

WRITTEN STATEMENT

CHESAPEAKE BAY TMDL

**HEARING OF THE SUBCOMMITTEE ON CONSERVATION,
ENERGY AND FORESTRY**

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CHAIRMAN**

PRESENTED BY

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Chairman Thompson, Ranking Member Holden and members of the Subcommittee, thank you for inviting me to testify on the Chesapeake Bay Total Maximum Daily Load (TMDL). I am Hobey Bauhan, president of Virginia Poultry Federation (VPF), a nonprofit, statewide trade association representing all sectors of the poultry industry since 1925. VPF's members include poultry processors, poultry farmers and allied companies that provide goods and services to the poultry industry. I am also testifying today on behalf of the National Chicken Council, the National Turkey Federation and the U.S. Poultry and Egg Association, the leading poultry trade associations in the United States.

The National Chicken Council (NCC) represents the vertically integrated companies that produce, process and market more than 95 percent of the young meat chickens (broilers) in the United States. NCC serves as the industry's voice in Washington in the development of national legislative and regulatory policy.

The National Turkey Federation (NTF) represents nearly 100 percent of the turkeys produced in the United States, including all segments of the turkey industry from breeders and hatcheries to growers and processors. Like the other poultry organizations, NTF has strong membership support from companies allied to the poultry business.

The U.S. Poultry and Egg Association is the world's largest poultry organization, whose membership includes producers of broilers, turkeys, ducks, eggs and breeding stock, as well as allied companies. The association focuses on research, education and technical services, as well as communications to keep members of the poultry industry current on important issues.

Poultry contributes more than \$1.5 billion annually to the Virginia economy, supports the livelihood of some 1,100 family farms and employs more than 10,000 people. The poultry industry, which has an overall economic impact in Virginia in excess of \$1.5 billion, generates significant farm income that helps keep farmland in production and slow conversion of farmland for other less environmentally friendly uses, a benefit acknowledged by many, including the EPA administrator.

Poultry Industry Environmental Stewardship

The Chesapeake Bay is an iconic water body with a rich history. In a May 2009 Executive Order, President Obama stated, "The Chesapeake Bay is a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world." The bay is indeed a tremendous natural resource. It deserves our active stewardship. However, we believe EPA's approach in the Chesapeake Bay TMDL raises significant technical, policy and legal questions, and imposes unnecessary costs and burdens on agriculture, without generating meaningful results for the environment.

States and the District of Columbia that are part of the Chesapeake Bay watershed have worked cooperatively on strategies to improve the bay since the 1980s. Much progress has been made to reduce nitrogen and phosphorus discharges from wastewater treatment plants, and in implementing agricultural and urban best management practices through voluntary and regulatory programs. However, litigation over failure to reach certain water quality goals has led EPA to develop a Chesapeake Bay TMDL. This strict “pollution diet” sets new limits on nutrient (nitrogen and phosphorus) and sediment “loadings” into rivers and streams throughout the 64,000-square-mile bay watershed.

Through compliance with existing government regulations and the implementation of voluntary practices, the poultry industry in Virginia, along with other states in the watershed and across the country, has been a responsible and proactive environmental steward. The industry has long been part of the solution to a cleaner bay and local waterways. It is our hope that the industry continues to be able to provide the rural jobs and economic base for years to come. Please consider the following:

- In 1995, Virginia’s poultry industry received a “Friend of the Bay” award from the Commonwealth of Virginia for its voluntary initiative to implement Nutrient Management Plans (NMPs) on all Shenandoah Valley poultry farms by the year 2000, a goal largely achieved.
- VPF estimates at least 80 percent of poultry producers in the Shenandoah Valley have constructed sheds for storing poultry litter before it is utilized. (Those with or without sheds must store litter according to state regulatory criteria.)
- For feed management, the poultry industry has adopted new feed management practices using phytase as an enzyme in poultry feed resulting in a more than 25 percent, on average, reduction in phosphorus in poultry litter.
- VPF has also reached out and collaborated with a wide range of organizations to minimize impacts on our water resources. A few examples include:
 - VPF participation in the Virginia Waste Solutions Forum, a collaboration of agriculture, environmental groups, academia, government agencies, and others that have worked since 2004 to identify economically viable solutions for surplus animal manure;
 - VPF’s founding membership of the Shenandoah Valley Pure Water Forum, another group of diverse interests working collaboratively toward improved water quality;
 - VPF participation in a coalition of agricultural and conservation groups that worked successfully together to obtain increased funding for the Virginia Agricultural Best Management Program cost-share program.

