

Minutes

**CHESAPEAKE BAY COMMISSION**  
**Washington, DC**  
**May 6-7, 2010**

The Chesapeake Bay Commission held its second quarterly meeting on Thursday and Friday, May 6 and 7, 2010 in Washington, D.C.

The following Commission members and staff were in attendance:

Rear Admiral Mark Boensel  
Senator Mike Brubaker  
Delegate John Cosgrove  
Secretary Doug Domenech  
Representative Russ Fairchild  
Senator Brian Frosh  
Secretary John Griffin  
Senator Emmett W. Hanger, Jr.  
Secretary John Hanger  
Delegate Lynwood Lewis  
Delegate Scott Lingamfelter  
Senator Thomas "Mac" Middleton  
VA Citizen Representative John Reynolds  
Representative Mike Sturla  
PA Citizen Representative George Wolff  
Delegate John Wood, Jr.

Staff: Ann Pesiri Swanson  
Suzan Bulbulkaya  
Matt Mullin  
Marel Raub  
Paula Hose

Members not in attendance:

Delegate Virginia Clagett (proxy)  
MD Citizen Representative Bernie Fowler  
Delegate James Hubbard (proxy)  
Representative James Wansacz (proxy)  
Senator Mike Waugh (proxy)  
Senator Mary Margaret Whipple (proxy)

**Thursday, May 6, 2010**

**HOUSE CHESAPEAKE BAY TASK FORCE MEETING**

At noon, Commission members met with members of the House Chesapeake Bay Task Force for a working lunch in the Government Oversight Hearing Room, Room 2203 in the Rayburn Building. Lunch was hosted by Representative Chris Van Hollen of Maryland. Congressional members in attendance included: Senator Cardin, Representatives Holden, Holmes Norton, Perriello, Ruppertsberger, Sarbanes, Scott, and Van Hollen. Congressional staff from four Senators and sixteen House members were also in attendance, as well as committee staff members and members of the press. Discussions focused on the necessary steps at the federal and state levels to implement the state TMDL Watershed Implementation Plans (WIPs).

After Congressman Van Hollen’s welcoming remarks, Chairman Mac Middleton provided a brief overview and Ann Swanson, Executive Director of the Chesapeake Bay Commission, gave a presentation on the Chesapeake Bay TMDL and what is needed to achieve success. We have made great accomplishments thus far, however we still have a tremendous amount of work to do to achieve the nitrogen, phosphorous and sediment reductions needed for a clean Bay.

Next, the State Secretaries from Maryland, Virginia and Pennsylvania provided details on how their state has progressed in their WIP process and the specifics of their plans. Each provided their current working target loads, how they compare to 1985 loads, how each state plans to engage stakeholders and the general public, what the anticipated priority BMPs are and how each state plans to account for growth.

The following charts illustrate each state’s accomplishments so far in reducing nutrients and their working target loads for nitrogen and phosphorus. Shari Wilson, Maryland’s Secretary of the Department of Environment; David Paylor, Virginia’s Director of the Department of Environmental Quality; and John Hanger, Pennsylvania’s Secretary of the Department of Environmental Protection each testified on behalf of their state.

Maryland:

	1985	2009	Working Target Load
Nitrogen (M lbs/yr)	74.9	52.2	41
Phosphorus (M lbs/yr)	5.4	3.3	3

Virginia:

	1985	2009	Working Target Load
Nitrogen (M lbs/yr)	91.4	65.7	59.2
Phosphorous (M lbs/yr)	11.3	7.07	7.05

Pennsylvania:

	1985	2009	Working Target Load
Nitrogen (M lbs/yr)	135.2	103.2	73.6
Phosphorous (M lbs/yr)	5.1	3.7	3.2

After the state presentations, Commission members engaged in a very lively discussion with the Congressional Bay Task Force members. Building stronger and coordinated state/Federal partnerships will help to accelerate Bay restoration. The TMDL process will require a strong focus on efforts to clean up the Bay and all in the watershed will have to contribute. Federal funding and support will be key. It was recognized that efforts to clean up streams in the far reaches of the watershed will not only benefit local waters but also ultimately the Bay. Representative Sturla stated that developing, recognizing and incentivizing alternative technologies to manage stormwater and other sources of the Bay's pollution must be supported by the Congress. There are more cost-effective means to handle much of our antiquated infrastructure systems and we need to be creative in our thinking.

