Testimony
Presented to:
Committee on Agriculture, Subcommittee on Conservation, Credit, Energy and Research

Presented by:

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Introductory Comments

Chairman Holden, members of the Subcommittee on Conservation, Credit, Energy and Research and guests, thank you for inviting the Commonwealth of Pennsylvania to be a part of this important hearing concerning the multitude of legislative, regulatory and administrative strategies that are being considered to help improve the water quality of the Chesapeake Bay, its tributaries, and its watershed. On behalf of Governor Edward G. Rendell, it is my honor to testify before you today.

There is no doubt that the Chesapeake Bay and its tributary waters are natural resources of outstanding ecological, economic and cultural importance to the citizens of the United States, and especially to the citizens and farmers of Pennsylvania. In fact, the Obama administration has recognized the Chesapeake Bay as a national treasure worthy of national attention.

The strategies being discussed here today are in part the result of that Presidential attention, in part the result of Congressional attention, and in part the result of the judicial process as the courts have mandated that the Bay watershed jurisdictions develop a plan for clean water. Surely these programs must address the broad spectrum of very important natural resource and cultural issues which are multifaceted, complex and intricately intertwined. Your interest and willingness to examine these strategies and how they will impact Pennsylvania farmers, citizens and communities is greatly appreciated.

Let me be clear at the outset, I believe we need to have two key, clear, and co-equal goals in any effort to restore the Chesapeake Bay and its watershed.

> First, it is imperative to meet the goals established for clean water for Pennsylvania and other Bay watershed states.
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> Second, it is imperative that we have economically viable and thriving farms and strong communities in Pennsylvania and other Bay watershed states.

To accomplish these goals, we need strong Federal support. This Committee, and the Congress, must be commended for your work on the Farm Bill to deliver to the watershed those tools and resources needed to keep farmers in business protecting clean water. Now, we have a second shot at the apple with the reauthorization of the Bay Program in the Clean Water Act. If done

right, this legislation can compliment the Farm Bill and again ensure that farming will be sustainable while farms are managed to deliver clean water.

It is clear to me that the problems we face in meeting the Bay nutrient and sediment reduction goals is not exclusively an agricultural problem, nor is it exclusively an urban problem; regardless, it is a Pennsylvania problem. More than 3 million Pennsylvania citizens call a portion of the Chesapeake Bay Watershed their home. Each and every person that lives in a portion of the Chesapeake Bay Watershed contributes to the nutrient and sediment loads that are impacting the Bay. Whether you milk cows in Bradford County, fertilize your lawn in the suburbs of State College, flush a toilet in Lancaster City, or park your car at the mall in Gettysburg, we all contribute to the nutrient and sediment loads that are impacting the Bay. Likewise, we all need to contribute to the solutions that will help restore the Bay. Approximately 40,000 Pennsylvania farmers rely on the soil, water, air and other natural resources of the Chesapeake Bay Watershed to raise and market their crops and livestock, support their families and communities; and to help feed the citizens of Pennsylvania, the United States, and people around the globe. These Pennsylvania farms are extremely diverse, from 50-cow Amish dairy farms to 2500-cow dairies; small organic truck farms to cash-grain operations farming thousands of acres; backyard cow-calf operations to large-scale poultry or swine growers. The diversity of Pennsylvania agriculture is one of its most important strengths.

It is often said that farmers are our first conservationists, and I sincerely believe that. Pure and simple, they make their living off the land. The quality, health and sustainability of the natural resources they manage from day-to-day, year-to-year, and decade-to-decade on their farms determines to a large degree their economic success, viability and longevity. Farm families are often tied to their land for generations.

Pennsylvania farmers have worked diligently over the generations to help protect and restore the natural resources that they and their fellow citizens depend on. I believe our farmers take seriously the challenges we collectively face in achieving water quality goals that have been established for the Chesapeake Bay and its tributaries. They fully understand that clean water for the Chesapeake Bay means clean water for their families, their communities and their livestock.

Pennsylvania farmers are trying to better understand how the changes called for in these Executive Order proposed reports, strategies and legislative bills will impact their day-to-day farming decisions, what changes will they need to make, and what the costs will be. It is imperative that as legislative leaders and appointed political leaders, we fully understand the impact of these proposals, ensure the solutions are practical, balanced and effective, and work to provide the financial and technical resources that will be necessary to implement these changes.

