

**Roundtable Issues Forum
The Tides Inn
Irvington, Virginia
Wednesday, June 9, 2010
12:30 – 5:00 PM**

**Chesapeake Bay Program in Transition;
Lessons Learned and Applicability for the Mississippi Basin**

Summary of Discussions

Chairman Jeff Eger welcomed all participants to the meeting of the Commission's Roundtable Issues Forum. Mr. Eger introduced Commissioner Bob Wayland of Virginia (and former Director of USEPA's Office of Wetlands, Oceans and Watersheds) who would chair this particular roundtable session due to his intimate knowledge of the Chesapeake Bay, the Chesapeake Bay program and the critical issues surrounding it's recovery. The roundtable forum started with presentations on the Chesapeake Bay from Commissioner Dave Paylor and Mr. Tom Wall of USEPA (Presentations are attached or available at www.orsanco.org/).

12:40 – 1:30: The Chesapeake Bay – Issues and Solutions, Commissioner Dave Paylor, Director, VA. Department of Environmental Quality

Mr. Paylor's presentation provided an overview of the Chesapeake Bay, which included a comparison of the Chesapeake and Ohio River watersheds; the actions that have been undertaken to date to "Rescue the Bay"; a review of the Agreements of 1987 and 2007; Critiques of the program and litigation; the TMDL decision and Obama Executive Order; a review of current water quality and environmental conditions and impairments and the actions that are currently underway.

1:30 – 2:20: Protecting and Restoring the Chesapeake Bay Watershed – Tom Wall, USEPA, Sr. Advisory to the Assistant Administrator for Water

Mr. Wall provided a review of Executive Order 13508, the Chesapeake Bay Strategy, and compared Bay issues with national issues.

Following these initial presentations, a group of panelists was introduced to provide a range of perspectives on Chesapeake Bay recovery issues. The panel was comprised of following individuals and industry sectors:

Chris Pomeroy – Virginia Association of Municipal Waste Water Authorities (AquaLaw)

Wilmer Stoneman – Representing the Virginia Farm Bureau providing the production agriculture perspective

Don Gill - Thirteenth generation Lancaster County, VA farmer and Land use Planning Commissioner, Lancaster Co., VA

Brooks Smith - Attorney with Hunton and Williams and Environmental Counsel with the Virginia Manufacturer's Association

Anne Jennings – Virginia Executive Director, Chesapeake Bay Foundation

The Roundtable discussions were opened with each panelist being asked to identify, from their own perspective, what has worked, and what hasn't worked, relative to the clean-up efforts for the Chesapeake Bay.

Chris Pomeroy: Commented that TMDLs have been more of a hindrance than a help to progress with bay improvements. On the positive side, through this effort, there are now two recognized drivers in Virginia, point source and now non-point source pollutant contributions.

Brooks Smith: Compared success in Clean Air Act pollutant reductions to the need for similar reductions under the Clean Water Act. Brooks identified the following areas of need for success from this point forward: development of trust-based partnerships; establishment of an open scientific process; an effective cost share funding program; appropriate time and phasing schedules; an effective trading program; promotion of centralized treatment works.

Anne Jennings: Commented that the economy of the northern neck of the bay, where this meeting was taking place, was indicative of the impacts of an unhealthy bay. What has worked; Virginia's work in improving waste water treatment; nutrient trading program; cost share program.

Wilmer Stoneman: Stated that agriculture is still Virginia's largest economic sector. However, Illinois, Indiana and Ohio are represented in Chesapeake Bay through air deposition. What works; nothing, Executive Order says must do more, Virginia is comprised of 60% forest and agriculture, but agriculture is supposedly 50% of the problem. The Chesapeake Bay model is broken, does not account for reductions achieved through voluntary BMPs, nutrient management plans, etc. Expressed frustration with regulatory agencies attempt to regulate agricultural inputs with an incomplete/broken model. Frustrated by the change in efficacy of BMPs; what works for nitrogen and sediment (no-till farming practices) doesn't seem to work for phosphorus. What is working: working with Chesapeake Bay Foundation to develop proper BMPs.

