



Statement of the American Farm Bureau Federation

**TO THE
HOUSE COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON CONSERVATION, ENERGY AND FORESTRY
REGARDING: CHESAPEAKE BAY TMDL AND AGRICULTURAL
CONSERVATION PRACTICES**

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Testifying on Behalf of the American Farm Bureau Federation

Thank you, Chairman Thompson and Ranking Member Holden. I appreciate the opportunity to appear before you today and to provide comments on behalf of the farm and rural family members of Farm Bureau. My name is Carl Shaffer, and I have the privilege of serving on the Board of Directors of the American Farm Bureau Federation and as President of the Pennsylvania Farm Bureau. Farm Bureau represents farms of all sizes, spanning virtually all commodities grown and sold in our great nation. I am pleased to offer this testimony, on behalf of the Pennsylvania Farm Bureau, the American Farm Bureau Federation and its more than 6.2 million member families.

I own and operate a farm in Columbia County, where I raise green beans for processing, corn and wheat. All the land I farm is in the Chesapeake Bay Watershed, and most of the land is within sight of the Susquehanna River. As we speak, at least two agencies of Pennsylvania's state government – the Department of Environmental Protection (DEP) and Department of Agriculture – are working to develop Phase II of the Watershed Implementation Plan (WIP) for the Chesapeake Bay Watershed. Pennsylvania Farm Bureau has been involved in the WIP process since it first began almost two years ago, and we sit on the WIP Management Team, a group of industry, governmental and environmental groups working with DEP officials provide advice and insight on objectives and actions the Commonwealth should pursue to reduce pollution in the Chesapeake Bay Watershed in a manner that is environmentally effective and economically feasible.

The planning process being implemented by our state DEP – working with more than 150 partners and state law – is one that, we believe, Congress intended to be implemented under the 1972 Clean Water Act in effectively managing pollution of waterways and responding to more serious water pollution problems. Unfortunately, in our view, recent regulatory actions by the Environmental Protection Agency (EPA) to micromanage and dictate environmental performance in the Chesapeake Bay Watershed have needlessly and unlawfully usurped the responsibilities that the Act intended to be reserved and addressed by the states. An example of this can be seen in EPA's review and disapproval of Pennsylvania's first WIP. Not only did EPA reject Pennsylvania's first plan, but throughout that process, state agencies and the affected industries would repeatedly ask EPA officials if a certain approach would be sufficient in meeting the goals and objectives of the federal agency. Those questions were most often met with responses seriously lacking helpful guidance. Moreover, the timeline for which Pennsylvania, and other states for that matter, was given for development of the plan was woefully inadequate, and states were expected to draft plans without knowing what their required nutrient and sediment reductions would be.

The process of developing Phase II of the WIP is taking a similar track. Pennsylvania's DEP is working diligently to reach out to county and local governments in the 43 counties of Pennsylvania within the Bay Watershed to obtain the necessary data and insight on workable solutions to reduce nutrient and sediment runoff at the local level – an objective that EPA is demanding in the Phase II segment of Watershed Plans. Despite the deadlines and expectations of EPA, this action is taking a significant amount of time in order to get it right. Like the development of the TMDL and the submission of the Phase I WIPs, EPA is driving a hurried process on the part of the states while offering little guidance of value. What's most disturbing is

that EPA is still asking state, and now local, governments to develop a plan based on poor and inadequate data.

The timeline that Pennsylvania is expected to meet, along with the other Bay states, is quite unreasonably ambitious. The Draft Phase II WIP must be submitted to EPA by Dec. 15, 2011 and the final plan is then due by March 30, 2012.

The demands that EPA is putting on Bay states in Phase II is further crippling states' ability to devise a program that will encourage meaningful and effective long-term benefits, already hampered by the demands that EPA has already placed so far through EPA's excessive TMDL regulation. Let me spend a moment to highlight some of the problems with EPAs' total maximum daily load (TMDL). Under EPA's Chesapeake Bay TMDL, all the pollutant loadings to the Bay and the reductions in those loadings take place in "model world." The model world appears to have no basis in reality and has very little to do with the real conservation efforts of farmers. Please note the attached timeline because it enumerates the concerns with EPA's models raised by scientists, states and other stakeholders. In the short time that I have, I want to focus on the lack of scientific realities specific to Pennsylvania agriculture.

Nutrient management provides a good example. EPA's TMDL says that regulated agricultural operations in the Pennsylvania part of the watershed for the Susquehanna River can deliver no more than 761,488.58 pounds of nitrogen, 18,589.44 pounds of phosphorus, and 2,688,715.58 pounds of sediment to the Bay. These numbers apply to farms in Pennsylvania, even though the Susquehanna River itself is meeting Pennsylvania water quality standards for nutrients.

