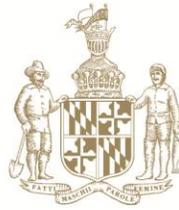


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**U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON WATER AND WATER LIFE
FIELD HEARING – SEPTEMBER 8, 2014
ANNAPOLIS, MARYLAND**

Good afternoon and thank you for inviting me to speak with this committee on the recently signed Chesapeake Bay Watershed Agreement. As a state representative of the Upper Eastern Shore of Maryland, I certainly support the goal of restoring the Chesapeake Bay.

However, because of Maryland's experience with previous Chesapeake Bay Agreements and the subsequent U.S. Environmental Protection Agency's (EPA) 2010 Bay Total Maximum Daily Load (TMDL) pollution reduction goals, I have two major concerns with this new voluntary Agreement.

First, the voluntary Chesapeake Bay Agreements and the mandated EPA pollution reduction goals are regularly cited as the motivation for advancing policy initiatives which previously were considered politically untenable. Both Maryland's executive and legislative branches now craft policy and defend such policy as critical to Bay restoration goals.

Some have rightly questioned the necessity of these policies to achieve Bay cleanup goals as policy makers have established few accountability mechanisms to measure success. It is appropriate to wonder how effective these policies may be, yet policy proponents unfairly dismiss such criticisms, often times accusing their authors of not supporting Bay cleanup efforts.

My second concern focuses on the astronomical cost to achieve the goals and outcomes outlined in this Agreement. In 2012, Maryland's Department of Legislative Services estimated that the State's total cost for bay restoration efforts to be \$14.7 billion through 2025. Although this Agreement asserts that "progress must be made in a strategic manner, focusing on efforts that will achieve the most cost-effective results," our experience in Maryland confirms these restoration efforts will have an enormous price tag with limited evidence that they may yield significant results.

Forty-five years ago when the Clean Water Act became law, the federal government provided 87.5% of funding to help local governments pay for the

massive investments. Chesapeake Bay Watershed Agreements have been voluntary and generally independent of federal assistance. Today, the EPA mandate exists, but the federal funding does not.

Forced to comply with these unfunded mandates, State policymakers have not just passed the financial obligation down to the local subdivisions, but have also directed the manners in which those subdivisions are to meet Bay objectives.

While these mandated pollution reduction goals have accelerated Maryland policy initiatives, such as centralized planning, tiered water and sewer maps and the usurping of local planning and zoning authority, efforts to achieve pollutant reduction goals focuses on four major areas: agriculture, septic system regulation, storm water management and sewage treatment.

Maryland agricultural regulations have tightened since 2010 in an effort to meet the Bay objectives. Demonstrating the agricultural community's commitment to Bay restoration, the Maryland Farm Bureau reports that state farms have already reached their 2017 Watershed Implementation Plan (WIP) goals. Farmers have worked to reduce their nutrient loading by implementing best management practices with limited state assistance.

Nonetheless, Maryland Department of Agriculture intends to promulgate further regulations by implementing a Phosphorus Management Tool (PMT), which could have a devastating effect on our region's farmers. With little concern for the cost implications, Maryland is now asking its farmers, who have done their part, to do more in the name of the Bay restoration.

In order to meet Bay objectives, Maryland has directed its attention, enacted law and promulgated regulations governing conventional septic system use. It should be emphasized that Maryland's septic discharge contributes 0.8% to 1.6% of the total Bay nitrogen load. Nonetheless, under the yoke of the federal mandate, Maryland has enacted laws to restrict septic use in new development. In rural areas like the one I represent, this has stunted new development, lowered land values and dissuaded businesses from locating to rural Maryland counties.

Maryland has certainly been most aggressive in relation to storm water management. Maryland's Department of Legislative Services reports that Stormwater Management initiatives will cost local governments \$6.27 billion between 2010 and 2025. Since this mandate contains no funding, the Maryland General Assembly passed what is commonly known as the "Rain Tax" which forces local governments to impose a tax on businesses, commercial and industrial properties and homeowners, based on their amount of impervious surface.

This tax has certainly not improved Maryland's reputation among business and industry. The imposition and uncertainty of each county's implementation of the Rain Tax presents an additional impediment for businesses seeking to locate in Maryland.

The fourth focus to reach Bay cleanup objectives has been the upgrading of Maryland's existing wastewater treatment plants. Maryland's 67 major plants were the first to be updated with local funds and grants from the state's Bay

Restoration Fund. This special fund is financed by an assessment known as the “Flush Tax” on all property owners across the entire state.

Maryland intends for its smaller plants to be updated in the coming years with Enhanced Nutrient Removal (ENR) technology. While larger waste water treatment plants implementing ENR technology have reduced their nutrient output, smaller plants do not treat the same volume of waste. The expensive upgrade creates only a marginal environmental benefit when one considers the smaller volume of a minor waste water treatment plant.

So, once again, cost effectiveness is of little concern. For smaller municipalities the price tag for an ENR plant can be staggering. I represent the Town of Betterton in Kent County. As of 2012, it had a population of 339. Last year, Betterton approved an ENR improvement of its wastewater facility. The projected cost is between \$5.5 and \$7 million. While federal and state grants may reduce the total cost by about \$3 million, the town will be left to find a way to finance the remaining \$2.5 to \$4 million. For a town with such a small population, one can't help but consider if such an update is a worthwhile investment.

These major investments in wastewater treatment facilities and stormwater management projects on top of regulations on our farming industry and restrictions on growth in our rural counties in the name of a healthy Bay come at a heavy cost without any guarantee that the investments will pay off.

Consistently, Maryland's executive and legislative branch policy makers, along with environmental organizations have chosen to ignore the single largest source of pollution in the Chesapeake Bay watershed: the Susquehanna River and the discharge of nutrient and sediment that flows through the Conowingo Dam. This disregard is once again apparent as this Agreement mentions neither the river nor the dam.

All of the goals and outcomes outlined in this Agreement, along with the investments to achieve them might be in vain, as one major storm event in the Bay Watershed could wipe out any progress. Failure to address or assign responsibility to dredge and maintain the accumulated sediment behind the Conowingo Dam undermines the legitimacy of this new Agreement.

I would urge other states considering voluntary pacts similar to the Chesapeake Bay Watershed agreements, to enter such agreements with caution. In Maryland's experience, non-adherence to such an agreement has served as the basis for the EPA unfunded mandate. Similar agreements could provide the opening needed for the EPA to force states to spend billions on unaffordable and largely ineffective efforts that that may never achieve their intended goals.

As an outcome of Chesapeake Bay Watershed Agreements or EPA mandates, improvements in the health of the Chesapeake Bay must be achieved in a prudent and fiscally responsible manner. We all want to save the Bay, but how to do so effectively with limited resources is still a point of discussion.