The results of these and other actions are reflected in EPA’s own estimates that between 1985-2005 nutrient loads from agriculture decreased to the Chesapeake Bay, while nutrient loadings from developed lands increased by 16 percent. The good news is that the poultry industry in the bay watershed has been moving forward, not backward, in improving water quality.

Virginia's experience shows the appropriate role that states are already able to play in water quality regulation and progress versus that of federal EPA. In 1999, the Virginia General Assembly enacted the Poultry Waste Management Program (House Bill 1207). This law charged the State Water Control Board with developing a regulatory program requiring a general permit, incorporating a state-approved, phosphorus-based, nutrient management plan and mandating adequate waste storage for growers.

This program requires tracking and accounting of litter transferred off poultry farms. Growers with 20,000 or more broilers or laying hens, or 11,000 or more turkeys, are required to obtain a state-approved nutrient management plan and file for the general permit. This requirement is at nutrient levels far below the threshold at which federal regulations define a Concentrated Animal Feeding Operation or CAFO. These nutrient management plans and nutrient controls are in place at more than 80 percent of all family farms in the state. Only the very smallest growers are not under this framework.

Furthermore, the State Water Control Board recently adopted amendments to the Virginia Poultry Waste Management Program to impose additional regulatory requirements upon litter transporters and non-poultry farmers that receive poultry litter for use on their farm. The regulation now imposes enforceable requirements governing "end-users" land-application and storage of poultry litter.

In addition, poultry processors are being required, with no cost-share funding, to spend millions of dollars on wastewater treatment plant and storm water upgrades. New permits must meet close to "limits of technology" reductions for total nitrogen, in some cases reducing nitrogen by 95 percent-99 percent at a cost of up to \$3 million per plant. This is on top of previous reductions in phosphorus to limits as low as 0.1 mg/liter that cost upwards of \$2 million for some plants.

In light of these and other efforts highlighted above, Virginia's poultry industry continues to be a responsible and proactive environmental steward on a voluntary basis and through compliance with government regulations.

Selected Industry Concerns

Yet, despite the steps the industry has taken to minimize or eliminate water quality impacts, the bay TMDL sets unprecedented federal nutrient-reduction targets for states like Virginia that could adversely impact agriculture. EPA has made it clear that it will:

- tie its strict nutrient "diet" to an extremely ambitious framework of federal permitting and paperwork requirements that expand the federal CAFO universe;
- make questionable changes to nutrient management plans;
- impose more costly controls and additional enforcement.

This will not necessarily achieve meaningful environmental progress in the future.

We also believe that EPA's approach to the bay TMDL may exceed the authority granted to the agency by Congress. The Clean Water Act prescribes specific requirements and procedures for EPA and states to develop TMDLs for impaired

waters, yet it appears that the agency may not have followed them. We will continue to monitor EPA's legal authority on this issue.

With respect to the development of the TMDL, while the poultry industry has expressed several of its concerns to the agency in the past year, EPA provided very little time to study and provide input on the bay TMDL. A mere 45 days of public notice and comment is inadequate and inappropriately brief to receive the critically important input on the massive, complex materials with notice posted by EPA in the *Federal Register* on September 22. The draft TMDL document itself was 370 pages, with 22 appendices, consisting of 1,672 pages. It contains highly technical information that made it impossible for citizens to analyze this volume of material and correctly assess its impact within 45 days. Even with the short comment period, EPA received more than 1,120 comments.