Current Economic Challenges

I would do an injustice if I did not note that farmers are also dealing with the some of the most difficult and challenging economic conditions that they have faced in more than 30 years, at the same time they are being asked to do more for the Bay. Requiring farmers to expend significant amount of funds for conservation practices during this economic recession could force many operators to make difficult decisions about leaving the industry.

In addition, state and local governments in Pennsylvania also face very real economic challenges. Pennsylvania's 2009-10 state revenue short falls resulted in the need to make difficult and painful reductions in state agencies' budget and staff complements. County and local governments are currently adopting 2010 annual budgets that are extremely tight due to revenue short falls. County conservation districts, which depend on a combination of state and county based funding sources, are being impacted especially hard during this annual budget cycle. Conservation districts are a key component of Pennsylvania's outreach and technical assistance programs for non-point source pollution programs.

Any Chesapeake Bay watershed restoration strategy, initiative or legislative solution must provide adequate federal funds necessary to accomplish new regulatory requirements and initiatives. As a state, we truly appreciate and value the funds provided through Farm Bill programs such as EQIP, and especially the Chesapeake Bay Watershed Initiative. These funds and the technical assistance they bring to Pennsylvania are critical to our success, but unfortunately significantly more financial and technical resources are needed to achieve the nutrient and sediment reductions that are called for in the TMDL and draft strategy.

For these reasons, our approach to the Bay restoration must be viewed over many years to address the economic and fiscal cycles that we will have to manage through.

Complexity of Challenges Faced

As I mentioned earlier, these strategies address a broad spectrum of very important natural resource and cultural issues that are multifaceted, complex and intricately intertwined. This is a very complicated equation with a common denominator – the Chesapeake Bay. Parts of the equation include:

- The Presidential Chesapeake Bay Watershed Executive Order with its 7 draft reports and a draft strategy.
- The ongoing Chesapeake Bay Total Maximum Daily Load (TMDL) process to establish enforceable waste load allocations and caps throughout the watershed that is currently being implemented under existing authorities of the Federal Clean Water Act;
- The proposed reauthorization of the Chesapeake Bay Program provided for under Section 117 of the Federal Clean Water Act, including SB 1816 and HR 3852 which propose to reauthorize section 117, including broad codification of the TMDL process.
- EPA Region 3's new "Agricultural Assessment Initiative" currently taking place on 26 farms (25 Amish, 1 English) in Watson Run, Lancaster County.

The complex and inter-related nature of each of these proposals and actions is challenging to those whose full-time job it is to review rules, regulations and legislation. Imagine how overwhelming they are when you're hustling everyday to make a living from farming.

The bottom line is Pennsylvania, and especially Pennsylvania farmers, have much at stake in the intricate details of the evolving national strategies and plans regarding the restoration of water quality in the Chesapeake Bay and its watershed lands and communities.

Recognizing Accomplishments to Date

Pennsylvania has worked diligently over many decades to help reach the water quality goals for the Chesapeake Bay and its tributaries. We were a signatory to the original 1983 Chesapeake Bay Watershed Restoration Agreement. From the beginning, Pennsylvania's approach has focused on each of the challenges we have faced, with a strong emphasis on agricultural non-point source pollution.

Pennsylvania leads the Chesapeake Bay states in measures critical to the restoration of the nation's largest estuary. The U.S. Environmental Protection Agency's most recent calculations show Pennsylvania farmers can proudly lay claim to 55 percent of all the nitrogen reductions made by agriculture anywhere in the multi-state watershed. This leadership derives from the Commonwealth's set of agricultural stewardship firsts:

- The first mandatory farm nutrient management plans.
- The first nutrient management program to regulate nitrogen and phosphorus.
- The first EPA-approved regulatory program for concentrated animal feeding operations.
- The first Bay state permanently to preserve 20 percent (now more than 3 million acres) of land in the watershed. More than 425,000 of those acres represent some 3,900 preserved farms (required to follow a conservation plan), representing an investment of more than $1 billion in state, county and federal funds.