One way EPA seeks to force reductions in nutrient and sediment loads is by increasing the rate of adoption of best management practices (BMPs). For agriculture, EPA assumes that 47.2 percent of farms have already adopted nutrient management practices. In its TMDL, EPA requires 85 percent of farms to adopt "enhanced nutrient management practices."

EPA's requirement makes no sense because all Pennsylvania agriculture operations that generate manure are already subject to nutrient management requirements. However, EPA's Chesapeake Bay models do not credit non-cost-shared nutrient management practices, so they misrepresent the on-the-ground reality of nutrient management on Pennsylvania farms. This flaw was pointed out by numerous stakeholders. For example, in its draft Watershed Implementation Plan, Pennsylvania stated:

A significant number of agricultural and other best management practices that have been implemented in Pennsylvania have not been 'tracked' and entered into the Chesapeake Bay Model. A significant level of interest in this deficiency was expressed by Pennsylvania's Agricultural Watershed Implementation Plan workgroup. Pennsylvania pilot project efforts in Lancaster and Bradford counties, as well as preliminary evaluation of data from NASS indicates that as much as 84 percent of some implemented BMPs have not been entered into the Bay model, resulting in potentially significant nutrient and sediment reductions not being accounted for in the reductions attributable to Pennsylvania.

In another example, EPA's model assumes that only 57,659 tons of manure are transported from Pennsylvania to locations outside of the Chesapeake Bay Watershed. However, Pennsylvania told EPA in September 2010 that all Chesapeake drainage county conservation districts in Pennsylvania report the export of manure from the county, and 227,527 tons left the Chesapeake Bay Watershed.

EPA's model also assumes that at least 15 percent of all manure at an animal feeding operation production area is simply "lost" and ends up in the waterways. Even though EPA was told that this assumption was ludicrous, it made no changes.

EPA did not correct these discrepancies between its model and reality and finalized the Chesapeake Bay TMDL in December 2010, knowing full well that it had not properly accounted for agricultural BMPs and was misrepresenting manure management in Pennsylvania and other jurisdictions. EPA cited an out-of-court settlement agreement as its excuse for rushing to complete the TMDL, even though it had received requests to extend the deadline, including requests from Reps. Goodlatte and Holden of this subcommittee.

Instead, EPA promised to make some changes to land use and nutrient management assumptions in the Chesapeake Bay Model in 2011, in time for the revised model to be used for the Phase II Watershed Implementation Plans. However, in the new models (Phase 5.3.2) EPA only changed the number of acres of impervious surface and some nutrient management assumptions. It did not address the lack of credit for non-cost-shared BMPs. It did not address the fact that a single piece of land can utilize multiple BMPs. It did not correctly apply the recommendations of the Agricultural Work Group regarding nutrient management. And, it did not address the 15 percent manure loss assumption that is built into the model.

As a result, EPA made its model worse, not better. EPA again rushed to meet the arbitrary deadline it established for state submission of Phase II Watershed Implementation Plans and has again developed a model that does not reflect reality.

When the Chesapeake Bay Watershed states began using EPA's revised model to try to develop their Phase II Watershed Implementation Plans, they began to get inconsistent results. For example, when Virginia tried to use EPA's model to determine how much Charles City County needed to reduce sediment, it found that, while the old model told them that Charles City County needed to *reduce* sediment by 48 percent, the new model says that Charles City County could *increase* sediment by 406 percent. Obviously, states and every community or business in the Watershed that has been assigned an allocation and a responsibility under EPA's TMDL is concerned. EPA's refusal to take the time to improve its models, or to reduce its reliance on models, is undermining the public's confidence. Worse, EPA's federal TMDL could cause people to spend scarce resources on conservation measures that are directed to the wrong sources or the wrong areas.

A news article reporting the previously referenced inconsistencies in Virginia quoted an EPA official dismissing the concerns of local and state governments on modeling data saying, "Use common sense. Let's get on with it." Another EPA official is quoted as saying, "None of this stuff should impede the planning for what everyone knows is needed to be done."

Unfortunately, common sense tells us as farmers that ever-shrinking public dollars, and hard earned private capital, must be applied in a manner to achieve actual and proven water quality improvements, not compliance with a model based on assumptions that puts out inconsistent prescriptions for water health.

