

US EPA ARCHIVE DOCUMENT

**TESTIMONY OF J. CHARLES FOX
SENIOR ADVISOR TO ADMINISTRATOR LISA P. JACKSON
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

September 22, 2009

Madame Chairwoman and members of the Subcommittee, I am J. Charles Fox, Senior Advisor to Administrator Lisa P. Jackson at the U.S. Environmental Protection Agency (EPA). Thank you for the invitation to speak today on reauthorizing the Chesapeake Bay Program. We appreciate greatly the leadership of this Subcommittee on the Chesapeake and we look forward to working closely with you in the weeks and months ahead.

Our testimony will describe the actions of EPA and other federal agencies in implementing President Obama's Executive Order on Chesapeake Bay Protection and Restoration. Collectively, the federal family is committed to a new generation of federal leadership which is characterized by new levels of accountability, performance, partnership and innovation to help protect and restore the Bay and its tributaries to a healthy condition.

The Scope and Complexity of the Watershed and Bay

The Chesapeake Bay watershed encompasses 64,000 square miles, parts of six States and the District of Columbia. Nearly 17 million people live in the watershed. The land mass of the Bay watershed is sixteen times the size of the Bay, a ratio higher than any other estuary in the world. This means that our actions on the land have a profound impact on our local streams, rivers and, ultimately the Bay.

The Chesapeake Bay is the largest estuary in North America and is ecologically, economically and culturally critical to the region and the country. It is home to more than 3,600 species of fish, plants and animals. For more than 300 years, the Bay and its tributaries have sustained the region's economy and defined its traditions and culture. The economic value of the Bay is estimated at more than \$1 trillion¹ and two of the five largest Atlantic ports (Baltimore and Norfolk) are located in the Bay.

The Health of the Bay

In March 2009, the Chesapeake Bay Program issued its annual Health and Restoration Assessment of the Chesapeake Bay and Watershed, also referred to as the "Bay Barometer." A copy of the Executive Summary has been provided to the Chair and Members of the Subcommittee.

¹ *Saving a National Treasure: Financing the Cleanup of the Chesapeake Bay*, A Report to the Chesapeake Bay Executive Council, Chesapeake Bay Blue Ribbon Finance Panel, October 27, 2004

The Bay Barometer affirms what we all know. Despite the impressive restoration work done by the array of partners, the health of the Bay and watershed remains severely degraded. The data included in this report are sobering. Virtually all of the 13 measures which comprise Bay health show very limited progress (water quality, habitats and lower food web and fish and shellfish) (see Figure 1). There have been positive improvements in the population of striped bass, which is generally attributed to the actions by Maryland, Virginia and other east coast states to limit harvest pressure years ago, although this population has been stressed in recent years by a high incidence of mycobacteriosis.

Figure 1. Chesapeake Bay Measures of Health Progress (2008)



In general, the Bay Program partners have made some important – but not sufficient -- progress to reduce nutrient pollution from agriculture and wastewater treatment plants. Agriculture is the single largest source of nutrient and sediment pollution to the Bay, with about half of that load directly related to animal manure. However, the pollution from urban and suburban stormwater has an increasingly large impact on the Bay's water quality.

The negative trend in nutrient and sediment pollution from stormwater is directly linked to the rise in population and land use patterns in the watershed. Since 1950, the number of residents has doubled. Experts predict that population will continue to rise through the next three decades, topping 19 million in 2020.

Impervious surfaces, such as roads and rooftops, increased by 41% compared to an 8% increase in population from 1990-2000. Low density, disconnected development -- commonly referred to as sprawl -- has been the predominant form of development in the Bay watershed for the past several decades. New development that is spread-out, far from existing communities, schools, wastewater treatment facilities, shopping, and jobs explains the disparity between the rate of population growth and the increase in impervious surfaces.

Impervious surfaces do not allow water to filter into the ground. Instead, rainfall runs off, picking up pollution and quickly carrying it into waterways. Projections through

2030 show continued population growth, which could result in the loss of natural areas if we continue the development patterns of recent decades. People are coming to the Chesapeake Bay watershed. Where and how these people are accommodated will have a profound influence on the health of the Bay.

Executive Order 13508

On May 12, 2009, President Obama presented all citizens who cherish the Chesapeake with an historic opportunity when he signed an Executive Order on Chesapeake Bay Protection and Restoration, directing a new era of federal leadership on the Chesapeake Bay. The Executive Order acknowledged that the efforts of the past 25 years to reduce pollution and clean up the Bay and its tributaries have yielded some progress. However, it concluded that the poor health of the Chesapeake remains one of our nation's most significant environmental challenges. Indeed, Administrator Jackson has emphasized repeatedly that communities in the Chesapeake Bay watershed expect and deserve rivers and streams that are healthy and thriving.