After the lunch meeting, the Chesapeake Bay Commission members divided into state delegations to attend individual meetings their Senators. The Maryland delegation met with Senators Cardin and Mikulski. The Pennsylvania members met with Senators Specter and Casey, and the Virginia delegation met with Senators Webb and Warner.

During the Commission's dinner on Thursday night, the two newest members of the Commission were recognized, Virginia Secretary of Natural Resources, Doug Domenech, and the new Virginia Citizen Representative, John Reynolds. Next, Secretaries Griffin and Domenech provided a brief status report on the bi-state effort to restore the blue crab population. Delegate John Wood, Jr., as the long-time chair of the Commission's Bi-state Blue Crab Committee, helped to set this restoration effort in motion through his early work with the BBCAC. Now it is estimated that over 658 million spawning-age crabs are present in the Bay; the highest level in over a decade and a huge improvement since we saw near-record lows just two years ago.

## **2010 GENERAL ASSEMBLY REPORTS**

With both Maryland and Virginia having concluded their legislative sessions for 2010, and with Pennsylvania being a year-round General Assembly, the members provided an update of what was accomplished in the two sessions and what is in store for PA. Senator Mac Middleton provided the update for MD, Senator Emmett Hanger gave the update for VA, and Senator Mike Brubaker shared what is on deck for PA. The following bills were discussed.

### **Maryland**

SB 278 / HB 474 Smart, Green and Growing – Maryland Sustainable Growth Commission

This bill, offered by the Administration, simply establishes the permanent, 30-member “Maryland Sustainable Growth Commission” and charges the body to look at Smart Growth patterns and options within the State. This new Commission is an extension of the existing Task Force on the Future for Growth and Development in Maryland, created in 2006 and set to expire on December 31, 2010. The new Commission will be comprised of experts from all sectors of Maryland’s workforce and will focus on policies and actions needed to grow sustainably.

SB 285 / HB 475 Smart, Green and Growing – The Sustainable Communities Act of 2010  
Another Smart Growth Administration bill, this legislation broadens the 14-year old Heritage Tax Credit program and re-titled the credit program as the “Sustainable Communities Tax Credit” as a way to support revitalization of existing urban infrastructure. The bill authorizes \$50 million over 3 years and expands access and eligibility to the tax credit program for communities that traditionally would not have qualified. The Heritage Tax Credit program has been an effective tax credit that has incentivized redevelopment of existing properties, thus potentially avoiding sprawl development that has been so costly and damaging to the health of the Chesapeake Bay.

SB 287 / HB 464 Maryland Clean Energy Incentives Act of 2010  
The measure simply extends a tax credit program that has offered a financial incentive needed for the growth of the renewable energy market and industry during the industry’s beginning stages. The bill takes a small step for the industry that will have a large impact on renewable energy growth and development within Maryland. A robust and sustainable renewable energy sector will have a direct positive impact on the water quality of the Chesapeake Bay.

SB 342 / HB 1191 Natural Resources – Oyster Poaching – Hearing  
Final Outcome: passed Senate; but no action taken by the House Environmental Matters Committee. This bill would have imposed stricter penalties for specified oyster fishing violations. An individual who commits an offense specified in the bill would have their license to catch oysters revoked. Department of Natural Resources would have to hold hearings to determine if the licensee knowingly committed an offense, and DNR would have to revoke the license if the offense was knowingly committed. It also restricts the person whose license has been revoked from using a tidal fish license issued to catch oysters or from receiving a transfer of a tidal fish license to catch oysters after revocation.

HB 98 Department Of Natural Resources – Tidal Fish Licenses – Transfer and Suspension  
The legislation clarifies that the Department’s existing suspension authority for tidal fish licenses and closes loopholes in the law. The legislation clarifies the law so that an individual who violates state or federal commercial fisheries law may not avoid a license suspension penalty by working on another tidal fish license.

