



CONTINUING AND ADVANCING THE RESTORATION OF THE CHESAPEAKE BAY

A TRI-STATE UPDATE FOR THE TRUMP ADMINISTRATION

CHESAPEAKE BAY COMMISSION • MARCH 2017

THE CHESAPEAKE BAY COMMISSION

Who We Are and What Our Role Is in the Protection of Clean Water

Composed primarily of state legislators from the General Assemblies of Pennsylvania, Maryland, and Virginia, the Chesapeake Bay Commission (Commission) is an interstate legislative organization dedicated to establishing and implementing collaborative and practicable policy for the restoration of the Chesapeake Bay.

A unique creation of three state legislatures, it dates back to 1980, prior to the signing of the first Chesapeake Bay Agreement (1983), prior to the development of Chesapeake Bay water quality criteria by the Environmental Protection Agency (2003), and prior to the development and adoption of a Chesapeake Bay Total Maximum Daily Load (2010).

Reflecting the truly bi-partisan character of the Commission, there are currently eight Republican legislators and seven Democratic legislators on the Commission. The Commission's leadership rotates annually among the three states.

The current Commission Chair is the chair of the Pennsylvania delegation, Representative Garth Everett, a Republican member of the Pennsylvania House of Representatives from rural Lycoming County. Representative Everett's career includes serving for 20-plus years in the U.S. Air Force as well as solicitor for multiple local governments and authorities.

The chair of the Maryland delegation, Delegate Tawanna Gaines, is one of two Vice-Chairs for the Commission. Delegate Gaines, a Democratic member of the Commission from Prince George's County, Maryland, has a history of public service in the Maryland House of Delegates and in local government.

Virginia Republican Delegate Scott Lingamfelter completes the Commission's slate of officers as its other Vice Chair. Delegate Lingamfelter served as Chair of the Commission in 2015. Like Representative Everett, his career also includes over 20 years in the U.S. armed services, having retired as a U.S. Army Lt. Colonel. A fiscal conservative, he describes himself as "an adherent to the Founders' vision of constitutional and conservative government."

These three leaders, two Republican and one Democrat, work across state boundaries as part of the twenty-one-member (seven from each state) Commission. In addition to the

Members of the Commission

Representative Garth D. Everett
(PA-R) Chairman

Delegate Tawanna P. Gaines (MD-D)
Vice Chair

Delegate L. Scott Lingamfelter
(VA-R) Vice Chair

Senator Richard L. Alloway, II
(PA-R)

Secretary Mark J. Belton (MD,
Governor's cabinet)

Delegate David Bulova (VA-D)

G. Warren Elliott (PA, Citizen
Appointee)

Delegate Barbara A. Frush (MD-D)

The Hon. Bernie Fowler (MD, Citizen
Appointee)

Representative Keith Gillespie
(PA-R)

Senator Guy J. Guzzone (MD-D)

Senator Emmett W. Hanger, Jr.
(VA-R)

Delegate Maggie McIntosh (MD-D)

Acting Secretary Patrick McDonnell
(PA, Governor's cabinet)

Senator Thomas McLain "Mac"
Middleton (MD-D)

Delegate Margaret Ransone (VA-R)

Representative P. Michael Sturla
(PA-D)

Dennis H. Treacy (VA, Citizen
Appointee)

Senator Frank W. Wagner (VA-R)

Secretary Molly Ward (VA,
Governor's cabinet)

Senator Gene Yaw (PA-R)

15 legislative members (five per state), three members are cabinet-level secretaries (representing the governors of Pennsylvania, Maryland, and Virginia) and three members are citizen appointees of their respective state General Assembly.

Experiential backgrounds among the members include a lifelong farmer, an environmental planner, a former Vice President and Chief Sustainability Officer for a Fortune 250 corporation, a former judge, a CEO of a construction and contracting firm, a retired Navy Rear Admiral, and an owner of a multi-generational family-run oyster company.

