



VIRGINIA AGRIBUSINESS COUNCIL

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We Represent Virginia Agribusiness with a Unified Voice

November 9, 2009

Senator Benjamin L. Cardin
Chairman, Water and Wildlife Subcommittee
U.S. Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Mike Crapo
Ranking Member, Water and Wildlife Subcommittee
U.S. Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Senators Cardin and Crapo,

On behalf of the members of the Virginia Agribusiness Council, we respectfully submit the following comments in regards to S. 1816 and the efforts to expand and reauthorize the Chesapeake Bay Program. We ask that these comments be entered into Congressional record as part of the November 9, 2009 hearing on "Great Body Water Legislation" before the Senate Environment and Public Works Subcommittee on Water and Wildlife. The Virginia Agribusiness Council represents farmers, foresters, processors, manufacturers, and suppliers of agricultural and forestal products, as well as approximately 40 commodity associations.

Over the past week, our members have reviewed the provisions of S. 1816 and remain extremely concerned about the implications of the legislation. While our industry is committed to taking steps to improve water quality across the Commonwealth including the Chesapeake Bay, we are concerned that this legislation does not soundly or efficiently achieve goals for improving water quality. Agribusinesses across the Bay watershed have implemented best management practices, complied with permit requirements, and made innovative and environmentally friendly changes in their production systems over the past two decades. According to the Chesapeake Bay Program, as of 2008 approximately 50% of the goals for nitrogen, phosphorus, and sediment reductions from agriculture have been achieved. This progress will continue in the future with innovations in agricultural production, increased participation in best-management programs, and farmer education.

The provisions of this legislation are most troubling to us and threaten Virginia's number one industry of agriculture and forestry – a \$79 billion economic engine. In effect, the legislation places a cap on the watershed's economic growth, impacting jobs, development, and food production. This bill will impose severe economic

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hardship to our industry and further increase pressure for the Chesapeake Bay's most effective and efficient land use, production agriculture, to move out of the watershed. Inclusion into law of the specific caps for Total Maximum Daily Loads (TMDLs) for the Bay is premature, as is the accelerated timetable for TMDL development set forth in the legislation. Court-ordered TMDL development must be in place by May 2011, however this legislation sets a deadline of December 2010. Less than a week ago on November 4, 2009, EPA communicated to each Bay state and Washington DC expectations in setting TMDL implementation plans. This process has just barely gotten underway. Codification of deadlines, severe limits, and expanded EPA authority at this point is premature and troubling. Agribusinesses in Virginia will be participating in the development of the TMDL. However, we are unsure of the specific requirements for implementation and, most importantly, the true implications to agriculture and forestry at this time.

By setting a hard cap on the amount of nutrients and sediments in the Bay through codifying the TMDL we believe any economic activity will also be effectively capped under this legislation. Young farmers or those who would like to expand their existing businesses will be forced to do so at significant costs for purchasing offsets, if they are able to do so at all. We are unsure as to the fate of already permitted "point source" discharges from agriculture. Will animal and livestock operations be required to comply with costly permit requirements or retire out of business? Will they be authorized to expand their business capacity beyond their current animal numbers without purchasing the right to do so from another agricultural producer? Most importantly, what will be the fate of a viable, sustainable, and growing farm economy in the Bay region under these cap limits?

Our members are supportive of offset or trading programs as market-based solutions to environmental issues. However, in light of the heavily regulated environment that agriculture could be operating under, the ability to generate offsets from our industry is questionable at best. In Virginia, compliance with the TMDL may mean as much as 92% implementation of practices, leaving a mere 8% for offset generation to go beyond TMDL requirements. Under these circumstances, retirement or loss of agricultural land will be the only available offset for use by any expanded or new economic development. The loss of this land in profitable agricultural production leads to loss of food production in the Bay watershed. If instead, few offsets are available for purchase, it leads to loss of economic growth within the watershed. In either scenario, the outcome is concerning at best.

Technical assistance and cost-share funds to help agriculture implement the best management practices that will be required for Chesapeake Bay clean-up remain a priority for our membership. We appreciate the provisions in the legislation that set aside federal funds for these purposes, and continue to support efforts at the state and federal levels to increase cost-share and technical assistance for best management practices. However, there is no assurance that cost-share funding through the Farm

Bill, new funds authorized in this legislation for technical assistance, or state cost-share funding will continue to exist. As more regulatory measures are placed upon agriculture over the next ten to fifteen years, we cannot guarantee to producers that cost-share funding will be appropriated to offset the costs of compliance.

The legislation establishes an elevated level of Clean Water Act regulation on agriculture in the Bay watershed greater than is in place in any other area in the nation. This unprecedented expansion of EPA authority to take any action deemed necessary to meet Bay goals will result in severe economic hardship for Bay-region producers, who must compete not only with their counterparts across the country but also worldwide. Expanding EPA's authority over any pollution that affects water quality effectively eliminates existing Clean Water Act provisions, such as agricultural stormwater exemptions placed into federal law due to the specific nature of agricultural production.

Current data utilized to make decisions on Chesapeake Bay loading limits, regulations, and permits must be based on accurate, scientific data. The basis for many of these decisions rests with the Chesapeake Bay Model, however, this model does not currently contain accurate data as to all best management practices implemented by farmers. For example, the Model does not account for agricultural best management practices voluntarily (without cost-share assistance) implemented by farmers or for those who continue to utilize a practice after the "life-span" of the cost-share agreement has ended. While the legislation speaks to an accounting system for practices that have been implemented, this must be the first action to be undertaken.

Our members are committed to water quality, not only in the Bay, but in their local streams and rivers. In light of our commitment to these goals, we ask the Water and Wildlife Subcommittee to reauthorize the existing Chesapeake Bay Program without dramatically expanding federal authorities. Adequate time should be given to develop creative ways to economically achieve water quality goals, expand economic development, and refine the science and modeling in the Bay watershed. Thank you for this opportunity to comment and we look forward to continuing discussions with you regarding this critical issue.

Sincerely,



Donna Pugh Johnson
President