Testimony of James M. Tierney, Assistant Commissioner for Water Resources
New York State Department of Environmental Conservation
Before the
United States Senate Environment and Public Works Committee
Water and Wildlife Subcommittee
"A Renewed Commitment to Protecting the Chesapeake Bay: Reauthorizing the Chesapeake Bay Program"
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Chairman Cardin and members of the Water and Wildlife Subcommittee, thank you for this opportunity to be here today. My name is Jim Tierney and I am the Assistant Commissioner for Water Resources with the New York State Department of Environmental Conservation in the administration of Governor David A. Paterson. It is my pleasure to share with you New York State's perspective of the effectiveness of the Chesapeake Bay Program to date, and on additional measures the federal government should take to protect and restore water quality and living resources of the Chesapeake Bay and Basin.

New York: An Up-Basin State

New York is an "up-basin" state with areas in the Susquehanna and Chemung River watersheds that ultimately feed into the Chesapeake Bay. This region of New York includes 13% of the state, and extends up to 440 miles from the Bay. The area is about 70% forested, with intermixed agricultural areas consisting of mainly small, financially troubled, dairy farms. In short, the area is predominantly rural and lower income. Wastewater treatment plants located in the Susquehanna/Chemung region contribute an estimated 1% to Chesapeake Bay's pollutant load. Recent estimates are that New York provides about 10% of the Bay's water but somewhere less than 5% of the pollutants.

New York State's efforts to protect water quality in this region have contributed to decreased impairments of Chesapeake Bay. We estimate that if water quality in the Bay had the nitrogen, phosphorus and sediment concentrations of the water leaving New York, the Chesapeake would probably not violate federal water quality standards. There are very few, and very localized, violations of water quality standards within New York's portion of the Chesapeake Basin.

Funding and Supporting a Watershed Basins Approach

A comprehensive environmental agenda for New York State is a critical component of Governor Paterson's vision for the state's future. Our efforts include flood hazard planning and mitigation; stream restoration; flood plain mapping and management; drinking water source protection; primary aquifer mapping and protection; climate change adaptation, and wetland protection and creation. A key aspect of the Governor's program is a robust New York State action plan for the Chesapeake Basin, known as the "Tributary Strategy."

For New York to succeed in these and other efforts, strong federal leadership and financial support is vital. Given the low-income, poor and distant communities of the Susquehanna/Chemung region of New York State, federal assistance is needed to ensure that we continue to protect the water quality of this area and, going beyond New York's borders, assist in the efforts being made by the federal government and other states to attain the national goal of restoring Chesapeake Bay.

We support a "watershed basin" approach to reducing pollution loadings at the source and protecting the natural resources that, in turn, protect water quality. Under a true watershed basin program, stabilized streambanks or wetlands constructed to mitigate flooding up in Sidney, New York, would be equally important as stabilized shorelines or marshes constructed to reduce nutrient and sediment discharged in Baltimore, Maryland. This approach will meet local needs while building the full partnerships that will better ensure the restoration of Chesapeake Bay. Congress needs to direct the U.S. Environmental Protection Agency (EPA) and the states to undertake a comprehensive Chesapeake *Basin*, not simply Chesapeake Bay, program. This should be reflected in any reauthorization Congressional oversight. One basic measure to consider in reauthorizing the Chesapeake Bay Program, therefore, is to have less of a distinction between "signatories" and headwater states. This would better ensure funding equity.

Refocusing Existing Chesapeake Bay Efforts: Stronger National Standards

Some express support for the geographical targeting of all federal resources to places where the most pollutant reduction from the existing built environment will be gained for the Bay. While it may look like more "bang for the buck," this strategy rewards areas that experienced massive over development in the face of known water quality impairment, fails to address water quality issues of local import in up-basin areas, and does not operate to protect the high quality water resources that already exist in the basin. Clearly, areas of poor water quality should improve and receive equitable funding. They also may be the appropriate focus of the enforcement authority granted to EPA by the Clean Water Act – so as to not simply reward past sprawl with public money.

One clear path forward to protect water quality is to facilitate the reversion of land uses near waterways to better mimic natural conditions. Many tools already exist to further this goal, the simplest of which are wetland construction, stream bank and floodplain restoration and public ownership of riparian corridors. New York encourages Congress to direct the Chesapeake Bay Program to provide significant funding to accomplish this broad goal.

The EPA and the other Chesapeake Basin states also have tended to focus attention on particular problems in individual rivers, estuaries and watersheds. Such an approach fails to recognize, however, that many of the Basin's water bodies suffer from the same abuses from our ever expanding development footprint, including nutrient enrichment and bioaccumulation.

It is highly work intensive to address each individual waterway within the present Total Maximum Daily Load protocol. Since the Clean Water Act was enacted in 1972, great strides

have been made to achieve the state-of-the-art treatment at the time, the "secondary treatment" standard. Thirty-seven years later, basic treatment technologies and understandings of runoff impact have increased dramatically, so that additional research is not needed. Now is the time to raise the national floor of technical standards and effluent limitations. We need to ensure that national standards are consistent with existing technology, especially for nutrients. An EPA focus on standard setting will allow the states to focus on their strengths: implementing programs; assessing localized problems, and developing local solutions.

Given the magnitude of nutrient and sediment reduction needed to restore Chesapeake Bay and the cost to implement innumerable nonpoint source management practices and wastewater treatment improvements, it is imperative that pollutants first be controlled at their sources, before being managed on the landscape or removed by end-of-pipe treatments or edge-of-field controls. End-of-pipe treatments in particular, while relatively effective, are typically energy intensive and do not help us to meet policies necessary to address climate change. Opportunities exist to reduce pollutants at the source, including air emissions of NOx, phosphorus waste from dishwashing detergent, lawn fertilizers, domestic animal access to streams and manure spreading on frozen ground. While states can enact policies, rules and regulations, federal leadership is needed for consistency and sufficient regional scope.