The Executive Order created a Federal Leadership Committee, chaired by EPA, to strengthen the role of the federal government in the Bay restoration and align the capabilities of EPA, and Departments of the Interior, Commerce, Agricultural, Defense, Homeland Security, and Transportation. The Order directed federal agencies to prepare seven draft reports within 120 days addressing key challenges to the Chesapeake Bay, ranging from improving water quality to expanding public access to the Bay and its

tributaries. Last week, the Federal Leadership Committee received the seven draft reports for review. The draft reports focus on a number of recommendations that include:

- **Define the next generation of tools and actions to restore water quality** in the Chesapeake Bay and describe changes to be made to regulations, programs and policies to implement these actions (led by EPA).
- **Target resources** to better protect the Chesapeake Bay and its rivers (led by USDA).
- **Strengthen storm water management practices** at federal facilities and on federal lands within the Chesapeake Bay watershed and develop storm water best practices guidance (led by DOD).
- **Assess the impacts of climate change** and develop a strategy for adapting to those impacts on water quality and living resources (led by DOI and NOAA).
- **Expand public access** to waters and open spaces of the Bay and its tributaries (led by DOI).
- **Strengthen monitoring** and decision support for ecosystem management (led by DOI and NOAA).
- Focus and coordinate habitat and research activities that **protect and restore living resources** and water quality (led by DOI and NOAA).

The draft reports are available online at: <http://executiveorder.chesapeakebay.net>

The reports outline four broad tenets of new federal leadership:

1. Increasing accountability and performance from pollution control, habitat protection and land conservation programs at all levels of government;
2. Expanding use of regulatory authorities to assure reductions in nitrogen, phosphorus and sediment pollution to the Bay and its tributaries;
3. Expanding targeting of technical and financial resources to improve efficiency and secure better outcomes; and,

4. Harnessing technological innovations and making these tools accessible and meaningful to the states, D.C. and local communities whose decisions are fundamental to protection and restoration of the Bay.

Draft 202(a) Report on Water Quality

The Executive Order's draft report on water quality, which was prepared by EPA, defined three principal mechanisms to achieving water quality objectives in Chesapeake Bay and its tributaries:

1. Create a new accountability program to guide federal and state water quality efforts;
2. Initiate new federal rulemakings and other actions under the Clean Water Act and other authorities; and,
3. Establish an enhanced partnership between USDA and EPA to implement a "Healthy Bay – Thriving Agriculture" Initiative.

The proposed new accountability framework builds on Sections 117(g) and the "Total Maximum Daily Load" (TMDL) provisions under section 303(d) of the Clean Water Act to set new expectations to guide state and federal efforts for reducing nutrient and sediment pollution. Specifically, EPA proposes to define more precisely the criteria it would use to approve implementation strategies, including its intention to rely heavily upon enforceable or otherwise binding programs.

The proposed accountability framework also proposes that EPA would identify a number of potential consequences that it may use in the event that jurisdictions do not commit to establish and implement effective restoration programs or do not achieve interim milestones. These consequences would include, but are not limited to:

- Revising the draft or final pollutant reduction allocations in the Bay TMDL that EPA will establish in December 2010 to assign more stringent pollutant reduction responsibilities to point and non-point sources of nutrient and sediment pollution;
- Objecting to state-issued CWA National Pollutant Discharge Elimination System (NPDES) permits;
- Acting to limit or prohibit new or expanded discharges of nutrients and sediments;
- Withholding, conditioning, or reallocating federal grant funds; and,
- Taking other actions as appropriate.

The draft water quality report also cites potential changes in regulations under the Clean Water Act to reduce pollution from concentrated animal feeding operations (CAFOs), stormwater, and new or expanding discharges of nutrients and sediment. With these rulemakings, EPA would significantly strengthen or clarify federal requirements that would further limit nutrient and sediment discharges to the Bay.

In a rulemaking for CAFOs, EPA would consider a number of potential changes including regulating more animal feeding operations as CAFOs. EPA would also consider revising minimum nutrient management planning elements in the current CAFO rule to better define agricultural practices essential for load reductions based on sound science and adaptive management principles.

To deal with storm water – a growing and urgent issue – EPA would consider revising its stormwater regulations to include additional high-growth areas and establish stronger minimum performance standards in stormwater permits.

EPA would also consider a rulemaking to clarify, at a minimum, how permitting authorities can authorize new or increased discharges related to population growth and development in the context of managing overall pollutant loads into impaired waters. Such a rule could address how high priority point source load increases can be managed so that the resultant load will be protective of water quality standards and achieve the goals of the President’s Chesapeake Bay Executive Order.

In addition to rulemakings, the draft water quality report contains recommendations for implementing a compliance and enforcement strategy focusing on four key sectors: concentrated animal feeding operations, stormwater discharges, wastewater treatment plants and air deposition sources of nitrogen regulated under the CAA, including power plants. Further, we will address pollutants from Superfund sites

and RCRA facilities that are impacting the Bay where we are performing removal, remedial and corrective action activities. EPA would also ensure that states adhere to their schedules for installing nutrient removal technology at significant wastewater treatment plants throughout the watershed; develop and promote model state septic tank control programs and ensure states meet their commitment to reduce septic tank loadings to the Bay; and pursue an ambitious regulatory agenda that would significantly reduce atmospheric deposition of nitrogen to the Bay.

