



Chesapeake Bay Commission
Policy for the Bay

CHESAPEAKE BAY COMMISSION
ANN PESIRI SWANSON, EXECUTIVE DIRECTOR

TESTIMONY

**S. 1816, the Chesapeake Clean Water and Ecosystem Restoration Act and
S. 1311, the Gulf of Mexico Restoration and Protection Act**

**Senate Committee on Environment and Public Works
Legislative Hearing**

November 9, 2009

Introduction

Chairman Boxer, Ranking Minority Member Inhofe, and members of the Committee, thank you for this opportunity to testify on the Chesapeake Clean Water and Ecosystem Restoration Act and the Gulf of Mexico Restoration and Protection Act. My name is Ann Pesiri Swanson and I have served as the Executive Director of the Chesapeake Bay Commission for the past 21 years. The Commission is a legislative commission established in 1980 representing the state legislatures of Maryland, Pennsylvania and Virginia on matters of Bay-wide concern.

Over the past three decades, the Commission has had the opportunity to address many issues. We have participated in developing and executing nearly every major Chesapeake Bay Program policy since the Program got its start in 1983. We are a signatory to all three Bay agreements executed by the partnership established under Section 117 of the Clean Water Act.

My work has also led me beyond the basin's borders and into advisory relationships with similar restoration efforts on the Great Lakes, Gulf of Mexico, Puget Sound, Narragansett Bay, Galveston Bay, Everglades, Gulf of Maine, Platte River, Upper Mississippi River, and the California Bay Delta. I have also had the honor of working on a number of ecosystems around the globe. Collectively, these experiences have helped me to refine my professional knowledge and expertise regarding the water quality and habitat restoration needs of watersheds throughout the world. I hope that this expertise can be helpful to you today.

I should also explain the Chesapeake Bay Commission and its role in the watershed. The Commission was first created in 1980 to serve as a governmental policy leader in the restoration of Chesapeake Bay. Its 21 members represent the states of Maryland, Pennsylvania and Virginia. Fifteen are members of the General Assemblies, three are

cabinet-level secretaries and three are prominent citizens. Its membership is politically diverse, drawn from both parties and representing urban and rural districts from across the watershed.

CHESAPEAKE BAY PROGRAM

The Commission would like to begin by thanking Senator Benjamin Cardin for introducing this landmark legislation. The role of the Federal government is critical to the success of the Bay's restoration. We are here to offer our complete support for this legislation to amend the Clean Water Act's Section 117 and for the first time provide accountability measures that complement and bolster the Bay states' efforts to minimize pollution from all sources.

Background

Section 117 of the Clean Water Act established the Chesapeake Bay Program more than two decades ago. It focused on the establishment of the Chesapeake Bay Program office and a strong, cooperative partnership among the jurisdictions, the Federal government and the Chesapeake Bay Commission (representing the legislative branch). EPA's Chesapeake Bay Program expired in 2005. S. 1816 provides us with the opportunity to reauthorize the Bay Program and build upon it. It provides us with an opportunity to refocus the Program, improve its accountability and put the restoration process on a well-paced path toward clean water.

In its current form, the Clean Water Act covers all *point* sources of pollution encompassing municipal wastewater and stormwater, industrial discharges and concentrated animal feedlots. To protect a system like the Chesapeake, where roughly 60 percent of nutrient pollution comes from *nonpoint* sources, we must be sure that all sources are controlled in a meaningful, measurable and accountable way.

We believe that Senate Bill 1816 is moving in that direction. The bill provides the support to control *all* sources of pollution, building on current strengths in the Act, and establishing new assurances that any source of pollution not covered in the Clean Water Act as a point source will be adequately addressed by the states to reduce their pollutant loads to meet pollution reduction targets.

Because of the existing strengths within the Clean Water Act, we in the Bay region have become a model of success for upgrading our wastewater treatment plants. Hundreds of sewage treatment plants throughout the watershed are being upgraded with new technologies to reduce their nutrient loads to the Bay. Because point sources are clearly regulated under existing permit structures we are on target to achieve our point source reduction goals as set in *Chesapeake 2000*. This is because of strong financial commitments from Federal, state and local governments and our citizens and because of clear regulatory authority laid out in the Act.

In fact, perhaps more than any other region in the country, we have taken full advantage of the Act, and have strongly supplemented it with more than a billion dollars at the state level. These actions have resulted in the establishment of standards that require advanced nutrient controls – down to 4 to 8 mg/l of nitrogen – at most of our major sewage treatment plants in the region. This puts us ahead of most of the nation when it comes to nitrogen removal at our waste treatment facilities.

While the States have made significant progress with point sources, we have not been successful with reducing the more diffuse nonpoint sources of nutrient pollution entering the Bay. When one considers the vast and diverse nature of these pollution sources across the Bay's 64,000 square mile watershed, it is not hard to see why we have fallen short in this area.

