



Chesapeake Bay Commission

Testimony of Ann Swanson, Executive Director and Marel Raub, Pennsylvania Director before the Environmental Resources & Energy Committee Pennsylvania House of Representatives January 29, 2014

Chairman Miller, members of the Committee and guests. Thank you for the opportunity to testify today regarding HB 1565, regarding the use of riparian buffers.

The Chesapeake Bay Commission is a tri-state legislative commission advising the General Assemblies of Pennsylvania, Maryland and Virginia on matters of Bay-wide concern. The Pennsylvania members currently include this Committee's Chair, Representative Ron Miller, who also serves as Chair of the full Commission this year; Senator Mike Brubaker, our Delegation Vice Chair; Representative Garth Everett; Representative Mike Sturla; Secretary Chris Abruzzo of DEP, representing the Governor; and Mr. G. Warren Elliott, our citizen member. A second Senate membership, previously held by Senator Mike Waugh, is currently vacant. There is a similar complement of Commission members from Maryland and Virginia.

The Commission is a signatory to the several Chesapeake Bay Agreements over the past thirty years, and is a full partner with the states, the District of Columbia, and the federal government in the Chesapeake Bay Program Partnership.

In its 34-year history, the Chesapeake Bay Commission and its legislative members have been involved in the policy behind almost every significant Bay-related issue, from agricultural funding, to blue crab management, phosphate detergent bans to our topic this morning – riparian buffers.

In the past few years, our work has taken on new urgency as our member states are now subject to a regulatory Total Maximum Daily Load (TMDL) for Chesapeake Bay. Developed by the U.S. Environmental Protection Agency (EPA) under the federal Clean Water Act, the TMDL identifies the amount of pollution that the Bay can receive and still meet its state-designated water quality standards.

Sadly, a TMDL is needed because the Bay is not meeting its water quality standards due to excess nitrogen, phosphorus and sediment, despite thirty years of progress in the watershed that has reduced pollutant loads flowing to the Bay. Much of that progress has come from the

agricultural and wastewater sector. However, the population of our watershed continues to grow, and the manner in which we have developed the land to accommodate that growth has exacerbated water quality issues. Urban and suburban lands are the only sector with pollution loads that continue to grow.

Under the TMDL, we must have sixty percent of the necessary pollution reduction practices in place by 2017, and one hundred percent of the necessary practices in place by 2025. Not only must we reduce our current loads to meet the TMDL threshold, we must maintain those loads into the future, even in the face of population growth. Consequently, it is extremely important that we not only reduce loads from existing developed and working lands, but we also must maintain the function of intact resources such as riparian forests and wetlands.

Although the TMDL identifies numeric goals, each jurisdiction has developed its own Watershed Implementation Plan (WIP) to meet those goals. Across the watershed, forest buffers are the second most relied-upon practice for the states to reach their goals under the TMDL, more than even nutrient management or cover crops. Pennsylvania's WIP has identified a need for 7,232 acres of restored buffer per year (approximately 602 miles of 100' wide buffers).ⁱ

Beyond the TMDL and Chesapeake Bay water quality alone, the Bay Program partners have long recognized the value of riparian forest buffers to fish habitat, stream health, and local water quality. Consequently, the partners, including Pennsylvania, adopted a goal in 2007 to have seventy percent of the riparian area in the watershed forested. This would require an average of 900 miles restored per year, but current progress only averages 290 miles per year. Additionally, 695,000 acres of forest would be protected from conversion, targeting the forests most protective of water quality, which includes riparian forests. Across the watershed, we are about one-third of the way there, but Pennsylvania is lagging, at only twenty-eight percent of the goal.ⁱⁱ

Pennsylvania has long recognized the benefits of riparian forests and has the largest and arguably most successful example of the Conservation Reserve Enhancement Program (CREP) in the watershed. CREP is administered by the United States Department of Agriculture, with assistance from state and private partners, and provides compensation to farmers to establish and maintain riparian forests for a period of 10-15 years.

The success of Pennsylvania's CREP program is a result of not just the financial assistance provided to farmers, but also the technical assistance provided to inform farmers about the program and the establishment and maintenance of the buffers. The significance of technical assistance is illustrated by the fact that seventy-five percent of the CREP acres are in twenty-five percent of the counties, where the information and outreach resources are strongest. In other words, it is resource-intensive to restore buffers. It is wise public policy to maintain existing buffers as much as possible.

Despite the success of CREP, Pennsylvania is still falling short of its WIP goal of 158,813 acres by 2025, and we cannot rely on CREP alone to get us to our goal. Because of the regulatory nature of the TMDL, getting to our goal is important. If a state does not make progress on schedule, EPA has indicated its ability and willingness to impose certain consequences on that state. These consequences could includeⁱⁱⁱ:

- 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

Buffers are just one of many goals that Pennsylvania has committed to under its WIP. While every sector is making some progress, outside of wastewater treatment plants, which are subject to new permit limits, more aggressive implementation is needed if we are to meet even our 2017 mid-point goals, let alone our final goals for 2025.

Our progress will be evaluated not just by counting practices and pounds of pollution reduced, but also by the programmatic efforts we take to reduce pollution generally. The recent revisions to Pennsylvania's Erosion & Sedimentation regulations were an important step forward in our efforts to protect and improve water quality across the state. Rolling back any of those measures would be a step backward that puts the Commonwealth at risk for backstop measures from EPA and also removes important protections for our own local water quality.

Over 16,000 miles of local Pennsylvania streams are not meeting water quality standards and require or already have in place their own TMDLs. We have learned that restoration is expensive, and protection is much more cost-effective. We all pay for poor water quality. Millions of people use Pennsylvania surface water for their drinking water and dirty water requires expensive treatment. Additionally, our waters are an important recreational resource. Without protection, we risk losing an important economic engine for the Commonwealth.

Pennsylvania is not alone in regulating protection of riparian areas. Maryland's Chesapeake Bay Critical Area Protection Act^{iv} was enacted in 1984 and created a Critical Areas Commission to oversee the application of local comprehensive plans, zoning ordinances and subdivision regulations for the protection of Chesapeake Bay tidal waters. Regulations have recently been updated to strengthen 100' buffer requirements across the many jurisdictions subject to the Critical Areas Act^v.

Similarly, in 1988 Virginia enacted the Chesapeake Bay Preservation Act^{vi} that requires designation of 100' wide Resource Protection Areas (buffers) along all streams and large water bodies and connected wetlands in the "Tidewater" region (east of Interstate 95). The Bay Act is implemented through local government comprehensive plans, zoning ordinances, and subdivision ordinances that are in compliance with the Bay Act regulations. Local implementation is periodically reviewed by the Department of Environmental Quality for compliance with the Act and Regulations.

In conclusion, intact functional riparian buffers are an important and cost-effective practice that will help us meet and maintain our obligations for downstream water quality, reducing risk to the Commonwealth from federal backstop measures. Regulatory protection of these sensitive areas is meaningful and is complimentary to state and federal efforts to restore buffers across the region.

ⁱ Sally Willard Claggett, U.S. Forest Service Chesapeake Liaison

ⁱⁱ U.S. Forest Service, Chesapeake Bay Program

ⁱⁱⁱ U.S. EPA, letter from Region 3 Regional Administrator Shawn M. Garvin to Secretary Preston Bryant, Virginia Department of Natural Resources, December 29, 2009.

^{iv} Annotated Code of Maryland, §8-1801 et seq.

^v COMAR Title 27 (<http://www.dnr.state.md.us/criticalarea/regulations.asp>)

^{vi} Code of Virginia Title 10.1, Chapter 21