Moreover, the poultry industry believes that the agency's policy of threatening TMDL "backstops" is counterproductive. The term "backstops" refers to the the tightest possible limits on point source permits. The agency's proposed backstops called for greater nutrient reductions at municipal wastewater treatment facilities and greater regulation of Animal Feeding Operations (AFO's), while both wastewater plants and poultry AFO's in Virginia have already complied with stringent regulatory requirements at considerable expense. There are legitimate questions of the authority of EPA to require Clean Water Act permits for AFOs.

The poultry industry is also concerned about the accuracy of EPA's "Scenario Builder" data input tool used to inform the Chesapeake Bay Model and the TMDL's targeted nutrient reductions. It is essential that the assumptions in these tools are correct so that solutions can be tailored to actual problems. Yet EPA's required nutrient reductions throughout the watershed are based on flawed assumptions in the agency's model regarding manure management practices in the poultry industry. In one instance, the agency estimated that 15 percent of all manure from poultry farms is lost and runs off into waterways in the Chesapeake Bay. This is an absurdly large number and not based on actual data. The poultry industry informed EPA that not only did the number have no basis in actual practice, but it grossly exaggerates EPA's estimated loadings of litter run-off from poultry farms. While EPA has recognized its estimate was potentially exaggerated, an entire year has elapsed and the agency has failed to address the flawed data. Voluntary conservation and nutrient management practices must also be accounted for in the Chesapeake Bay Model, and the model must utilize up-to-date animal production data. At this point, EPA does not use such data.

Finally, it is important for EPA to obtain all applicable data on poultry litter transport and appropriately factor it into the agency's modeling efforts and loadings estimates. Now that Virginia has adopted its new "end-user" regulations, all litter applied on farmland anywhere in Virginia must follow management practices that limit phosphorus buildup in soils and address other environmental risk factors. It is essential that EPA provides industry with proper credit in the model for implementing these best management practices.

Cost, Economic and Social Impacts

Tens of billions of dollars have already been spent on efforts to improve the Chesapeake Bay. The poultry industry has been a willing and proactive steward of the environment, and allocated millions of dollars toward this objective, many directly related to restoration efforts for the bay. The industry will continue to play an active role, guided by scientific research, technological advancements and cost-feasibility considerations.

The Chesapeake Bay watershed TMDL and associated mandates will require a commitment of tremendous resources at a time when our economy is already struggling. Poultry processors and farmers operate on thin margins, and cannot bear the burden of substantial new regulatory costs, especially if they cannot be scientifically justified. Such costs will make the bay region struggle to be competitive against other poultry production regions.

Causing the poultry industry to shift production to other areas of the nation or overseas would be damaging for the bay area economy. The industry currently provides substantial farm income that helps maintain well-managed farmland, which is widely recognized as a one of the best land-uses for maintaining water quality. Jeopardizing the economic viability of the poultry industry will only lead to more farm land being converted into municipal development, such as residential neighborhoods and shopping malls.

Recognizing Successful State Programs

Rather than exceed the limits of its regulatory authority, EPA should recognize and reward the efficiency and effectiveness of state programs. For example, the Virginia Poultry Waste Management Act and regulations can in some cases be more effective for water quality protection than federal CAFO permits. Ultimately requiring more farmers to be covered under federal CAFO permits, which are not based on sound-science, only burdens them with more paperwork and does nothing for water quality.

Conclusion

EPA should do more to recognize the tools and programs that are working in Virginia, in other states in the Chesapeake Bay watershed, and across the nation. Overrunning states with a heavy handed federal permitting and penalty scheme – using the federal TMDL's questionable data and modeling assumptions – only imposes more costs and paperwork for family farms, and achieves marginal benefits at best to water quality.

Future progress is best achieved through consistent and reliable cost-share funding, more collaboration and strong technical assistance through local conservation agencies. We're ready to do more, but we must focus on what actually works and what is economically feasible.

I'd be pleased to answer any questions. Thank you again for the opportunity to share our views.