



March 17, 2014

Board of Directors

John Applegate
Robert Glicksman
David Hunter
Thomas McGarity
Amy Sinden
Sidney Shapiro
Rena Steinzor
Robert R.M. Verchick

VIA EMAIL: agreement@chesapeakebay.net

Chesapeake Bay Program
410 Severn Avenue / Suite 112
Annapolis, Maryland 21403

Re: **Request for Public Comments Regarding the draft *Chesapeake Bay Watershed Agreement***

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

To Whom It May Concern:

The draft Bay Agreement misses the mark. As the first interstate agreement since EPA issued the Total Maximum Daily Load (TMDL) for the Chesapeake Bay, it was an opportunity to build off the TMDL and tackle the issues it does not address. Instead, the Agreement ignores some of the most pressing issues facing the Chesapeake Bay today.

The Agreement Must Hold Agriculture Equally Accountable Across State Lines

Agricultural operations are responsible for nearly half of the nutrients now choking the Chesapeake. The authority for the TMDL comes from the Clean Water Act, which does not address nonpoint sources such as agriculture. The Agreement is a chance for Bay state governors to hold each of the various polluting sectors to roughly the same standards across state lines. Otherwise, the big chicken companies in the region will continue to play one state against another.

Other pollution sources—sewage treatment plants, county stormwater systems, even homeowners—are required to contribute to Bay cleanup in a transparent and verifiable way. Sewage treatment plants and other stationary sources of pollution, for example, must apply for a permit to operate and are subject to fees, regular inspections, and record-keeping requirements. To upgrade sewage

treatment plant pollution controls, homeowners in Maryland pay a “flush tax” of \$60 per year. In Delaware, the governor wants to invest approximately \$30 million annually to restore its waters, which would require the average Delawarean to put aside about \$1 per week.

Virginia localities will establish local stormwater runoff management programs by July 1, 2014. The process has already begun in Maryland, which has started collecting annual fees from property owners to help manage polluted stormwater runoff.

Such measures make sense. States in the watershed derive billions of tourism dollars from the Bay each year. To restore this vital economic and recreational engine, it is only fair that each sector takes responsibility for its share of pollution. The failure to hold agriculture accountable for its share of the pollution unfairly shifts the burden to taxpayers and other polluting sectors.

The Bay states have made some important strides toward cleaning up the Bay. To finish the job, it cannot ignore the source of half the estuary’s pollution. The final Bay Agreement should hold agriculture equally accountable across state lines.

The Agreement Should Invite EPA Oversight

The Bay’s recent progress is largely the result of the federally led TMDL, and the Agreement should acknowledge EPA’s critical role in restoring the Bay. Under the TMDL, the six Bay states and Washington, D.C. are legally required to have in place 60 percent of all the measures needed to reduce nitrogen, phosphorous, and sediment deposition in the Bay and its tidal rivers by 2017, with 100 percent of the measures in place by 2025. While this Agreement holds Bay states accountable to the TMDL, states were already required to adhere to the plan under the federal Clean Water Act—a requirement that a federal judge in Pennsylvania confirmed last October. The final Agreement should acknowledge EPA’s critical role in restoring the Bay and invite further oversight.

The Agreement Must Address Toxics and Climate Change

The Agreement was the states’ chance to address some of the issues unaddressed by the TMDL, most notably toxic chemicals in the Bay and the problems resulting from climate change. The last agreement, signed in 2000, committed the states to eliminating toxics in the Bay. Despite mounting evidence of impacts to fish and other resources since then, this draft Agreement omits any commitment to reduce—or even research—toxic pollution in the Bay and its tributaries. The final Agreement must address toxic pollutants.

Just as out of touch, the draft Agreement fails to utter the words “climate change.” That such a glaring omission is possible in 2014 is embarrassing and inexcusable. In the final Agreement, the authors must acknowledge reality and address the very real impacts that climate change will have—and is already having—on the Bay.

This tepid don't-rock-the-boat agreement harks back to yesteryear, when Bay states spent two full decades getting very little done. Governor O'Malley, the head of the Chesapeake Executive Council, and the other Bay state governors must revise the Agreement so that the final document reflects the true value Bay restoration represents to the region.

Sincerely,



Rena Steinzor
President, Center for Progressive Reform
Professor of Law, University of Maryland
Francis King Carey School of Law



Anne Havemann
Policy Analyst, Center for Progressive
Reform