As taxpayers, Farm Bureau members across the nation are concerned that millions of dollars can be potentially spent to chase paper compliance with a model that uses faulty assumptions rather than valid and readily available data, and a computer model that shows inconsistencies, as displayed in the Charles City County instance. EPA's questionable modeling has not given taxpayers in the Chesapeake Bay Watershed reasonable assurance that the practices the model is directing the states to implement and the millions of dollars the states will need to spend to implement these practices will get it even close to the reduction goals EPA is demanding states to meet. If the millions are spent, the practices are implemented, and reality proves the modeling projections are wrong, then what? Will farmers, other businesses and communities be expected to spend even more monies and resources to pursue other practices and programs directed through a modified model?

As farmers, business-owners and economic engines of the nation's economy, Farm Bureau members are worried that the private investments they are making to improve water quality, based on the flawed model, will be for naught and will not be credited to them as individuals, or to the agricultural industry, in the same model.

On Nov. 8, 2010, Pennsylvania's DEP and Department of Agriculture, under the previous administration of then-Governor Ed Rendell, wrote to EPA stating:

In general, Pennsylvania is concerned that EPA's approach to the Draft Chesapeake Bay TMDL is neither practical, equitable, nor cost-effective and could reverse progress in meeting our water quality goals.

In a meeting with EPA on Sept. 16, 2011, the Watershed jurisdictions rebelled against using EPA's model. As noted by the State of Virginia in a Sept. 28, 2011 letter to EPA summarizing that meeting: "the current Watershed Model is undermining the credibility of our collective efforts."

In the Sept. 16, 2011 meeting, concerns were raised by Pennsylvania, Maryland and Virginia. For example, Pennsylvania pointed out that EPA's model continues to assume inaccurate manure application rates. According to Pennsylvania:

Within EPA's model about 50 percent of crop land and 90 percent of all row crops receive manure. USDA's National Agricultural Statistics reports that 24 percent of total harvested cropland receives manure.

EPA's response to the states' concerns has not been entirely satisfactory. In a letter dated Oct. 5, 2011, EPA finally admitted that its models could not support allocations below the scale of a major river basin. However, EPA is still demanding Phase II Implementation Plans from states that include a narrative of how the states are to meet those river basin-wide allocations. Also, EPA's letter says nothing about the validity of the thousands of allocations that are already in the Final TMDL. Finally, in a question-and-answer document issued on Oct. 17, 2011, EPA repeated its threats to take retaliatory action against states if they do not meet EPA's ever-changing expectations.

On Oct. 17, 2011, EPA also released a plan for responding to the modeling concerns raised by the states. Unfortunately, each concern that involved a change to the model was pushed back to 2017. The only fix EPA is willing to make before 2017 is the recognition of additional BMPs. In response to concerns about wildly varying loadings resulting from the new model, EPA suggests that states focus their communication on implementation goals rather than pounds per acre reductions. That advice is difficult to follow when the TMDL specifies specific pounds of reductions for over 488 individual sources and communities with large storm sewer systems as well as aggregate (by river basin) pounds of reduction to be met by all the animal feeding operations, all the row crop agriculture, all septic systems and smaller municipal storm sewer systems in each river basin.

Even though the TMDL currently has aggregate pollutant loadings for agriculture on a river basin basis, EPA plans to develop a "certainty framework" that would track a farm's progress towards meeting the modeled reductions needed to meet a modeled result on a farm-by-farm basis. As noted above, EPA's models are not accurate at the county scale, much less the farm scale, and the federal TMDL should not impose specific reductions on specific farms or areas of land.

Pennsylvania's Secretary for Environmental Protection, Michael Krancer, who is also providing testimony today, has the unforbearing task of trying to weave the effective environmental programs and regulatory measures already being done in Pennsylvania into EPA's unrealistic and deeply flawed requirements. Pennsylvania Farm Bureau appreciates the opportunities we have been given to participate in state processes for planning and development of programs that have proven, not theoretically, benefits to local watersheds

Pennsylvania's farm families strongly agree with the approach set forth by the Clean Water Act that gives state agencies the lead in working with non-point sources. To that end, let me provide some examples on how Pennsylvania's agricultural community and our state's environmental regulatory agency, have taken significant steps in working cooperatively to improve our water quality. This positive effort has provided measurable benefits to the citizens of the Commonwealth who live near or use waterways downstream.