New York State's Commitment to the Chesapeake Basin

As a relatively new player in the formal Chesapeake Bay Program, New York remains steadfast in its commitment to aggressively pursue implementation of its Tributary Strategy, which can be found our web site at http://www.dec.ny.gov/lands/33279.html. This strategy was formally adopted in 2007 and, from a non-point source control perspective in particular, is a detailed grass roots plan with realistic levels of individual implementation of control practices, provided that enough time, money and staff are available.

Since 2007, New York has fenced animals out of several thousand streamside acres, constructed several hundred acres of wetlands and riparian buffers and upgraded the largest wastewater treatment plant within the New York portion of the Basin, which makes up about 25 percent of the total wastewater volume from New York. Heightened permit conditions have ben place on 27 smaller waste water plants. And, New York's stormwater general permits are far more stringent than the national minimum.

New York's Concentrated Animal Feeding Operation (CAFO) program covers farms as small as 200 mature dairy animals (or animal equivalents). It is a binding clean water permit program administered by New York State DEC. In place since 1999, New York's CAFO program requires implementation of comprehensive nutrient management plans developed and modified by certified planners, as well as the implementation of structural and non-structural pollutant controls. Active monitoring and enforcement programs are maintained. New York's CAFO program covers approximately 40% of the entire dairy herd in the basin. There are 88 covered and permitted CAFOs. It is estimated that only two of these CAFOs would be permitted under EPA's recently enacted program – thus, New York's CAFO program goes well beyond the level

of environmental protection that would be required by the federal government.

For this and other programs, New York has been and will continue to be accountable for its commitments and actions taken. As you may recall, New York has not been a party to the recent series of congressional inquiries and criticisms of Chesapeake Bay Program progress and accountability.

New York's record of environmental stewardship is demonstrated by the paucity of water quality problems in the Susquehanna basin and the strength of its water and air regulatory programs (including year round NOx controls on major air emissions and mandatory post-construction stormwater controls). That essential factor, coupled with the lack of growth and related economic stimulus in the State's Susquehanna Region, clearly warrants additional federal investment. Investments in New York activities are good investments in water quality protection.

New York State Models for Action

On a smaller scale, the New York City Drinking Water Watershed Program is an example of a successful basin program where plans and commitments, coupled with sufficient funding necessary for implementation, have led to significant protection of water quality. The cost of constructing water filtration for over nine million users is projected to be at upwards of $10 billion. New York State and New York City together have made significant yet far smaller water quality investments which are successfully protecting this Watershed. Land acquisition and wastewater treatment improvement are among the key cornerstones of this protection program.

Similarly, the Long Island Sound region which New York shares with our neighbors in Connecticut faced tremendous environmental impairments. Through a Long Island Sound program which the two states are implementing, this interstate water is receiving the attention that it deserves, and is slowly recovering from manmade environmental impairments. The TMDL for nitrogen in Long Island Sound, developed in 2000, required a 58.5% total nitrogen load reduction. The first phase of implementing this TMDL focused on incorporating nitrogen control technology in 102 sewage treatment plants in New York and Connecticut, using a combination of state, federal and local funds. DEC's implementation of this program has been rigorous, and does not allow for slippage.

Programs such as the New York City Watershed and the Long Island Sound Study serve as models for how the Chesapeake Basin Program can more cost effectively serve the needs of all the people and natural resources within its borders.

The Need for Congressional Action

Through existing federal programs, such as the National Pollutant Discharge Elimination System; nonpoint source controls; State Implementation Plans to address air pollution, and many

other tools, EPA already has the ability to achieve many of the pollutant reductions needed in the Chesapeake Basin. Through the efforts of the 111th Congress, DEC hopes that additional tools will become available to benefit this region and the nation as a whole.

For example, swift Congressional passage of the Clean Water Restoration Act (S. 787) will ensure that EPA and the Army Corps of Engineers have the clear authority needed to protect America's rivers, lakes, streams and wetlands. The Water Infrastructure Financing Act (S. 1005), introduced by Senator Cardin and rightly called "landmark legislation" by Senator Boxer, authorizes the funds that states need for stormwater management, water conservation, or efficiency projects, reuse and recycling projects. On behalf of Commissioner Grannis and Governor Paterson, I want to thank Chairman Cardin and the other members of the Subcommittee for their work on these highly important measures.

In any Congressional action specifically designed to revamp the Chesapeake Bay Program, in addition to the above legislation, it is imperative for New York to retain state priorities and flexibility in its approach to pollution reduction. A brief example of the potential disconnects that we face: there is one relatively large, 1,200 acre reservoir in New York that is listed as impaired from nutrients primarily from agriculture, yet in the 2007 Farm Bill this reservoir is not a priority watershed for implementation because it acts as a nutrient "sink" with less nutrient export to the Bay than from other larger river segments. This is an example of how State priorities need to be considered for federal attention and funding.

Conclusion

New York is optimistic about the future of Chesapeake Bay and the entire watershed that supports it. New York intends to heighten its attention to specific actions over the short term that can be undertaken to reduce phosphorus, nitrogen and sediment dischargers in the Susquehanna River Basin and encourages the federal government to pursue similar goals. If we look too far ahead we may lose sight of what we should be doing. DEC respectfully urges Congress to look beyond the Bay to enact and update federal programs and standards that will assist water resource protection efforts across the country. Think big! On behalf of Commissioner Grannis, I want to thank you for this opportunity to testify