also address the underreported BMPs?

Response to Comment: No, underreported BMPs were only identified in the agricultural sector (See Section 5.10). DEC has contracted with the SWCDs and the USC to report, track, and verify agricultural, stream restoration, and wetland BMPs. Underreported BMPs listed in the Phase III WIP were identified by SWCD and USC staff through the WIP planning process. The consultant will be responsible for tracking and reporting voluntary BMPs in the developed sector only if they have never been reported to EPA during an annual progress run by New York.
Comment 13. There needs to be more information for why we think these were underreported? This did not occur only due to lack of funding. Difficulty to pinpoint? Lack of landowner cooperation? Add detail on how we can combat these issues. What is the clear plan?

Response to Comment: A variety of reasons were identified during the WIP planning process as to why certain BMPs were never reported or underreported, including changes to the Bay Program BMP definitions, BMPs that were not currently tracked in the existing agricultural BMP database, new BMPs that were recently approved by the Chesapeake Bay Partnership, and implementation outside of federal/state cost share programs. Due to changes in the Chesapeake Bay Model, SWCD and USC staff are trained regularly on BMP definitions and updates to tracking and reporting protocols. To address these issues, funding has been made available to the USC to update their tracking and reporting database, as well as to hold trainings every year to train SWCD on updates to their protocols.

Comment 14. Natural sector and “developed” sector BMPs can also be funded through the Climate Smart Communities (CSC) program. The following are examples where CSC actions apply to such BMPs:

- Conservation of natural habitats
- Restoration of floodplains and riparian buffers
- Shade structures in public spaces (includes urban trees)

This is an additional funding source that should be indicated under the appropriate sector as these actions pertain to BMPs.

Response to Comment: Language was added to Section 7.10 regarding this funding source.

Comment 15. Within the CSC program section, the details are vague. It should be clear to our communities and counties that the applicants for funding do not necessarily need to be a CSC to be awarded. Once CSC status is achieved, it is easier to obtain funding; however, it is not required. Priority pledge actions are listed as though they must be completed in order to pass the CSC pledge. It should be made clear that they are only listed within the pledge and they do not need to be completed in order to pass the resolution. How does this program help to meet the goals of the Chesapeake Bay Program and the Phase III WIP? This should be indicated more clearly. More detail should be added to this section as it is also a DEC program.

Response to Comment: Clarification was made to Section 10.2 regarding this program. It is unclear at this time how this program will meet the goals of the Chesapeake Bay Program and the Phase III WIP as final targets related to climate change have not been assigned to jurisdictions, nor has any information related to how jurisdictions will receive credit for implementation of climate focused programs been developed by EPA.

Comment 16. More information about listed programs is needed in order for communities and counties to implement. For example, the Lamoka-Waneta inspection program is initiated by a community passing a local law and hiring Schuyler County to complete the inspections. They are completed on a regular basis with appropriate follow-up and enforcement. The program was modeled after the one implemented on Keuka Lake.

Response to Comment: Noted, these are locally developed programs that are not financially supported by DEC. Links to additional information was added to Section 8.2.
Comment 17. If we simply rely on other permitting programs for some of these BMPs (i.e. stormwater), we are subjecting ourselves to higher standards as indicated on the construction permit. These higher standards are intended for NYC areas. This would place a heavier burden on our communities.

Response to Comment: As stated in Section 7.1, developed sector goals are expected to be achieved by a combination of regulatorily-required implementation through the construction stormwater and MS4 general permits and voluntary BMP implementation on both public and private lands.

Comment 18. We respectfully request that the officials making the WIP III update for additional verbiage supporting widespread use of biochar in farms, forests, and cities to accelerate progress in reaching the Bay water quality targets.

Response to Comment: DEC will consider the use of biochar during the two-year milestone planning process if it is adopted as an approved best management practice by the Chesapeake Bay Program.