Since its creation in 1980, the Commission has been a leader in the states' Baywide environmental protection and restoration efforts. Among its successes are:

- The establishment of a multi-state ban on threatened stocks of striped bass, now a recovered fishery because of the ban.
- An end of the use of phosphate in detergents in all three Bay states.
- The establishment of a state-led process for developing river-specific state clean-up plans.
- A major initiative across the watershed states to develop policies on the restoration of riparian forest buffers.
- The establishment of the first ongoing bi-state committee to promote cooperation in the management of Maryland's and Virginia's most commercially valuable Bay fishery, the blue crab.
- The allocation of state funds to support pollution reduction from agricultural sources and installation of advanced sewage treatment infrastructure.
- The establishment of regional conservation initiatives in the Federal Farm Bill for agricultural conservation efforts in the watershed.
- The publication of precedential policy documents ranging from *Cost Effective Strategies for the Bay*, an examination of how to achieve the best "bang for the buck" in nutrient pollution reduction, to

The Purpose of the Chesapeake Bay Commission as Established by State Codes

The purposes ... are to assist the legislatures of Virginia, Maryland, and Pennsylvania in evaluating and responding to problems of mutual concern relating to the Chesapeake Bay; to promote intergovernmental cooperation; to encourage cooperative coordinated resource planning and action by the signatories and their agencies; to provide, where appropriate, through recommendation to the respective legislature, uniformity of legislative application; to preserve and enhance the functions, powers and duties of existing offices and agencies of government; and to recommend improvements in the existing management system for the benefit of the present and future inhabitants of the Chesapeake Bay region.

Nutrient Credit Trading: An Economic Study, an analysis of where nutrient trading could best provide potential cost savings and efficiencies.

Throughout its history, the state legislative leaders of the Commission have helped it drive state-led restoration opportunities and efforts which are now yielding a Bay in recovery.

THE BUSINESS OF THE BAY: AN ECONOMIC ENGINE¹

It is important to note at the outset that the Commission shares the conclusion of many that the Chesapeake Bay and its rivers and streams are not merely an ecosystem of immense natural resource value, they are also huge economic engines for the states of Pennsylvania, Maryland and Virginia. From recreational trout fishing to harvesting blue crabs, healthy Bay waters provide jobs, personal income and state revenue. In addition, clean water saves money; clean runoff from farm fields and well-managed stormwater reduces governmental costs for drinking water, for example. The bottom line: clean water and a healthy Bay are good business.

Research shows that the total estimated natural capital value of the Chesapeake Bay watershed is a whopping \$107.2 billion in its current state of recovery.

The value of a Bay watershed with clean water jumps to \$129.7 billion annually, a \$22.5 billion per year increase. For our states' economies, the numbers remain impressive:

- Pennsylvania: \$6.2 billion annually
- Virginia: more than \$8.3 billion annually
- Maryland: \$4.6 billion annually

The fact is that reduced pollution and cleaner water is good business.

And the results are not simply economic; there are the added benefits of an improved quality of life. These benefits include: improved food production (farming, hunting and fishing); better urban management of

1. <http://www.tandfonline.com/doi/full/10.1080/08920753.2016.1160205>

stormwater that reduces flooding, protecting life, public infrastructure (bridges, dirt roads, etc.), and private property; safer drinking water supplies; and increased access to recreation (tourism, outdoor sports, fishing and hunting, etc.).

THE CORE: SUCCESSFUL COOPERATIVE FEDERALISM

Highlighted in 2005 under the Bush Administration as a model conservation and restoration program of cooperative federalism, the state-federal Chesapeake Bay Program Partnership has successfully advanced a collaborative, state-led, federally supported restoration approach.

This state-federal Partnership, joining together six states, the District of Columbia, the federal government, and the legislatures of Pennsylvania, Maryland and Virginia, is governed by voluntary commitments established by the partners themselves. These core commitments focus on a comprehensive package of environmental indicators, commitments that include a pledge to uphold the rule of law and achieve the goals of the federal Clean Water Act.

Voluntary Agreements

Framed by a series of voluntary agreements dating back to 1983 among the Commission, six states, the District of Columbia, and the federal government, the Partnership's current operational framework document is the Chesapeake Bay Watershed Agreement (Agreement), drafted and signed in 2014. Key among the philosophies incorporated in the Agreement are the concepts of public-private partnering, measurable results, and the use of new ideas and technologies:

Local governments are key partners in our work, as are individual citizens, businesses, watershed groups and other non-governmental organizations. Working together to engage, empower and facilitate these partners will leverage resources and ensure better outcomes. ...The Partnership's experience with watershed restoration and protection efforts has shown that measurable results, coupled with firm accountability, yield the most significant results. The Partnership stands ready to embrace new ideas, technologies and policies that will help meet its goals. [“Preamble,” *Chesapeake Bay Watershed Agreement*, 2014]

These philosophies and concepts have led, according to one Commission member, to a “very effective system” for documenting and measuring progress on achieving the Agreement's goals and outcomes. Among them are: sustainable commercial and recreational fisheries; land and water habitats sufficient to support wildlife, recreational use, and scenic values; clean water that meets state and federal standards; and increased citizen stewardship; conservation of treasured landscapes.