In Pennsylvania, water quality improvements have been made as a result of the following state regulations and initiatives (as well as others, not specifically mentioned below):

- Pennsylvania Erosion and Sediment Control Regulations
 All farms must implement BMPs to control erosion and sedimentation for all disturbed lands, including plowing and tilling activities. Written erosion and sedimentation (E&S) control plans must be kept on site for all plowing and tilling activities that disturb 5,000 square feet or more. Plans must contain plan maps, soils maps, waters of the Commonwealth, drainage patterns, BMPs, descriptions of tillage systems used and schedules.
- Mandated State Standards for Storage and Land Application of Manure
 Every animal farmer, regardless of the farm's size or animal concentration, must operate his or her farm and manage animal manure in a manner that is consistent with the practices and standards identified in DEP's "Manure Management Manual for Environmental Protection." Any practice that substantially deviates from the manual's practices must obtain specific approval or permit from DEP. Every farmer who generates manure or receives manure for land application is required by state law to develop and implement written manure management plans that demonstrate the use of management practices that control nutrient runoff from farms.
- Pennsylvania Clean Streams Law
 This statute prohibits discharges of animal waste into streams. The degree of penalties to be assessed are based on the willfulness of the violation, the damage or injury that occurs to the waters or natural resources of the Commonwealth, the costs for correcting or mitigating the damages, and other relevant factors. Substantial penalties are often assessed on violations that result in fish kills or other serious injury to aquatic life.
- Pennsylvania's Nutrient and Odor Management Act
 This law prohibits Concentrated Animal Feeding Operations (CAFOs), Concentrated Animal Operations (CAOs) and any operation receiving animal manure from a CAFO or CAO from mechanically land applying the manure within 100-feet of a perennial or intermittent stream with a defined bed or bank, a lake, or a pond. Exceptions exist where a qualified 35-foot vegetated buffer is established along the water bodies. Recent statutory and regulatory changes to the act also require the development and implementation of nutrient plans approved by regulatory agencies to minimize runoff of nitrogen and phosphorus into waters of the Commonwealth, and require owners of land receiving manure generated from a CAFO or CAO farm to demonstrate through nutrient balance calculations that nutrients from the manure will not exceed the nutrient needs of plants and vegetation to be grown on the land.
- Pennsylvania Concentrated Animal Feeding Operation (CAFO) Program
 The program requires either National Pollutant Discharge Elimination System (NPDES) general or individual permits for animal operations with over 1,000 Animal Equivalent Units (AEUs) and CAOs with over 300 AEUs. Pennsylvania's CAFO permitting program has been expanded to include: poultry operations that use dry manure handling systems and are CAOs with more than 300 AEUs or that have 1,000 or more AEUs; horse operations that are CAOs with more than 300 AEUs or that have 1,000 or more AEUs; or any animal operation defined as a large CAFO under the federal CAFO

Regulations. The scope of farms required under state law to obtain NPDES permits is broader than the scope of farms required to obtain NPDES permits under federal law.

- Best Management Practices Manual for Pennsylvania Livestock and Poultry Operations
This manual was developed to outline BMPs which can assist livestock and poultry operations in their effort to protect local and regional natural resources, and to allow them to successfully integrate into the neighboring community. Some of the BMPs described are mandatory due to current regulations; other voluntary efforts are suggested to assist producers in addressing specific concerns.
- Pennsylvania Fish and Boat Code
State law prohibits the placement or allowance of any substance harmful to fish into streams. In addition to imposition of fines, a person who places or allows a substance into a stream is required to pay damages for fish that are killed or injured as a result of the substance being introduced into the stream. Penalties and damages are in addition to any penalties that may be assessed under the Clean Streams Law.
- Pennsylvania Stream Protection Program
This program allows streams to upgrade to High Quality (HQ) or Exceptional Value (EV) protection status. The program regulates activities and discharges adjacent to upgraded streams.
- Pennsylvania Dam Safety and Encroachment Act
Permits are required for activities located in, along or across streams or wetlands. Pennsylvania's wetland protection regulations exceed federal requirements.
- Pennsylvania Flood Plain Management Act
The construction of manure storage facilities in a flood plain must meet upgraded construction standards.

Stream health and aquatic rebirth in the Keystone State are improving each year. An example of this occurred at a recent Pennsylvania Fish and Boat Commission meeting on April 11-12, 2011 where nearly 100 streams – in 32 different counties – were presented to the commission for adoption as “Wild Trout Streams.” The Pennsylvania Fish Commission defines such a stream as “a remote, natural and unspoiled environment where man’s disruptive activities are minimized.” Wild trout are an excellent indicator of water quality and stream health. These upgrades in stream classifications were made possible by the ongoing and collaborative efforts of farmers, landowners and state and local regulators applying local and individualized solutions to water quality concerns.

