

Testimony of
Secretary Douglas W. Domenech
Commonwealth of Virginia
before the
U. S. House Committee on Agriculture
Conservation, Energy, and Forestry Subcommittee
March 16, 2011

Good morning Mr. Chairman and members of the Committee. I am Doug Domenech, Secretary of Natural Resources for the Commonwealth of Virginia. In my Secretariat, I oversee six state agencies; the Department of Environmental Quality, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Historic Resources, the Virginia Museum of Natural History, and the Department of Game and Inland Fisheries most of which have some responsibility to manage and protect the Chesapeake Bay's natural and historic resources.

Thank you for inviting me to discuss the Commonwealth of Virginia's Chesapeake Bay Watershed Implementation Plan (WIP) and the U. S. Environmental Protection Agency's (EPA) Total Maximum Daily Load (TMDL). On behalf of Virginia Governor Robert F. McDonnell, we have worked diligently with stakeholders and constituents to develop Virginia's Phase I Watershed Implementation Plan.

The Chesapeake Bay is a national treasure and an ecological wonder. As Virginians, we are committed to ensuring a clean and vibrant Chesapeake Bay for future generations to cherish. We strongly believe a clean Bay is good for the economic well being of the State.

I applaud the dedicated men and women at the EPA who work hard every day to improve the state of the Bay, and who provide advice and counsel to the states on how we can work together toward our common interest.

Virginia has been engaged in Bay cleanup efforts for 30 years. The Chesapeake Bay partnership began with a study by the Maryland and Virginia Legislative Advisory Commission which was the impetus for the Chesapeake Bay Commission (CBC) in 1980. The commission was formed to assist legislators in evaluating and responding to mutual Bay concerns and intergovernmental cooperation. Pennsylvania joined the Commission in 1985.

The first Chesapeake Bay agreement was signed by the jurisdictions of Virginia, Pennsylvania, Maryland, the District of Columbia and the EPA and CBC in 1983. The partners agreed to meet biannually, establish an implementation plan, and a liaison office in Annapolis. In 1987 the partners agreed to develop, adopt, and begin implementation of a basin wide strategy to equitably reduce nutrients by 40% by the year 2000. In signing the Chesapeake Bay 2000 Agreement, the partners committed to meet water quality standards in the Bay by 2010. In 2003 the partners agreed to new allocations that were the basis for the tributary strategies as the best way to restore the Bay and those strategies were developed and released in 2005.

The Chesapeake Bay Program has been an effective multijurisdictional effort to reduce pollution loads into the Chesapeake Bay. Since the initial agreement was signed, the partners have evaluated progress in the program and adjusted its goals to advance the restoration of the Bay. In Virginia, we have been successful in reducing nitrogen loads to the Bay by about 20 million pounds per year from 1985 through 2009 and an additional 10 million pounds per year from 2002 through 2009. Similarly Virginia reduced phosphorus loads by 4 million pounds per year from 1985 through 2009 even while the population has increased by 2 million people.

Virginia submitted our Phase I WIP to EPA on November 29, 2010 and EPA accepted our plan and included it in their TMDL with minor modifications. We crafted a comprehensive and effective plan that allows us to achieve EPA's pollution reduction goals absent "backstops" threatened by EPA last September in response to our draft plan.

However, as we have stated to EPA directly, Virginia continues to have concerns about the process, legality, allocations, and compressed timing in the development of this plan.

LEGALITY

EPA asserts that it had to develop the Bay TMDL by December 31, 2010 pursuant to the requirements of the Consent Decree entered in the 1999 case American Canoe Association et al. v. the United States EPA , 54 F. Supp. 2d 621 (E.D. Va. 1999), President Obama's May 2009 Chesapeake Bay Protection and Restoration Executive Order, and the EPA's out-of-court "settlement agreement" with the Chesapeake Bay Foundation. I note that Virginia was not a party to those court cases, and the Consent Decree established a deadline of May 1, 2011 for the EPA to establish TMDLs - not December 2010. This concern regarding the rush to completion is shared by many local governments, industries and others as evidenced by the public comment EPA received last fall.

THE MODEL

Virginia must also state our significant concerns with the nearly absolute reliance on management by computer model. As it's been said, "All models are wrong, but some are useful" (George Box). The Chesapeake Bay Model may be a useful tool in predicting outcomes on a watershed-wide basis, however, while the model has seen years of development it continues to contain fundamental flaws - such as under estimating the amount of impervious surface - that call its credibility into question. We are especially concerned that the level of precision EPA assigns to the model is far beyond what the model is capable of. This will be a larger problem as we develop the more locally based Phase II WIPs. In Virginia, our approach will be to make sure programs and practices are effective in the real world, not just the model world constructed by EPA.

These concerns about the model have also been validated by apparent gross discrepancies between the loading calculations provided by EPA's Bay Model and that of the U. S.

Department of Agriculture Natural Resources Conservation Service (NRCS). The difference between the EPA and NRCS assessments of actual agricultural land uses in the Bay watershed amounts to approximately 1.4 million acres. To put that in perspective, the two federal agencies disagree on the amount of ag land that's a land mass the size of the State of Delaware. EPA cannot credibly demand compliance with a TMDL derived from a model that differs so dramatically with that of its sister agency. A sister agency, I might add, that is actually charged by law with keeping an accurate census of agricultural uses in the Bay watershed and across the country.

Finally, Virginia is generally concerned that EPA is the only place that houses the model. It is hard to know you are speeding if the only people with a speedometer are the police.

