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BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

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Madame Chairwoman and Members of the Subcommittee:

My name is Bill Matuszeski and I served as Director of the Environmental Protection Agency's Chesapeake Bay Program from 1991 to 2001. I thank you for the opportunity to provide you with my perspective on current efforts to restore the Chesapeake Bay.

To use a sailing analogy, some believe the state-federal effort to clean up the Bay has hit the doldrums. If that is so, I would assert that it is probably due in part to the success of the cooperative effort to date. The sources of the problems of the Chesapeake have been identified, and what we learned in getting there has been useful to other estuaries around the nation and throughout the world. Beyond that, the solutions are well-known and widely accepted – to reduce nutrient and sediment loadings to the Bay and to manage its fisheries for sustainability. Loads have been estimated and reductions allocated to each river system. Tributary strategies have been completed. There is frankly little more we need to know about the Bay to know what actions to take.

The problem is that those required actions involve two words that public officials are loathe to use – "taxes" and "regulation". But the simple fact is that what needs to be done requires either public funds or the willingness to make others pay through regulation.

In some areas, we seem to have been able to get this point across. The major point sources of nutrients -- phosphorus and nitrogen – are sewage treatment plants already under the regulatory control of the states and EPA. Because there are already user fees in place for water and sewer services, paying to upgrade these facilities has been relatively easy to accomplish. To their credit, Maryland and Virginia decided early on to deal with the equity issue of the variable costs of upgrading plants with different existing systems by providing state funds as an equalizer. After an initial period of using the strictly regulatory route and encountering strong opposition, Pennsylvania now seems to be moving to a similar shared state/local cost approach. All this has produced good results and promise for more in coming years as upgrades of plants are completed.

In fisheries management, there are also encouraging signs of the willingness of state regulatory agencies to take needed action. The oft-told tale of the recovery of the striped bass after a moratorium on harvest is one example. And the recent actions by Maryland and Virginia to reduce crab harvests to protect the breeding stock were politically courageous. As we learn more about fishery interactions we will need to continue making these sometimes tough decisions. One is probably long overdue with respect to

the harvest of menhaden, which is removing the major food fish of the striped bass and probably leading to higher crab mortality. Interestingly, this decision is in the hands of the Federally-established Atlantic States Marine Fishery Commission, which has been much slower than the states to take obviously-needed action.

In other areas, the willingness to take on the task has been less evident. The other major sources of nutrients and sediment are air pollution (for nitrogen), stormwater and agriculture. And here we start to encounter real reluctance to make the "taxes or regulation" decision.

Air pollution is responsible for up to one-third of the nitrogen overload to the Bay. It comes from power plants, motor vehicles and farms (fans on chicken houses and volatilization from uncovered manure storage and manure spreading). The regulatory structure is in place to deal with this, but it has been ineffective in recent years. Nitrogen controls on power plants and autos have been held up in endless legal and administrative disputes. And no one wants to even look at the farm sources. In fact, whatever the outside forces preventing progress, the use of air pollution authorities to deal with the water pollution effects of nitrogen is crippled by the inability of EPA air bureaucrats to think very far outside their narrow air focus. Rather than see their water colleagues as allies in the battle to control nitrogen, they see them as irrelevant. So the solution here is leadership and making better use of the authorities already in place.

There is similar limited thinking going on with respect to stormwater, which is the only major pollution source to the Bay that is still increasing. EPA and the states have authority and issue regional permits to urban counties and cities to manage stormwater, but the permit requirements are generally vague, hortatory or "soft" efforts like education and public information. As more local TMDL's are produced, there are opportunities to tie the stormwater permits to the required pollution reductions, but there is real reluctance to do this at EPA and the states. Right here in the Anacostia, citizens have spent five years trying to get Maryland and EPA to agree to require Montgomery and Prince Georges Counties to reduce flows and peak flows to the River and its tributaries as part of the stormwater permits, and the jury is still out. Furthermore, there is an overemphasis in state stormwater programs on controls on new development, and not enough on the more important and more difficult issues of reducing flows from existing developed areas and from redevelopment projects. These are all problems that are solvable if EPA was willing to aggressively apply its existing stormwater provisions, and states and localities were willing to respond with programs to charge users and set up stormwater utility districts. But these are not politically popular actions, and there is not an informed-enough public to force them.

Finally, agriculture remains the single largest source of nutrient and sediment pollution to the Bay, despite the widespread efforts in recent decades to reduce loadings. States have been funding programs to assist farmers, and the recent Federal Farm Bill provides for the first time funds directed to the Chesapeake region. But the funding gap is still immense and the idea of regulating farmers remains anathema to many. It has been said that a USDA employee is someone who favors money to farmers to do what they are

already doing or what they would do if they thought about it. Within that mindset, we need to get more and more farmers to "think about it". But beyond this, we need to recognize that while federal regulation of farmers is not going to happen, there may be things states should start to consider. For example, if it is widely accepted that cover crops are a cost-effective way to reduce nutrient excesses in the soil of land used for rowcrops such as corn, and if the state has refused to provide adequate funding, are the only alternatives more money or more voluntary action by farmers? What if that does not get us what we need, and what if cover crops are the most cost-effective way to get there? I am simply saying that, now that Congress has acted to provide Federal funds, at some point further progress is going to require states to make the decision between taxes and regulation for agricultural management practices.

In conclusion, it seems to me that the issue for this Subcommittee and the Congress is not the need for new federal authority in the Chesapeake; it is assuring that Federal agencies are fully and properly using the authorities already in place. Much as EPA has used its point source permit programs with the states to make real progress in sewage treatment plant upgrades, we need to see the Federal executive branch use its authorities to manage interstate fisheries, to break the logjams and recognize the water pollution effects of nitrogen under the Clean Air Act, to assure that EPA is effectively using its stormwater authorities to get on-the-ground results, and to provide help to farmers under the new Farm Bill. Similarly, the state partners need to continue funding the treatment plant upgrades and making tough decisions on fisheries management, to develop innovative stormwater solutions, and to take on the task of making choices about taxes and regulation to get the results we need from agriculture.

Madam Chairwoman, the issues facing the Chesapeake Bay Program will require leadership to address, and I appreciate the leadership you have shown in calling this hearing. Thank you.