Rule of Law

The Partnership's Chesapeake Bay restoration efforts are not exclusively voluntary. The efforts are also framed by the rule of law as contained in the federal Clean Water Act:

(g) CHESAPEAKE BAY PROGRAM [PARTNERSHIP]

(1) MANAGEMENT STRATEGIES

The Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain—

(A) the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and its watershed;

(B) the water quality requirements necessary to restore living resources in the Chesapeake Bay ecosystem. [33 USC Section 1267]

These federal statutory provisions along with the Clean Water Act sections governing “impaired waters” and Total Maximum Daily Loads (Section 303(d) et al) are parallel restoration obligations of the Partnership.

As noted by one Commission member, “While the requirement to clean up the Chesapeake Bay is appropriately driven by the Clean Water Act, how to do this is decided by each state, which creates buy-in and ensures efficiency.” And, in fact, Commission members across the tristate region consider the role of EPA as the federal lead on Total Maximum Daily Loads critical to the ongoing success of the restoration efforts.

Cooperative Federalism

Describing the current roles of the EPA and the states, along with the blend of voluntary and statutory efforts, one Commission member noted: “This is a model for how a watershed cleanup program should be done.” The simple fact is that the Chesapeake Bay Program Partnership is a shining example of successful cooperative federalism. In the words of another member, “The relationship with EPA has been a true partnership in every sense of the word.”

The Chesapeake Bay Watershed Agreement specifically acknowledges the cooperative federalism nature of the Partnership and the unique mix of statutory and voluntary elements. In the Goals and Outcomes Water Quality section, the Agreement cross references the Clean Water Act obligations of the partners:

Restoring the Bay's waters is critical to overall watershed restoration because clean water is the foundation for healthy fisheries, habitats and communities across the region. However excess amounts of nitrogen, phosphorus and sediment in the Bay

and its tributaries have caused many sections of the Bay to be listed as “impaired” under the Clean Water Act. The Chesapeake Bay Total Maximum Daily Load (TMDL) is driving nutrient and sediment reductions as described in the Watershed Implementation Plans (WIPs), adopted by the states and the District of Columbia, and establishes the foundation for water quality improvements embodied in this Agreement. These plans set nutrient and sediment reduction targets for various sources—stormwater, agriculture, air deposition, wastewater and septic systems.

The defining feature of the Chesapeake Bay Program Partnership is its collaborative structure. It is a joint enterprise where state governments and the federal government together share responsibilities; where negotiated voluntary agreements among governments confirm not only shared statutory obligations but also apportioned voluntary goals that exceed the shared statutory obligations.

The federal government’s role in this collaborative structure has proven essential to the successes to date. EPA not only provides an infrastructure to allow all the players’ voices to be heard, but it also coordinates complex decision-making. In addition, when necessary, EPA provides federal oversight and accountability, assuring that all the players observe the voluntary commitments they have made and the rule of law.

In every way, the Chesapeake Bay Program Partnership is a model of cooperative federalism.

CONTINUING SUCCESS: THE STATE PERSPECTIVE ON SPECIFIC CONTRIBUTIONS FROM OUR FEDERAL PARTNERS

Providing Information: Science and Planning Tools

As state legislative leaders, we recognize the critical role that EPA and the federal partners play in providing the scientific and technical – including modeling – information and expertise necessary to ground restoration decisions on the best science available.

While EPA serves as the lead federal partner, the Chesapeake Bay Program Partnership incorporates unequalled expertise from federal agencies such as USGS, NOAA, USDA, NPS, USFWS, DOD, and Homeland Security. The states rely on these federal partners to provide data, analysis, interpretation, and coordination.

States depend heavily on the scientific information some of these federal agencies provide. From the original determination that an excess level of nutrients was the primary pollutant causing the decline of water quality in the Chesapeake Bay to the recognition that airborne nitrogen was a substantial contributor to that excess level of nutrients, EPA in collaboration with other federal agencies has provided the cutting-edge science necessary for on-the-ground state decision-making. No one state could either obtain or generate this information on its own. In the words of one member of the Commission, the federal

Chesapeake Bay Modeling, Monitoring and Data Collection Are Called for in the Clean Water Act

(b) CONTINUATION OF
CHESAPEAKE BAY PROGRAM
[PARTNERSHIP]. --

(2) [CHESAPEAKE BAY]
PROGRAM OFFICE. --

(B) FUNCTION. -- The
Chesapeake Bay Program
Office shall provide support
to the Chesapeake Executive
Council by --

(i) implementing and
coordinating science,
research, modeling,
support services,
monitoring, data
collection, and other
activities that support the
Chesapeake Bay Program
[33 USC Section 1267]

government contributes critical “science-based initiatives that support state implementation.”

