



**Testimony of  
Marel Raub, Pennsylvania Director, Chesapeake Bay Commission  
before the  
Pennsylvania House and Senate Agriculture and Rural Affairs Committees**

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By December 31 of this year, EPA will have published a regulatory document that will subject states to a new level of accountability for water quality all throughout the 64,000 square mile Chesapeake Bay watershed.

This document, a TMDL or “Total Maximum Daily Load” for nitrogen, phosphorus, and sediment is required under the federal Clean Water Act because 90% of the Chesapeake Bay is not meeting water quality standards. In 1999, EPA settled a lawsuit in federal court by agreeing to develop this TMDL by May 2011. By agreement of the Chesapeake Bay Program partners and a subsequent settlement agreement, we now have a deadline of December 31, 2010.

This TMDL will be different from others across the country in both detail and expectation for how states will provide “reasonable assurance” that water quality improvements will in fact occur. Reasons for this include the size of the Bay and its watershed, the 30-year history of the restoration effort and the amount of scientific data available. Additionally, President Obama’s Executive Order of May 12, 2009 calls for a new accountability framework to guide the Chesapeake restoration effort. These expectations were outlined by EPA in a letter to states on November 4, 2009<sup>1</sup>.

Primary among these expectations is an implementation deadline of 2025, with incremental two-year milestones to guide and measure progress and an interim deadline of 60% implementation by 2017. Although we have made progress over the past 30 years, experience has shown that 10-year deadlines don’t result in prompt action. Instead, the use of two-year milestones will help to hold us accountable and will also allow for new information and technology to be incorporated over time.

A second key expectation is the development of state-specific “watershed implementation plans.” These plans must outline the control measures that will be implemented by states to achieve necessary reductions from both point sources, which are regulated through the federal NPDES permit program, and non-point sources, which are addressed through state laws and programs. The Commission has consistently expressed that the states must be given maximum

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<sup>1</sup> [http://www.epa.gov/reg3wapd/pdf/pdf\\_chesbay/tmdl\\_implementation\\_letter\\_110409.pdf](http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf)

flexibility to develop these plans in a way that works for the state. There is no one-size-fits all strategy that will work for an area as diverse and dynamic as the Chesapeake watershed.

A third expectation is identification of contingencies – a set of actions that will be reserved for use if a state fails to meet its milestones. If a state still fails to meet its progress goals, EPA has indicated its ability and willingness to impose certain consequences on that state. As outlined in a December 29, 2009 EPA letter to the states<sup>2</sup>, these consequences could include:

- Expand NPDES permit coverage to currently unregulated sources
- Object to NPDES permits and increase program oversight
- Require net improvement offsets
- Require additional reductions of loadings from point sources
- Increase and target federal enforcement and compliance assurance in the watershed
- Condition or redirect EPA grants
- Federal promulgation of local nutrient water quality standards

Thus, the challenge to states is, how do we develop a reasonable 15-year strategy to achieve and maintain water quality in Chesapeake Bay while also allowing for growth and without putting an undue burden on our regulated industries, ratepayers, and taxpayers?

With regard to agriculture, there are four key areas of focus:

**1. Improved tracking and reporting of “voluntary” best management practices.**

USDA and the states have made considerable investments to improve conservation on farms by providing cost-share assistance for best management practices. These efforts are multiplied well beyond cost-share programs by fostering new knowledge and improved management across agriculture. Unfortunately, only publicly-funded practices are tracked and accounted for in the Chesapeake Bay Watershed Model. In order for farmers to get full credit for their conservation work, practices implemented without public dollars must also be counted.

**2. Increased technical assistance and cost-share funding that can be targeted.**

In spite of the achievements that Pennsylvania farmers have already made, to achieve the accelerated level of nutrient and sediment reductions required by the 2025 deadline we will have to engage even greater numbers of farmers and other landowners in higher levels of conservation. Reaching out to these farmers will

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<sup>2</sup> [http://www.epa.gov/region03/chesapeake/bay\\_letter\\_1209.pdf](http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf)

require high-quality technical assistance from trusted advisors. This technical assistance may come from a government entity, such as a conservation district, or possibly from a non-profit group such as Trout Unlimited, Chesapeake Bay Foundation or a local watershed organization. Funding through agency appropriations and Growing Greener will be critical to support this effort.

Similarly, cost-share assistance for practice implementation will also be necessary. The 2008 Federal Farm Bill more than doubled conservation money coming into Pennsylvania, including dollars specifically targeted to the Chesapeake Bay watershed. While this is a significant source of help, it is not sufficient to meet all of the demand and there is a large number of landowners who do not want to participate in this type of program. The Resource Enhancement and Protection (REAP) tax credit program is an important alternative that has proven itself to be popular and efficient at leveraging private investment.

Because there are limited resources for both technical and cost-share assistance, programs should be able to be targeted to geographic areas or practices where we can achieve the highest amount of progress for the least cost.

### **3. Market-based options.**

Another alternative to public cost-share programs is private funding through the marketplace. Nutrient trading is one example. Besides providing a source of funding for traditional best management practices, trading is becoming a catalyst for new technology, such as manure-to-energy projects, that can generate income from material that is now only viewed as a waste product.

Likewise, establishment of a next-generation biofuels industry in our region would increase demand for conservation crops, such as rye, barley, or switchgrass, that could reduce our nitrogen loadings to Chesapeake Bay by millions of pounds per year.

### **4. We cannot disregard other sources of nutrients and sediment.**

Agriculture is often the focus of nutrient reduction efforts for several reasons. It is the single largest source of nutrients and sediment, and agricultural conservation practices are some of the most cost-effective. However, the requirements of the TMDL mean that we cannot reach our goals by looking to agriculture alone. Wastewater treatment plants are now facing new permit limits and our watershed implementation plan will have to make a serious effort to address loads from stormwater – the only source that is increasing its loads to the Bay.

Trading is one tool to reduce the cost of compliance in these other sectors. We should also be looking for new methods of controlling stormwater, such as urban tree plantings, permeable pavement, or other green infrastructure techniques. Urban nutrient management is yet another idea that is being considered. To make these alternatives viable, local governments will need to have new incentives and funding tools in place.

Meeting our Chesapeake Bay goals will be challenging. It will require both federal and state action to be successful, plus an openness to new ideas and partnerships. Although we have fifteen years to achieve our goals, the use of 2-year milestones, an interim deadline, and potential federal consequences mean that we cannot delay. Instead, we should prioritize cost-effective practices and programs that will leverage federal and private investment in the short term, while developing new tools to promote new technology and green infrastructure for future gains.