Don Gill: Lancaster County was the last County to implement Chesapeake Bay Program recommendations. Mr. Gill is an advocate for the need to preserve the agricultural heritage of Lancaster County. Who better to be a good steward of the land than someone who makes his living by it? Things that have worked right: May 1988, Lancaster County waterfront residential overlay ordinance requires waterfront lots to be not less than 2 acres in size; strong land owner rights advocates. What hasn't worked; unfunded federal mandates.

The presenters were then asked what they would do if they were "King of the Chesapeake Bay" for a day?

Don Gill – Pursue public access issue; Lancaster County is the last of 13 bay counties for public access to the bay. Wastewater treatment issue; fear of building infrastructure to accommodate 300 – 400 house subdivisions. Supports the no-growth contingent in Lancaster County.

Wilmer Stoneman: Cited a lack of action on behalf of USEPA. Asked to create TMDL, and EPA doesn't bring forth a hard and fast target. Need to give farmers tools to implement BMPs and reductions in a timely manner to achieve water quality improvements. Set goals, provide tools and stand back to let farmers implement. Frustrated due to USEPA changing the end-point target.

Anne Jennings: Bay Restoration effort begun with establishment of targets in 1983, then reset targets for nutrient reductions in 1987; then there was the 1992 agreement which didn't help; then the Y2K agreement – which established reduction goals to be achieved in 2010...which didn't happen. The current process seeks to establish goals and timelines and has never succeeded. A lawsuit was filed in 2008 to sue federal government since they haven't succeeded in cleaning up bay. Negotiated settlement w/EPA was reached which has specific timelines and deadlines, i.e., the Bay TMDL is to be completed by Dec. 31 of 2010. Need accountability and responsibility for hard parts of equation. Settlement authorized \$1.5B and further development of the trading program.

Brooks Smith: Negotiated Settlement agreement mentioned above; primary claim was that EPA didn't live up to mandatory duty to insure tributary strategies are developed and implemented. Implemented is not a debatable point. Claim should have been dismissed. Intervention papers to dismiss were filed by the Virginia Manufacturers Association; case went into private settlement anyway. Federal government would not defend itself, instead negotiated a new settlement with new goals and deadlines. EPA held this settlement up as being a great new deal and of great benefit to the bay. The negotiated settlement and its contents however are not enforceable. If they do not achieve the goals and timelines as set forth in the settlement, then, legally, a suit can be filed; but the claim can be against EPA only on original failure to insure that tributary strategies are developed and implemented, and not based on or against any of the components of the negotiated settlement.

Regarding the Chesapeake Bay Model, Mr. Smith commented that such is needed to determine appropriate reductions, but, issuance of a final number is now held up due to attempts to “tweak” the model to determine exactly how much, to the last ton, pound and ounce, needs to be reduced throughout the basin. The establishment of a final number is being held up by the last one tenth of one percent, instead of identifying a number based on the big picture need. The model is king, but currently, is not being used or finalized properly.

Chris Pomeroy: Lawsuits are defended differently in different ways at different times for similar issues. A successful point to point trading program has been developed; the need exists to expand this concept to develop a full nonpoint trading and point to nonpoint source trading. Need a different tack to framework and for accountability. Reasonable assurance concept makes sense at face value. EPA demands states to demonstrate reasonable assurance, but “Reasonable Assurance” has not been defined. States/stakeholders must demonstrate that reasonable assurance has been achieved, but not able do so as concept is not quantifiable. Does not think there should be arbitrary schedules for implementation of reductions based on an uncertain model forcing decisions that are not realistic.

Following the opening comments by the panelists, Mr. Wayland opened the floor to the attendees for comments and questions.