The development and deployment of technical tools is a parallel informational contribution provided by the federal government. The Chesapeake Bay Watershed Model (Bay Model) is a prime example of this type of essential federal contribution.

A peer-reviewed model extensively calibrated and validated to stream monitoring data at hundreds of locations throughout the Chesapeake Bay states, the Bay Watershed Model is one of international recognition and respectability. “[E]ach successive version of the model has added more detail, more process documentation, better input data sets, and finer temporal and spatial representation of the watershed.” [Chesapeake Bay Program, Scientific and Technical Advisory Committee Publication 11-02 September 26, 2011]

Not only would it be practically impossible for any single state to develop a comparable model, the states have utilized the model extensively over the years to develop implementation plans, make strategic planning decisions, assess progress, and continue forward momentum on reducing pollution and achieving clean water. Local governments across the watershed are also now using these tools to make informed, strategic and cost effective decisions. The states of the Commission recognize that the model serves as an invaluable tool in their process of engaging stakeholders, considering priority choices, making funding decisions, and implementing restoration strategies.

Another federally assisted informational initiative on which states rely is the Partnership’s water quality monitoring program. Led jointly by USGS and the EPA, the federal government coordinates a monitoring network that utilizes federal monitoring stations, state monitoring stations, academic institutions, scientists, federal and state agencies and staff, and citizen scientists to monitor and assess water quality conditions as the states implement pollution control and reduction practices. Monitoring water quality is critical to determining which solutions to implement and their level of effectiveness. Monitoring data and data analysis characterize current conditions, identify long-term trends, and drive decisions and choices on water quality improvements.

Funding assistance

Simply stated, informational support is not the only critical role of the federal partners: Commission members of both parties understand the critical role that federal funding support has historically played — and must continue to play — in the restoration of the Chesapeake.

States currently outspend the federal government in supporting cleaner water in the Bay and its rivers. 2016 state program spending for watershed restoration exceeded \$1.2 billion. Federal agency spending, all totaled from all agencies, was substantially less: \$536 million. [*Chesapeake Bay Restoration Spending Cross-cut Report to Congress*, Office of Management and Budget, 12-16]

The Chesapeake Bay watershed states are serious about the restoration of the Bay.

Federal contribution remains essential, however, even at this lesser level. From USDA dollars to EPA dollars to NOAA dollars, these monies fund the federal informational science as well as the collaborative structural leadership that the federal government provides the Partnership. In addition, EPA dollars flow to the states to help implement the on-the-ground restoration work and USDA dollars provide farmers with necessary funds to manage their farmland in environmentally sensitive ways.

While the Commission supports new ways to deliver these and additional dollars (e.g., through non-siloed block grants), current funding serves as invaluable capital, both real and political, in the cooperative federalism model of the Chesapeake Bay Program Partnership.

CONCLUSION

The Chesapeake Bay Commission's unique structure, history, and make-up give it a lens like no other player in the Chesapeake Bay Program Partnership. It sees from the state government legislative perspective the realities of what is and is not working. We hope that this briefing provides you with a view of the current effort – and our clear and unequivocal support of it.

As you look to the future, we look forward to working closely with you.

HEADQUARTERS AND MARYLAND OFFICE

60 West Street, Suite 406
Annapolis, MD 21401
410-263-3420 · Fax 410-263-9338

VIRGINIA OFFICE

General Assembly Building
201 N. 9th Street, Room 270
Richmond, VA 23219
804-786-4849 · Fax 804-371-0659

PENNSYLVANIA OFFICE

c/o Senate of Pennsylvania
Room G-05 North Office Building
Harrisburg, PA 17120
717-772-3651 · Fax 717-705-3548

www.chesbay.us

Ann Pesiri Swanson
Executive Director
aswanson@chesbay.us

Mark Hoffman
Maryland Director
mhoffman@chesbay.us

Ann F. Jennings
Virginia Director
ajennings@chesbay.us

Marel King
Pennsylvania Director
mking@chesbay.us

Jennifer Donnelly
Administrative Officer
jdonnelly@chesbay.us



Chesapeake Bay Commission
Policy for the Bay