Nearly one-quarter of the Bay watershed's land is devoted to agricultural production. As such, agriculture is the largest source of nitrogen, phosphorus and sediment in the watershed. Through the Federal Farm Bill we now have a program targeting funding to the Chesapeake Bay watershed which, together with state funding, provides an important new tool to reach new farmers and increase farmer participation in on-the-ground conservation practices. But the enrollment levels and best management practice implementation levels are not close to where we need them to be. Furthermore, support for technical assistance to encourage further participation is not adequate. S. 1816 ensures that 20 percent of federal implementation grant funding be dedicated to technical assistance to farmers and foresters. It also increases accountability for agricultural pollution reduction programs.

The other source of non-point pollution yet to be adequately addressed is stormwater runoff from urban and suburban lands. Here we are actually losing ground. Polluted runoff from the land is actually escalating because of increased development across the Bay watershed.

The proposed legislation offers remedies to this situation that we believe are critically needed to ensure successful restoration of the Bay, its waters and the living resources therein. Specifically, there are six key points that I would like to highlight that underscore our support for this bill.

Legislation

First, the bill respects a collaborative Federal and State approach. EPA and the Bay states have been focused on delisting the Bay from the Federal impaired waters list for more than two decades. The Bay Program partnership has acknowledged previous efforts will not achieve this goal. , Thus, EPA is working with the states to develop a court-ordered Bay-wide TMDL due in 2011. The Bay states have agreed to chart-out and implement cleanup plans in two year increments, to reach the nutrient and sediment cap load allocations agreed to by all the partners.

By building on the successful elements of the Chesapeake Bay Program partnership, S. 1816 directly complements this effort. The bill codifies the process and deadlines agreed to by the states, thus ensuring coordination, requires an annual Federal Implementation Plan, increases state accountability, steps up compliance and increases Federal funding. Both Federal and state governments will work together to develop individual state Watershed Implementation Plans that will chart out state-specific goals designed to achieve a Bay-wide pollution cap.

Critical to the design of the bill, each state would be provided with the flexibility to develop and implement its own plan to meet its share of the watershed goal. Each jurisdiction faces a different set of challenges dependent upon the land use, climate, topography and socioeconomic and physiographic characteristics of their jurisdictions. Flexibility will allow them to reach for the most cost-effective, politically-doable solutions. The pollution cap, dates certain (including a half-way mark), consequences and stepped-up Federal funding will collectively ensure that the job gets done.

Second, the bill uses a Clean Air Act construct to improve accountability. Borrowing from successful provisions of the Clean Water Act and the Clean Air Act, S. 1816 strengthens authority for states to act and provides consequences for failure to act.

If we are to learn from what has worked in the past and what continues to work in the present, the Clean Air Act offers some useful models for success. The Clean Air Act utilizes State Implementation Plans and time schedules giving states discretion to develop state-specific means to attain air quality standards within a region by a certain date. The watershed-based approach of the Bay-wide TMDL would benefit from a similar approach. The Clean Air Act also contains noncompliance sanctions that work as incentives for expeditious and effective state programs. Using this approach with the already agreed upon two-year state milestones and deadlines would help to ensure progress continues throughout the restoration process- not only with our point sources but also with our multitude of non-point sources of pollution.

So far, our greatest successes have involved strong intergovernmental partnerships, clear regulatory authority and predictable, reliable government support. By building on our existing partnerships, S. 1816 will increase our accountability and increase our rate of success.

Third, S. 1816 clearly articulates the Federal governments expectation for Clean Water. At the end of the day, the assurance of Clean Water is the combined responsibility of the Federal and state governments. S. 1816 establishes strong enforceable pollution caps with clear deadlines, along with an iterative process for addressing nonattainment issues along the way. A clear expression of these expectations is needed to ensure that the stakeholders involved are making adequate progress and that their pollutant loads can be sufficiently reduced within the expected timeframe. Provided that the separation of Federal and state responsibility is clearly respected, we believe that this clarification will be helpful in policy making at both the state and local scale.

Fourth, S. 1816 will provide for better tracking, accountability and technical assistance.

As we accelerate the pace of restoration, it will be critical to accurately account for what we have done in order to understand where the reductions have come from and, importantly, where they have not. This will allow us to adapt our programs over time to ensure success. Furthermore, providing added technical assistance for both the agricultural and urban and suburban sector will be critical to achieve the levels of participation needed and to better understand what must be counted. The bill before will provide for improved tracking, technical assistance and accountability.

Fifth, an interstate nutrient trading program is laid out within the bill.

Nutrient trading can help speed the cleanup of the Chesapeake by encouraging facilities to not only meet but also go below their pollutant reduction caps. Trading taps the most efficient available reductions and facilitates cost-effective attainment and maintenance of pollutant caps. In addition, trading markets spur innovation to reduce nutrient runoff. For instance, by generating additional nutrient reductions that can be sold to point sources, local farmers stand to gain financial rewards for being active stewards of their land. But for these markets to work there must be a clear cap. S. 1816 provides that cap. In fact, we believe that a Chesapeake Bay-wide trading program would generate revenue to farmers comparable to existing federal and state agricultural conservation funding while at the same time achieving cost savings for municipalities.

