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**TESTIMONY BEFORE SUBCOMMITTEE ON WATER AND WILDLIFE  
U.S. SENATE COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS  
AUGUST 3, 2009**

Chairman Cardin, Ranking Member Crapo, and members of the Subcommittee:

Good afternoon and thank you for the opportunity to present testimony to you today.

My name is Mike Brubaker. I am a Pennsylvania State Senator, representing the 36<sup>th</sup> Senatorial District, which includes a large part of Lancaster County and a small part of Chester County. I am honored to represent Pennsylvania at today's hearing and to offer my support for your efforts to reauthorize section 117 of the Federal Clean Water Act. The current language of Section 117 has played a vital role in the establishment of the Chesapeake Bay Restoration Program and has served as a central catalyst of the multi-jurisdictional campaign. However, the time has come to revamp the law – to give it new fuel by adding new Federal authorities, mechanisms of accountability, and enhanced financial support that will collectively leverage even greater actions at the state and local level.

By way of background, approximately half of Pennsylvania lies within the Chesapeake watershed, and Pennsylvania's Susquehanna River supplies 50% of the fresh water to Chesapeake Bay. Consequently, Pennsylvania is responsible for the largest share of pollution reductions to achieve our Chesapeake Bay water quality goals. Almost my entire District lies within the Chesapeake Bay watershed, and I am proud to serve as Chairman of the Pennsylvania Delegation of the Chesapeake Bay Commission and Chairman of the Pennsylvania Senate Agriculture and Rural Affairs Committee.

While Lancaster County may be most known for its productive farmland – it is the most productive non-irrigated farmland in the nation – and its large population of plain sect Amish and Mennonites, Lancaster County is in fact a very diverse and growing county, no stranger to suburban development and the continual challenges of economic development and environmental protection. If you look at Chesapeake watershed maps

of agricultural nitrogen loads, wastewater treatment plant nitrogen loads, and projected population growth, Lancaster County jumps out in dark red in all three.

In that sense, Lancaster County is a microcosm of the entire watershed. With that perspective I will offer my testimony to you on your stated purpose of this hearing, which is to evaluate the successes and shortcomings of the Chesapeake Bay Program. I will start with the successes.

In its almost 30-year history, the Chesapeake Bay Program has set the standard for federal-state partnerships. It recognized from the beginning that watersheds know no political boundaries, and that jurisdictions must work together, in partnership, for improvements to occur. While the Bay Program structure is, admittedly, large and complex, it recognizes the diversity and scope of this 64,000 square mile watershed. Importantly, while the sources of impairment to the Bay are simple – excess nitrogen, phosphorus, and sediment – there is no one-size-fits-all solution to the problem.

Secondly, the Bay Program's work is science-based. As a legislator, I frequently factor Bay Program data into my policy decisions. While not always perfect, this information is very good and is open to public review. Additionally, Bay Program scientists are regularly updating their understanding of the Bay and its watershed, so that the information is continually improving. Current and comprehensive information is critical to effective policy making.

Now, for the shortcomings: The Bay Program has not historically focused on implementation, or more precisely accountability for implementation; it has instead focused on research and policy. As a result, we have not sufficiently driven reductions of nitrogen, phosphorus and sediment from existing sources, primarily agriculture and wastewater treatment plants. In Pennsylvania, we are reducing nitrogen loads at a rate of 1.2 to 1.5 million pounds per year. Most of those reductions have come from implementation of agricultural best management practices spurred by state nutrient management regulation, federal regulation of concentrated animal feeding operations, and state and federal cost-share programs like those in the Federal Farm Bill. Unfortunately, Pennsylvania still has more than 30 million pounds left to go to meet our Chesapeake Bay goal.

At the same time, we have allowed new sources – residential and commercial development, roads, and parking lots – to continue to proliferate. As a result, urban and suburban lands are the only sources of runoff that are increasing in the watershed.

Thus, our progress toward a clean Bay has been slowed, and now we have to play catch up. For us to accelerate reductions, we must hold all sources of nitrogen, phosphorus, and sediment accountable for implementing the practices that we know will improve water quality. We must also hold ourselves accountable as public officials.

This will mean new incentives, new regulations, and even new consequences. In a multi-state multi-sector effort such as this, the Federal government needs to play a leadership role.

We must do this while also ensuring that growth continues. Growth is both inevitable and necessary to a healthy economy. However, good decisions on how and where growth occurs can prevent the need for costly retrofits down the road. This is where local governments become key partners in our effort.

Local governments have control over land use decisions. Without acknowledging the important role that local governments play in addressing pollution controls, pollution reductions and accountability as they relate to growth, we will never achieve the significant new progress that is required. This does not mean the federal government and the state government should not play a role. Indeed, they remain critical partners, whether it be through aggressive stormwater standards for building the roads that support growth or conditioning public funding for projects on green design and construction.

Pennsylvania has begun to address the growth issue by limiting new or expanding wastewater treatment plants in the Chesapeake watershed to a zero net discharge of nitrogen and phosphorus. While this approach is not without its controversy nor challenge to the building community, it was accompanied by the creation of a nutrient trading program in the Commonwealth, thus allowing for the purchase of offsets to achieve the zero net discharge requirement. Although the trading program is moving through some growing pains of its own, the Commonwealth's actions have had some surprisingly positive results – most notably, bringing a diverse group of stakeholders to the table.

In 2008, I, a Republican, joined with my fellow Commission member and Lancaster Countian State Representative Mike Sturla, a Democrat, to convene the Lancaster County Chesapeake Bay Tributary Task Force. The Task Force consists of more than 50 business, agriculture, local government, and scientific leaders in Lancaster County to address our Chesapeake Bay responsibilities in a way that makes fiscal and environmental sense for our community.

It has only been a clear discharge cap, plus the flexibility presented by trading, that has enabled us to seriously begin to address water quality improvements at a community-wide scale. This cap must apply to not just new growth, but to all sources. Farms must do more. Sewage treatment plants must do more. So must homeowners. And golf courses. And the list goes on.

Through a cap and trade system, much like what was achieved through the Clean Air Act, we can provide the certainty of clear expectations with the flexibility to achieve

goals in a cost-effective manner. Additionally, everyone in the community is brought into the process, as we look for new and innovative pollution reductions. In fact, I and my staff are ever more frequently contacted by private sector individuals to inform us about new technology that is being developed – technology that may not have been economically feasible absent a trading program, but that has the potential to ultimately lower the total cost of water quality improvement.

I mentioned that clarity and flexibility are both keys to any future success in Pennsylvania. I believe that is also the case watershed-wide. Clear delineation of federal, state, and local responsibility is important for public accountability and planning on behalf of the regulated community. At the state level, we have begun this process by agreeing to an implementation deadline of 2025, and by agreeing to set two-year milestone goals along the way. At the federal level, EPA is developing a Bay-wide TMDL (total maximum daily load) and President Obama signed his Executive Order regarding Chesapeake Bay. We anxiously await the reports that are being developed at the agency level pursuant to that Executive Order. Finally, local communities and decision-makers must have a clear understanding of what is expected of them and how they can achieve it, along with the legal and financial tools to make it work.

However, states and communities must also have the ability to design a strategy that is the most cost-effective and equitable for them. As I stated earlier, one size does not fit all.

Thank you again for the opportunity to testify. I am happy to entertain any questions you may have.