The Commonwealth also met its goal to plant 600 miles of riparian forest buffers well ahead of the 2010 goal. Pennsylvania is home to the largest Conservation Resource Enhancement Program in the entire nation. Our CREP program delivers more than $50 million in state and federal assistance for best management practices and, unlike other federal Farm Bill programs, targets key edge-of-stream BMPs to maximize water quality. Pennsylvania leads the Bay states in this category after restoring 3,212 miles of 35-feet-wide buffers in the watershed.

From 2007 to 2009, Pennsylvania has invested more than $750 million in a variety of programs to improve water quality in the Bay. This includes $264 million in Commonwealth funds for financing municipal and industrial wastewater systems. The largest funding sources have been the Growing Greener bond initiatives, the state Resource Enhancement And Protection Program (REAP), the Pennsylvania Farmland Preservation Program, and land conservation acquisitions and easements funded by the Department of Conservation and Natural Resources, through Growing Greener and the 'Key 93' real estate transfer tax fund.

Together, these measures and others have helped Pennsylvania achieve 46% reductions in Nitrogen, 64% in Phosphorus and 88% in sediment (as of 2008). Since 1985, the U.S. Geological Survey trend analysis of water quality data shows that Pennsylvania has been sending cleaner water to the Chesapeake Bay. While we have made important gains, there is more to do. The Commonwealth continues to need funding to improve water quality in the Susquehanna River and its tributaries, and funding for conservation.

Local, State and Federal Partnerships

To date, achieving water quality goals for the Chesapeake Bay has been dependent on strong and balanced partnerships at the local, state and federal level. As new strategies, initiatives, regulations and/or laws are developed, it is critical that these partnerships are enhanced and that a proper balance of non-regulatory and regulatory approaches are maintained. This is especially true as efforts are ramped up to address non-point source pollution concerns.

Pennsylvania conservation districts and the USDA NRCS have worked for decades to assist landowners in voluntarily managing their natural resources in a manner to minimize non-point sources of pollution (nutrients and sediment). They have developed relationships and trust with landowners that are critical to solving non-point source pollution problems. Our conservation districts also have experience in managing regulatory non-point source programs such as nutrient management and erosion and sediment control programs. When these efforts are combined with the regulatory tools of the Pennsylvania Department of Environmental Protection and other state agency partners, Pennsylvania has access to a suite of tools that we believe are best equipped to accomplish the nutrient and sediment reduction goals for the Chesapeake Bay and its tributaries.

The key to success in addressing non-point source pollution problems is using the right tool for the job at the correct time. Some situations call for technical and or financial assistance; some call for a regulatory approach; and some call for a mix of both. The key is balance. By utilizing the appropriate mix of tools, positive tension can be created that causes farmers and landowners to change behaviors and adopt best management practices that are necessary to reduce nutrients and sediments being delivered to the Bay.

Adopting a heavy handed or unbalanced approach will only drive farmers away from compliance and or out of business. On the other hand, if we work smartly, with a balanced approach, and allow the agency(s) with the appropriate skills and necessary tools to work with famers and landowners, we will have a greater chance of accomplishing our goal of clean water and thriving farms.

Based on the success of this existing regulatory frame work, we recommend EPA and other federal agencies work cooperatively with Pennsylvania agencies to develop and implement a strategy for achieving widespread compliance of agricultural producers using existing Pennsylvania legal requirements. The strategy should address the following:

Regulatory Authority:

- Recognize that simply requiring more operations to obtain a Concentrated Animal Feeding Operation (CAFO) permit is not the answer to improving water quality, but rather we believe implementing Pennsylvania's current regulatory authority that calls for an active on-site collaboration between producers and conservation professionals to identify and implement required practices for all farms, is the best approach.
- Farmers require and deserve clear and predictable legal obligations. We must do a better job of communicating those expectations to farmers, and provide them with tools that facilitate their ability to comply. Any changes to regulatory and enforcement strategies must be made in a transparent manner with cooperation between federal, state, and local

partners. In this regard, we suggest that the proposed legislation to reauthorize the Bay Program includes some provisions that dispel the notion that EPA will be the regulatory authority on farms under this bill and make the expectations clear. If a farmer has developed and *is implementing* a plan (in accordance with any existing state and/or federal requirements and in accordance with the criteria established), then the producer should be deemed to be in compliance with the TMDL and its Watershed Improvement Plan (WIP). Simply stated, if the federal government develops a set of approved conservation practices for the Bay water quality, and those practices being implemented are part of an approved conservation and comprehensive nutrient management plan, then the producer is assured they have met the requirements.