EPA and USDA would also develop and implement a “Healthy Bay-Thriving Agriculture Initiative” that would include:

- An intensive and strategic effort to expand the use of key conservation practices in the high priority watersheds in the Bay
- Coordination with other federal and state partners on the development of next generation nutrient management planning tools;
- Establishment of centerpiece projects in each of the Bay states to demonstrate benefits of significant and innovative conservation approaches to addressing key issues in the region; and
- Implementation of a targeted, collaborative initiative using USDA and EPA funds to support development of critically needed tools and technologies that can create new market and revenue streams that support the adoption of conservation measures.

All of these recommendations are part of new leadership on the Bay. Working closely with our partner agencies, we will fulfill President Obama's goal to restore this unique ecological, economic, and cultural resource.

Key Challenge Reports and Coordinated Strategy

The other reports called for under Section 202 of the Order provide the lead agencies' recommendations to address the additional key challenges identified in the Order:

- Targeting conservation practices
- Strengthening storm water management at Federal facilities
- Adapting to impacts of a changing climate
- Conserving landscapes
- Strengthening science for decision making
- Conducting habitat and research activities to improve outcomes for living resources.

In the next 60 days, the Federal Leadership Committee will evaluate the recommendations and consult with states and the District of Columbia. The Committee will revise, refine, and prioritize the recommendations, and develop the best plan for meeting key challenges. Later this fall, the Federal Leadership Committee will release, for public comment, a draft strategy that integrates the seven reports. All of this will culminate in a final strategy targeted for release on May 12, 2010 – one year after the President issued the Executive Order.

Let me stress that this is not the beginning and the end of our work on the Chesapeake. We will not just be reviewing reports for the next eight months. Federal agencies are continuing to implement important actions for restoration and protection

and will continue to look for ways to move forward in implementing policies and programs before the strategy becomes final.

Chesapeake Bay Program Reauthorization

We applaud the Committee's leadership and look forward to offering you technical assistance to improve the performance and accountability of the Chesapeake Bay Program. EPA strongly supports reauthorization of the Chesapeake Bay Program and the opportunity to work with the Committee to make restoration and protection of the Bay happen more effectively and efficiently.

The Clean Water Act, Section 117, the Chesapeake Bay, was last authorized in 2000. It expired in 2005. This action by Congress was helpful in supporting the Chesapeake Bay Program and the Agreement adopted by the partners in 2000. But as we know now, the 2010 goals of that Agreement are not going to be achieved. Indeed, the goals of the original 1983 Agreement, which was the basis for the 1987 inclusion of Section 117, have not yet been achieved. We are hopeful that any reauthorization of the program will be supportive of and consistent with steps taken to date through our work to address the goals of the EO, and can put within our reach the goals of these agreements. This may necessitate significant changes to the program.

As noted earlier, the fundamental challenge for the Bay's water quality is reducing runoff pollution from urban, suburban and agricultural lands. In fact, urban

and suburban runoff pollution to the Chesapeake is increasing, while agricultural pollution is not declining nearly enough as needed to restore the Bay. Presently, we have a range of tools that we are implementing to tackle these problems, and through our work to address the goals of the EO we have found potential ways to increase the number and effectiveness of the tools available to us. However, as we continue to think about Bay restoration and protection, we are also examining changes to our program's authorization that may provide even better results.

Our nation's modern history includes several successful models of pollution control. The Clean Air Act (CAA), for example, has produced significant improvements in air quality, despite sizable growth in population, energy consumption, and vehicle miles travelled. As we think about ways to further protect the bay, we are looking at a range of accountability mechanisms including provisions similar to those available in the Clean Air Act.

We look forward to working with the Subcommittee and other Members of Congress to explore these issues in the months ahead. A reauthorization of the Chesapeake Bay Program presents all of us with a unique opportunity to redefine our future, and we greatly appreciate the Subcommittee's leadership in this regard.

Closing

Across the Chesapeake Bay watershed, there have been important actions over the past 25 years - by farmers to implement nutrient management practices and install buffer strips and fences; by homeowners to reduce energy consumption and runoff pollution; by localities to upgrade wastewater treatment plants and to reduce stormwater pollution; by developers to implement sediment and erosion control plans and implement smart growth practices; by states to expand land conservation and strengthen their water quality protection programs. However these good efforts are simply not sufficient.

The straightforward conclusion is that the Chesapeake Bay ecosystem remains severely degraded, despite the concerted efforts by many for more than 25 years. However, all of these challenging conclusions are tempered by a strong sense of optimism we all share for the future. Scientists have learned much about the Bay and that knowledge is being used by managers to help plan and evaluate new policies and practices. Our region's elected officials are engaged as never before. At EPA and partner federal agencies, we have clear direction from the President to provide the leadership necessary to protect and restore the Bay.

Thank you again Chairwoman Johnson, and Members of the Subcommittee, for the opportunity to appear before you today. In the coming months, we look forward to working with you on reauthorization amendments for the Chesapeake Bay Program that meet our shared goals for protecting and restoring this national treasure.