Sixth, Federal financial assistance will be greatly enhanced.

I list this last so that I can underscore not only its importance overall, but also to strongly support the subcategories of funds contained in the bill. The health of the Bay is only as good as the sum of its parts. S. 1816 targets money to some of the sectors that are most able to make substantial reductions – namely our local governments, farmers and foresters. Furthermore, the bill highlights the importance of monitoring to serve as a real time reminder of the state of the water, not subject to the assumptions of a model or the spin of any given sector, state or politician. The Bay has been repeatedly recognized as one of this country's greatest national treasure. A ramped up Federal investment will leverage the kind of further investment at the state, local and private sector necessary to get the job done.

Suggested Amendments

The Commission strongly supports S. 1816, and suggests two important changes. First, provisions should be added to establish an EPA Technology Development Fund to support the development of advanced septic systems, denitrification technologies, regional enhanced methane digesters and other innovative technologies to further nutrient reduction in the watershed. We must keep ourselves on the cutting edge of technological advances in order to bring about affordable solutions to the diverse sources of nutrient pollution that we face.

The second amendment that we offer relates to the specificity at which individual sectors are covered in the bill. The current language would require reductions (p. 32, lines 3-16)

and no net increase (p. 30, lines 3-11) in loads from each individual source sector. Instead, we recommend that states be responsible for reductions and no net increase in loads from the sum of all sources collectively. It makes no difference to the Bay whether a pound of nitrogen comes from a septic system or a wastewater treatment plant, so to maintain flexibility and maximize cost-effectiveness, a state must be able to choose the level of reductions it will require of any one sector. However, none of the mentioned sectors should be left out when calculating total loads and if a state chooses not to require limits on one sector, the state must demonstrate how those loads will be offset by other sectors.

Our closing comments related to S. 1816 should certainly address the public commitment to clean water is real; support for this bill can be found throughout the watershed states. Strong cultural and historic values are at stake because their survival is intertwined with clean water. Segments of our economy rely heavily on clean water, such as our productive wild fisheries, budding aquaculture trade, and the recreation and tourism industries. The flexibility provided in this legislation will enable each state to prescribe its own plan, addressing state priority areas first. States continue to view restoration of their streams and rivers that lead to the Chesapeake as investments in clean water that far outweigh the costs of inaction.

GULF OF MEXICO PROGRAM

I have also been asked to comment briefly on S. 1311 which reauthorizes the Gulf of Mexico program. More than twenty years ago, in 1988 I traveled to Florida at the invitation of Governor Bob Martinez. He asked that I consult with a group of people beginning to work on the Gulf of Mexico in order to address the growing anoxia of its waters. Republicans and Democrats alike were joining forces, as they have in the Chesapeake, to address an issue that transcends party lines.

Since that time, much has happened in the Gulf of Mexico and many efforts have been tried. The challenges of the Chesapeake in some ways pale in comparison to those presented by the size and complexity of the Gulf's watershed. Still, the effort has persisted and its importance has only grown over time.

S. 1311 amends the Clean Water Act to reestablish the Gulf of Mexico Program under the EPA. It reestablishes a program office along with staff intended to coordinate the activities of the EPA and other federal agencies with those of the states and local authorities. These activities are to be focused on venues that will result in measurable improvements to water quality and living resources of the Gulf of Mexico system. The important role of monitoring is clearly recognized.

As I said when I began, my career has focused on Chesapeake Bay issues. Throughout the years I have witnessed the profoundly important role that the Federal government, and particularly EPA, has played in its clean up. The Bay Program Office has provided a strong coordinating role that is both substantive and inclusive. Data analysis and

monitoring services have been vital. This same service will be critical to addressing the needs of the Gulf. While I am certainly not an expert on the Gulf of Mexico program, nor are our members, we can only conclude that the reestablishment of a Gulf of Mexico program is an important step forward in cleaning the waters of the central and southern United States.

This concludes my remarks on behalf of the Chesapeake Bay Commission. It has been my honor to appear before you today. I would be happy to answer any questions that you might have.

THE CHESAPEAKE BAY COMMISSION:

The Chesapeake Bay Commission is a tri-state legislative commission, established in 1980 prior to the creation of the Chesapeake Bay Program, to advise the members of the Maryland, Virginia and Pennsylvania legislatures on matters of Bay-wide concern. The catalyst for our creation was the Environmental Protection Agency's (EPA) landmark seven-year study (1976-1983) on the decline of the Chesapeake Bay. Congressional concern prompted our beginnings and has since contributed handsomely to our success.

The Commission is a partner in the Chesapeake Bay Program – one of six signatories to the agreements that make up its leadership. What makes the Commission unique is the simple fact that it is *not* an Executive Branch agency (like the other five partners) and it is not of a single state. Instead, 21 members from three states, 15 of whom are legislators, provide a regional voice within the Program.