Pennsylvania also has an effective nutrient management program in place. Pennsylvania’s Nutrient and Odor Management Act provides the opportunity for animal farms whose animal numbers and concentrations are below those of a regulated CAO or CAFO to voluntarily act in developing and implementing reviewed and approved nutrient management plans in the same manner as regulated CAOs or CAFOs. Those who do so are given modest protections from enforcement penalties. Each year, the Commonwealth sees an increase in volunteer nutrient

management planning – in the early 1990s fewer than 2,000 acres were enrolled in Pennsylvania’s nutrient management program; today this program covers 1.3 million acres. Several years ago, Pennsylvania’s DEP estimated that approximately half of the total manure being generated by the Commonwealth is now being managed under approved nutrient management plans of regulated and volunteer farms. This demonstrates farmers’ desires to be good stewards of the land and to protect our natural resources for future generations. Furthermore, Pennsylvania was the first state in the Union to implement mandatory requirements for nutrient management plans for CAOs and CAFOs, a practice that was in place long before the current scrutiny on the Chesapeake Bay TMDL.

Additionally, Pennsylvania’s State Conservation Commission implements the Dirt and Gravel Road Program. This program is an innovative effort to fund environmentally sound maintenance of unpaved roads that have been identified as sources of erosion and sediment pollution. The program is based on the principle that informed and empowered local effort is the most effective way to stop pollution. The Dirt and Gravel Road program has inspected 16,500 miles of public unpaved road, and has set up 16,600 “worksites” where road runoff negatively impacts a stream are mapped and assessed. This program has stabilized more than one quarter of a million square feet of streams near 640 miles of rural roads since 1997. These state and local efforts are significantly reducing sediment discharge. Expansion of federal jurisdiction over these small streams would only complicate an already successful program.

Although Farm Bureau and state officials try to work cooperatively in developing effective and feasible regulatory initiatives to improve water quality, we can and do have material disagreements over regulatory measures the Commonwealth ultimately decided to impose. A very recent example is the aforementioned revision of the “Manure Management Manual,” which will likely be finalized by DEP very soon. DEP rejected a number of concerns and recommendations offered by Pennsylvania Farm Bureau that we believed would place significant and unworkable requirements on smaller animal farm operations without providing any meaningful enhancement of water quality. While disappointing, DEP’s response illustrates the larger picture - that Pennsylvania’s regulatory agencies are not unduly influenced by industry and in fact, do make their own independent judgments. In discussions with other state Farm Bureaus, we believe that other states apply the same independence in judgment as applied by DEP in regulatory management of water quality.

We believe any contention that state agencies are incapable of effectively regulating and improving water quality are quickly dismissed when a federal regulator applies common sense to the assessment of Pennsylvania’s accomplishments. Surely other states in the Bay Watershed, and nationally, have similar improvements in water quality that have little to do with federal edicts. EPA has made it quite clear that their current focus on the in the Chesapeake Bay Watershed is a model for other watersheds across the nation. While we believe their actions go beyond their authority under the law and have filed a complaint in federal court, farmers will continue the work of stewarding our natural resources, improving water quality and feeding America.

As I stated just seven months ago, farmers are seriously concerned about their ability to continue to operate their farms in the Chesapeake Bay Watershed. This is because of the continuous onslaught of regulations, guidance and other requirements being issued by the EPA. EPA's focus on agriculture and its over-reaching restrictions are particularly troublesome because agriculture has worked successfully with the U.S. Department of Agriculture (USDA) to reduce its environmental impact on the Bay.

EPA's TMDL wrongly establishes binding allocations and timelines *regardless of cost*. Clean Water Act and EPA regulations specifically allow states to consider economic consequences and to modify water quality goals when necessary to avoid substantial economic and social disruption. EPA asserts that the TMDL will restore jobs and help the Bay economy, but it has not provided any data to support these claims. The Bay states, however, estimate that implementation will cost billions of dollars (*e.g.*, \$7 billion for Virginia, \$3 billion to \$6 billion for New York). Farm Bureau believes the TMDL threatens the economic health of businesses, individuals and communities throughout the Chesapeake Bay Watershed.

Finally, I would be remiss if I did not mention the positive outcomes realized, and real water quality improvements that have occurred due to farm bill conservation programs, including the Environmental Quality Incentive Program (EQIP), the Conservation Reserve Program (CRP) – or its state counterpart, the Conservation Reserve Enhancement Program (CREP), the Emergency Conservation Program (ECP), the Farm and Ranchland Protection Program (FRPP), the Chesapeake Bay Watershed Initiative (CBWI) and others. Many of the Farm Bill conservation “working lands” programs, including those referenced, help agricultural producers implement conservation measures to comply with regulatory mandates by EPA.

I would like to thank committee for convening this hearing and for all your hard work on behalf of agriculture across the country. I will be pleased to respond to questions.