Comment 19. While several public workshops were held related to the agricultural sector in April 2019, it does not appear that broader public workshops were included as part of the planning process. The local planning targets established for the developed sector will require the cooperation of municipal and county governments. Subsequently, buy-in from the taxpayer will be required as municipalities use public monies to install best management practices. Certain communities in New York’s 19-county area, contain state-recognized Environmental Justice Areas. These communities are particularly important to include in planning processes as they have the highest likelihood of being affected by environmental degradation. Therefore, we recommend that additional workshops targeted toward municipal leaders, Environmental Justice Communities, and the public be held in advance of the adoption of the Final WIP in August 2019.

Response to Comment: Noted. Due to the timeframe, additional workshops cannot be held prior to implementation of the Final WIP in August 2019. Additional outreach and workshops for municipal leaders, environmental justice communities, and the general public will be held throughout the Phase III WIP implementation period. Major implementation plan changes that result in future workshops will be captured in New York’s milestone reporting to EPA or will be added as an addendum to the final WIP.

Comment 20. Gap analysis sections could benefit from the identification of responsible parties to address noted gaps. The gap analysis section be revised to include clear, achievable outcomes for addressing the gaps, the parties responsible for implementing key action steps, and anticipated sources of funding to utilize in filling the gaps.

Response to Comment: Additional language regarding partners that will assist in filling gaps and potential funding sources was added to Sections 5.10 and 7.11.

Comment 21. Based on the statements in Sections 5.8, 6.8, and 7.10, it is clear that there is a substantial gap in existing funding and needed funds to meet the 2025 Chesapeake Bay TMDL targets. For example, it is estimated that the total cost to meet the 2025 TMDL targets for the agricultural sector is $133,218,845. However, the Phase III WIP does not provide a strategy for acquiring funds to meet the TMDL targets from state or federal sources. Rather, several different funding sources are listed and described. It is unclear how New York State plans to acquire the funds to meet the 2025 reduction
targets and who will be responsible for applying for, and acquiring said funds (USC, DEC, non-profits, municipalities, etc.). Moving forward, we encourage the DEC to engage local partners and work with state and federal partners to acquire additional funds to help in meeting the 2025 TMDL targets.

**Response to Comment:** It is a high priority for DEC to acquire additional funding to meet 2025 TMDL targets. DEC will continue to pursue both additional state and federal funding and will continue to work with local, state, and federal partners to align funding with planning and implementation needs.

**Comment 22.** Currently, the Chesapeake Bay Program Local Government Advisory Committee (LGAC) is evaluating the feasibility of circuit rider planners to assist municipalities with their watershed planning needs. Circuit Rider Planners (CRPs) would assist municipalities on an ad hoc basis with the planning and implementation of programs such as a green infrastructure program, or an urban forestry program. CRPs could play several key roles at the municipal or county level in facilitating partnerships for new best management practice installation programs, help municipalities leverage additional funding to meet TMDL targets, and develop plans which demonstrate increased commitment at the local level to participate in TMDL compliance efforts. CRPs would need to be capable of providing consistent, effective, and low-cost services to their partner municipalities given the realities of local budgeting processes. Therefore, we recommend that New York consider working with the LGAC to develop a network of circuit riders dedicated toward TMDL-related watershed planning efforts.

**Response to Comment:** Additional language was added to Section 7.11 regarding circuit rider planner recommendations from the Local Government Advisory Committee.

**Comment 23.** Conserved lands should be considered at the sub-watershed level as a tool to maintaining and improving water quality. Therefore, we recommend that New York consider working with local land trusts to target land conservation in priority watersheds where nutrient loading is highest and implement best management practices on conserved agricultural lands as appropriate.

**Response to Comment:** DEC awarded $1 million of grants in 2017 to land trusts and organizations working in the watershed to permanently conserve lands and restore riparian forest buffers. While conserved lands do not receive credit as a BMP in the Chesapeake Bay Watershed Model, New York State prioritizes land conservation through the New York State Open Space Plan and Farmland Protection Programs.