TIMING, COST AND FLEXIBILITY

It is important to emphasize that this plan is being developed during the worst economy in generations. Virginians have already invested billions of dollars in Chesapeake Bay water quality improvement to date. As EPA's numbers demonstrate, significant reductions have taken place in Virginia since the advent of the Chesapeake Bay program despite a significant increase in population.

We estimate that full implementation of this plan will likely cost more than 7 billion new dollars between now and 2025. The cost and pace of this mandate on the state, localities, private industries, farmers, and homeowners in Virginia will be significant.

Even in these tight times, Governor McDonnell included 36.4 million new dollars in our Water Quality Improvement Fund in his 2011 budget amendments which has now been adopted by the General Assembly. In this economy, we cannot guarantee additional funding will be provided by our General Assembly for this purpose over the next 15 years. It is our position that the success of the WIP will be largely subject to the provision of sufficient federal funding to assist in covering these massive costs.

While we have developed an approved plan, Virginia has told EPA that we reserve the right to adjust this plan based on new information such as additional voluntary best management practices currently implemented but not accounted for in the EPA model, adverse economic impacts on business, funding availability from federal sources in particular, and improved scientific methodologies. As EPA Administrator Lisa Jackson said last week, WIPs are state plans.

Virginia is moving forward with the implementation of this plan with a clear focus on flexibility and cost effectiveness. A venti (20 oz) size latte holds approximately one pound of nitrogen. The cost to remove that much nitrogen can be \$6.00 or it can be \$6,000 depending if it is removed in a waste water system or an urban stormwater retrofit. The removal of nitrogen and phosphorus in different sectors can vary that much, therefore it is imperative that our plan provides options for localities to meet their reduction goals.

NUTRIENT TRADING

In our recently concluded General Assembly session a resolution was adopted, as was proposed in our WIP, calling for a study of the expansion of our existing nutrient credit exchange to allow additional source sectors to participate in a market-based program. Virginia's nutrient credit exchange program has already allowed for reductions in the wastewater sector to be accomplished in an orderly and cost-effective manner. We believe that expanding that program will afford the same approach to other sectors, particularly urban stormwater and septic.

THE JAMES RIVER

I would also call your attention to our proposed approach for the James River watershed. Due to its proximity to the mouth of the Bay and the Atlantic Ocean, the James has less impact on the water quality of the mainstem than any other river. The James also is unique because of the numeric chlorophyll standards that were adopted in

2005 with the concurrence of EPA. We believe that because sufficient new information is available for the James River, we should take the time necessary to review the James River numeric chlorophyll standards to ensure that they reflect the best science and regulatory approaches. Therefore, we have included a detailed plan to accomplish this review and amend standards if necessary prior to the scheduled revision of the TMDL in 2017. We will also consider developing a local chlorophyll-based TMDL for the James River. Our plan demonstrates that we will meet the 2017 target loads prescribed by EPA in all basins, including the James.

GENERAL ASSEMBLY ACTION

Our General Assembly recently completed significant advances in the management of fertilizers used in urban areas through the passage of legislation that will ban phosphorus in most homeowner fertilizer products.

Legislation was passed that prohibits the sale, distribution and use of lawn maintenance fertilizers containing phosphorus after December 31, 2013. Additionally, the sale of deicing agents containing urea, nitrogen or phosphorus, will be unlawful after December 31, 2013. The legislation requires golf courses to implement nutrient management plans by July 1, 2017. The Commonwealth is developing a cost-share program to assist in implementation of the required nutrient management plans.

Legislation was also passed regarding resource management plans. This legislation affects both regulated agricultural landowners and voluntary participants. Components of a resource management plan, depending on the type of farm and crops, may include nutrient management plan, forest or grass buffer, soil conservation plan, cover crops, and a system that prevents livestock access to streams. Each individual farm will be assessed to determine the appropriate components and to determine which agricultural best management practices are currently being implemented. Cost share funding is available through the Virginia Agricultural Best Management Practices Cost-Share Program to assist with the implementation and maintenance of the resource management plan.

Resource management plans, if components are fully implemented and maintained, will deem the agricultural landowners or operators as meeting the requirements of the Chesapeake Bay TMDL.

To meet the requirements of EPA's TMDL, Virginia's WIP relies on 95% of all agricultural lands implementing one or more of the following best management practices: nutrient management plans, soil conservation crops, cover crops, forest buffers and livestock exclusion from streams. The estimated cost for agriculture alone to comply with the WIP is more than \$1 billion. These costs will be borne by the agricultural landowner and the state, with the landowner paying for approximately 30 percent of the cost of implementation. The Commonwealth is working in cooperation with the agricultural industry and farmers to increase the reporting of both voluntary and cost-share best management practices.

In the urban sector, estimated costs to meet the urban retrofits requirement is \$3 billion. The vast majority of this cost will be borne by local governments and private developers. It is anticipated that Virginia will adopt new stormwater management regulations, which will meet the requirements of the WIP, in early fall of this year. The regulations will ensure that there is no increase in nutrient loadings for new development and ensure that redevelopment improves the current nutrient loadings.

We designed Virginia's WIP to allow the flexibility to implement the most cost-effective practices in each watershed using the programs that are already in place, programs that will be expanded and new programs that we will propose. The plan emphasizes actions with appropriate timeframes in each sector to achieve significant cost-effective reductions in pollution loads to the Bay.

Our work does not end with the submission of our Watershed Implementation Plan. We will continue to work with EPA, stakeholders, and the public to ensure that our implementation improves water quality in a manner that is sensible, fair and cost effective as this process unfolds over the next 15 years.

Thank you for the opportunity to speak with you today.

Douglas W. Domenech
Secretary of Natural Resources