- The TMDL and the proposed language to reauthorize section 117 both recognize that one size does not fit all and identify the states as the entity that will develop and carry out Watershed Implementation Plans (WIPS). EPA has a legitimate interest in overseeing a state's implementation, but as long as a state continues to meet its commitments under the Implementation Plan, the state must remain the primary entity for regulation and enforcement. However, for a state to be successful, we do need a strong federal partner in the area of compliance assistance.

Compliance assistance:

- The proposed legislative language to reauthorize section 117 recognizes the crucial role that technical assistance plays in agricultural compliance. We cannot underestimate the benefits of having knowledgeable conservation professionals who can meet one-on-one with farmers. The time and money spent on these relationships are extremely cost-effective in the long run because they help to ensure that practices are implemented correctly both for the environment and for the farmer. This in turn will help to keep plans implemented and practices on the ground.
- There is a critical shortage of technical assistance and compliance oversight staff in Pennsylvania. Providing additional technical assistance capacity (planning/engineering) through conservation districts, an enhanced technical service provider (TSP) program and increased compliance oversight staff is critical. USDA must take action to expand their capacity under the TSP program, and EPA must allocate funding to address the staffing shortfall for compliance oversight staff at the state agencies and conservation districts.
- Technical and financial assistance programs must be coordinated within the state to ensure that all farms develop and implement the necessary conservation and manure management plans. Program delivery and conservation practice implementation at the state level should be integrated with EPA's expectations for water quality improvement. They should also be linked to individual states' implementation plans and milestones.
- A tracking system, to be effective, must include the ability to capture all conservation practices, including those implemented with or without federal or state funding. Current modeling has no effective method for including practices (i.e. cover crops, reduced tillage) established independently of public assistance.
- Technical and financial assistance programs should be used holistically to address the overall water quality challenges on a particular farm, instead of the current piecemeal approach that leaves some water quality problems unaddressed. Good overall farm

management throughout the watershed is needed to reach the goals we need to reach, not just individual priority practices on certain farms or regions.

- The practices needed on each farm must be site-specific and address water quality cost-effectively. While we recognize that best management practices must meet certain standards that demonstrate water quality improvement, a rigid set of standards may actually be a hindrance to compliance instead of an asset. Instead, we need flexible standards that, while still being based on water quality outcomes, recognize the differences between types of farms and their configuration on the landscape.
- New and alternate technologies (i.e. phytase, manure digestion) can play a key role in helping some farms improve water quality. Strategically targeted technologies in areas where it can make the most difference can be very cost-effective. For example, focusing the placement of enhanced regional digesters in areas of Franklin and Lancaster County could help achieve 20 percent of Pennsylvania's manure-related reductions. Investments in new research or technological developments can provide significant opportunities.
- Effective and simple planning tools are needed in order to assist farmers in their efforts to comply with water quality obligations. As we move to deal with a greater number of smaller farms, we need to have planning tools that can be easily understood and completed by farmers or their consultants. The current array of extensive planning tools has relevance to the larger farms; however, a very simple approach is appropriate and needed in order to ensure compliance with the vast number of smaller farms. Pennsylvania is in the process of developing these tools (i.e. OneStop Online Conservation Plans) and needs additional resources to finalize them for public use.

Mr. Chairman and Committee, I'll end where I began by saying there are two co-equal goals – First, it is imperative to meet the goals established for clean water for Pennsylvania and other Bay watershed states.

Second, it is imperative that we have economically viable and thriving farms and strong communities in Pennsylvania and other Bay watershed states.

If we are going to be successful, we must find balance between these goals and be flexible as we develop the strategy. This year and next, as the Reauthorization of the Bay Program is considered by Congress, we hope that you will continue to champion these inextricably linked goals. In doing so, you will be greatly assisting the Commonwealth of Pennsylvania, the Chesapeake Bay and farmers throughout the watershed.

Furthermore, we hope that you will continue to be our champion as the Farm Bill is reconsidered, each time assuring that farm sustainability and clean water are considered in tandem. The Bay-wide TMDL must be implemented by 2025. Between that end goal and now stands 16 years and at least two, possibly three Farm Bills. We must count on you then, as we count on you now, to be the voice for farms and clean water.

Thank you.