As several comments and concerns were previously stated about the model the question was asked regarding the existence of an ambient water quality sampling network to provide water quality data that would validate improvements stemming from model-based actions. Ellen Gillinsky, Director Water Division of the Virginia Department of Environmental Quality stated that there was a long standing interstate water quality monitoring network and adequate data. However, the model is still being “tweaked” ad infinitum. The statement was made that, “if you're going to cut with a chainsaw, you don't need to measure with a micrometer” summed up much of the current frustration expressed by many of the panelists. Some improvements are being observed, but not all across the board.

The question was asked, “Is the data validating the model projections?” One concern identified the disconnect that could occur between implemented BMP’s, the water quality data and the model results, and the presumed need to “chase the model” as establishing the water quality goal is problematic. Economic sector civil war could occur if, after all BMPs and regulations are implemented, the water quality goals as prescribed by the model are not met. In stream monitoring is needed to determine the actual water quality improvement and not the presumed improvement as indicated or dictated by the model.

The model overestimates the effectiveness of the practices currently in place because the number of acres of voluntary BMPs has not and may not be quantifiable.

The use of the model to lay blame on one or various industry sectors is an inappropriate use of the model.

The Chesapeake Bay Model has been in development over decades and may be the best single tool for monitoring contributions from the 64,000 mile watershed. However, the shift from the 2003 agreement point source goals driver to EPA’s TMDL-based driver has put a different focus on use of the model.

Delay in focusing on the non-point source end of the pollutant contribution equation is problematic to success. There is no regulation of non-point sources.

Wilmer Stoneman commented that the above statement regarding the absence of regulation on non-point sources was, patently, not true. The Chesapeake Bay Preservation Act requires a 100’ buffer between agricultural fields and waterways and/or other BMPs. Such a requirement is a regulation. CAFO regulations implemented in Virginia are 3 times more restrictive than the federal government requirements. There is also a poultry litter regulation that touches all farmers, producers and land applicators alike.

Agriculture has done much for the point source reductions by taking bio-solids and applying them upland based on a strict nutrient management plan. Agriculture is the relief valve for the nutrients for the waste water treatment plants. The rest of agriculture is regulated by the economy. Fertilizer use is down by 200k+ tons less fertilizer since 1980.

Commissioner Chuck Duritsa asked how accurate is the science behind the BMPs recommended to the agriculture community? No till practices were thought to be the answer, but now it seems that they’re not so good for phosphorus. He had never heard of that.

Wilmer Stoneman: Water quality is not the only problem for crab and oyster populations. A disease and overharvest wiped out the oysters, and overharvesting wiped out the crabs, then striped bass populations were reestablished in the Chesapeake; striped bass eat juvenile crabs. There are many reasons for the declines of these populations, not just water quality.

Commissioner Phil Morgan: No till costs 30 bushels/acre production.

Wilmer Stoneman: The bay has been impacted by human upland activities for 400 years. It won’t be fixed in 20, or even another 15 more. But improvements can be made.

Marcia Wilhite: BMPs are variable at the sub watershed level. Inventory of existing BMPs is important. What will it really take to fully implement needed BMPs?

Wilmer Stoneman: Make cost share dollars available for most cost effective management solutions, not more expensive agency mandated/approved designs, i.e., cost share portion for half of the expensive 6-strand wire fencing which is an agency approved design, is greater than the entire cost of a single strand electric fence, which is equally effective, yet it does not qualify for cost share.

Commissioner Lee Servatius: Is model so inflexible that it can't be recalibrated based on empirical data?

Brooks: The model is set on a throne and should be used to determine the big picture issue, not the minutia level amounts. It's not the model that is the problem, but how it is being viewed and used.

Wilmer Stoneman: Must have all parties involved in solution, not just agriculture, but not advocating E3 concept of attainment: E3 = Everything, Everywhere, Every target.

The Bay program is healthy, but all the focus is on the margins, not the main thrust of the controls. With that, Commissioner Wayland thanked the presenters and panelists for their participation. Commission Chairman Eger then closed the Roundtable discussions thanking all participants for the involvement.

Summary prepared by Jerry Schulte