



## VIRGINIA AGRIBUSINESS COUNCIL

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*We Represent Virginia Agribusiness with a Unified Voice*

October 9, 2009

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The Honorable Mark Warner  
B40C Dirksen Senate Office Building  
Washington, DC 20510-4601

Dear Senator Warner:

The Virginia Agribusiness Council continues to evaluate and discuss the impact of expanded efforts by the Obama Administration, Congress, and the Commonwealth of Virginia related to restoration of the Chesapeake Bay. Our industry's commitment to clean waters throughout the state is evidenced by the significant progress we have made to voluntarily implement best management practices and to reduce run-off from our farms.

As a significant partner in having achieved water quality progress in the Commonwealth, we **oppose** legislative proposals that considerably expand federal authorities through the reauthorization of the Chesapeake Bay Program. Bills, such as the ones being developed by Senator Benjamin L. Cardin and Representative Elijah Cummings, propose to include codifying President Obama's Chesapeake Bay Executive Order, set an enforceable deadline for Chesapeake Bay restoration, set deadlines from Chesapeake Bay Total Maximum Daily Load (TMDL) development and implementation, establish citizen right of action (civil suits), and ban activities such as commercial menhaden fishing. We **support** reauthorization of the Chesapeake Bay Program, but without expanded federal authorities, and **support** giving Bay states the greatest amount of flexibility and authority in order to partner with impacted industries to meet restoration goals.

The recently issued multiagency draft report required by the May 12, 2009, Presidential Executive Order, places over 50 percent of the responsibility for Bay pollution clean-up on agriculture. It calls for increased and expanded regulation of agriculture, increased prioritization and targeting of conservation incentives, and improved credit in the Bay model for voluntary measures implemented by farmers. A final report is due in May, 2010; however, the proposed legislation includes immediate codification of the precedent setting Executive Order. We oppose codification of the Chesapeake Bay Executive Order.

By court order, a Chesapeake Bay TMDL (Total Maximum Daily Load) is to be developed and completed by May 1, 2011. The TMDL establishes the maximum load or "cap" of nutrients and sediments that can be discharged to the Bay from any source. Land use plans will be developed, and approved by EPA that limit loading below the cap.

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No growth will be allowed that causes loadings beyond the cap. This will significantly limit new or beginning agribusiness operations and place similar limits on expansion. In just the next six months, the loading targets and state implementation plans will be developed. There is no need to include the TMDL development in legislation. It is court-ordered. The outcomes are yet unknown to the Commonwealth and its stakeholders. And, codification would bypass the authority of our Virginia General Assembly.

The proposed legislation would also codify the "Chesapeake Bay Milestones" or two-year goals/initiatives established by each state and approved by EPA to achieve Bay restoration. In Virginia, proposals for the 2009-2011 two-year milestones include continued and expanded cost share funding, phytase additives in feed, mandatory nutrient management plans, mandatory fencing of streams, and a number of other measures. The Chesapeake Bay Milestones should not be codified because each state will individually establish them every two years and flexibility is certain to be critical.

Establishment of "citizen right of action" or civil suits is included in the proposed legislation. Whether intended to keep EPA engaged in restoration of the Bay or to hold up permits (both general and individual permits) this will bring economic growth to at halt. Civil suits cannot be codified because they will generate unnecessary suits that are simply intended to stop a project or prolong the issuance of permits.

We believe reauthorization of Section 117, Chesapeake Bay Program, of the Clean Water Act is important to continuing restoration activities. However, the Council opposes expansion of federal authority for this program. The Council supports giving the Commonwealth the greatest amount of flexibility in order to partner with our agribusiness industry to meet restoration goals in the most economic and effective manner.

We welcome the opportunity to discuss the proposed legislation and our position with you and your staff. Thank you for considering the interests of Virginia's number one industry – our farmers, foresters, and agribusinesses.

Sincerely,



Donna Pugh Johnson  
President