



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAR - 1 2013

The Honorable Doug Domenech
Secretary of Natural Resources
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

Dear Secretary Domenech: *Doocy*

On January 3, 2013, the U.S. District Court for the Eastern District of Virginia (E.D.Va.) vacated the U.S. Environmental Protection Agency Region III's (EPA) *TMDL for Benthic Impairments in the Accotink Creek Watershed: Fairfax County, City of Fairfax and Town of Vienna*, established on April 18, 2011. While EPA continues to believe that the Total Maximum Daily Load (TMDL) was appropriate, we have decided not to appeal in part due to the willingness of the Commonwealth to promptly establish a replacement TMDL for the Accotink Creek. EPA looks forward to receiving from you a replacement TMDL that, when implemented, will restore the health of Accotink Creek and surrounding community.

As you are aware, the benthic impairment of the Accotink must now be reported on the Clean Water Act's List of Impaired Waters (303(d) list). We request that the Department of Environmental Quality send a revision to the 2012 303(d)305(b) Integrated Report returning Accotink Creek to Category 5A (impaired, TMDL required).

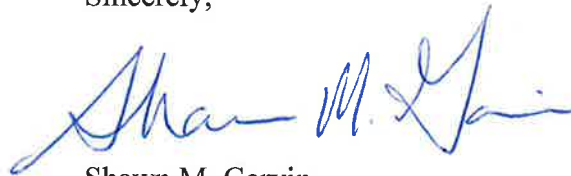
EPA is also requesting that the Commonwealth prioritize the development and establishment of a replacement TMDL that follows Clean Water Act guidelines for the benthic impairment for Accotink Creek. Specifically, the TMDL should: (1) be designed to attain and maintain the applicable water quality standards; (2) include a total allowable loading and, as appropriate, wasteload allocations for point sources and load allocations for nonpoint sources; (3) consider the impacts of background pollutant contributions; (4) take critical stream conditions into account (the conditions when water quality is most likely to be compromised); (5) consider seasonal variations; (6) include a margin of safety (which accounts for uncertainties in the relationship between pollutant loads and instream water quality); and (7) be subject to public participation. Finally, the TMDL must provide reasonable assurance that allocations assigned to nonpoint sources can be achieved.

EPA encourages the Commonwealth and the Fairfax County Board of Supervisors to work with stakeholders to develop a plan to ensure that implementation of the replacement Accotink Creek TMDL will be consistent with the Virginia 1997 Water Quality Monitoring, Information and Restoration Act. EPA believes Fairfax County's January 2011 *Accotink Creek Watershed Management Plan* provides an appropriate starting point for that effort.

We look forward to receiving from the Commonwealth the planned schedule to complete the replacement TMDL and accompanying implementation framework. Please feel free to contact my TMDL program staff throughout this process.

EPA appreciates your support in working to ensure that the Accotink Creek Watershed has the necessary protections for people's health and the environment. If you have any questions, please do not hesitate to contact me or have your staff contact Dr. Jennie Saxe, EPA's Virginia Liaison, at 215-814-5806.

Sincerely,



Shawn M. Garvin
Regional Administrator

cc: Mr. David Paylor, VADEQ
Ms. Melanie Davenport, VADEQ