## **Virginia**

SB 341 DCR to provide estimate of amount of land used for production agriculture under Land preservation tax credit. This bill requires the Department of Conservation and Recreation, in preparing its annual report on qualified Land Preservation Tax Credit donations, to provide an

estimate of the number of acres of land currently being used for "production agriculture and silviculture" that have been protected by conservation easements and that have onsite operational best management practices.

SB 346 Land conservation practices database. Requires the Secretary of Natural Resources, with assistance from the Secretary of Agriculture and Forestry, to establish and maintain a database of on-sight agricultural best management practices. The database is intended to document voluntary actions taken by the agricultural and silvicultural sectors and will (i) be uniform in content and format to applications in the other states of the Chesapeake Bay watershed, (ii) maintain the confidentiality of information, and (iii) use existing methods of data collection. By November 1, 2010, the Secretary of Natural Resources shall submit a report on the establishment of the database and associated costs and responsibilities for its long-term maintenance.

SB 345 Oyster restoration projects; authorizes Resources Authority to finance. This bill authorizes the Virginia Resources Authority (a bonding authority) to finance oyster restoration efforts undertaken by local governments.

SB 272 Procurement of Biodiesel by State Agencies. This bill requires the Department of General Services to establish guidelines for state agencies to purchase diesel fuel containing at least two percent biodiesel for use in on-road vehicles. There is an exemption if (i) biodiesel is not practically available or (ii) the cost exceeds the cost of unblended diesel fuel.

SB 623/HB 803 Income tax, corporate and individual; green job tax credit. This bill allows a \$500 individual or corporate income tax credit for the creation of "green jobs" paying an annual salary in excess of \$50,000 for taxable years 2010 through 2014. Each taxpayer is allowed a credit for up to 350 new green jobs. "Green job" means employment in industries relating to the field of renewable or alternative energies, including biomass and biofuels systems.

SB 678 Income tax credits; producing electricity primarily from agricultural livestock waste. This bill would allow individual or corporate income tax credits for an electric energy facility producing electricity primarily from agricultural livestock waste. The amount of the state tax credit would be equal to the amount of the federal Energy Credit.

HB 1135 Wastewater discharge permits; certain conditions for owner of sewage facility. This bill requires facilities treating domestic sewage with a discharge greater than 1,000 gallons per day and up to 39,999 gallons per day that have not begun the discharge of pollutants prior to January 1, 2011, to acquire waste load allocations sufficient to offset their nitrogen and phosphorus discharges.

HB 1290 Nutrient trading; Eastern Shore facility to acquire credits in Potomac & Rappahannock tributaries. Allows wastewater treatment facilities on the Eastern Shore to acquire nitrogen and phosphorus credits from facilities in the Potomac and Rappahannock tributaries. Currently, a permitted facility can acquire point source nitrogen credits, among other restrictions, from one or more permitted facilities in the same tributary.

HB 1221 Water Facilities Revolving Fund; loans for stormwater runoff controls. This bill allows the State Water Control Board to provide loans from the Virginia Water Facilities Revolving Fund to a local government for construction of stormwater best management practices to reduce or prevent pollution of state waters caused by runoff from impervious surfaces. However, under the bill, wastewater treatment facilities have the first priority in obtaining financing from the Fund.

HB 1220 Stormwater management regulations; changes effective date that establishes local program criteria. This bill delays the recently-approved stormwater management regulations that were to go into effect on July 1, 2010. The regulations, however, must be adopted within 280 days after the establishment of EPA's Chesapeake Bay-wide TMDL, but no later than December 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulations that would be necessary to comply with such TMDL.

## **Pennsylvania**

### **Passed**

SR 215 directs the Legislative Budget and Finance Committee to conduct a study of the costs of agricultural compliance with Pennsylvania's Chesapeake Bay nutrient and sediment reduction goals.

### **Pending**

SB 698 would establish the PA Farms to Fuels Initiative and provide incentive payments to farmers to support transition to a bioenergy crop. Funds would also be available to Conservation Districts to provide technical assistance to farmers during the transition (in Senate Appropriations Committee).

SB 884 would establish the Agricultural Land Conservation Assistance Grant Program within the Agricultural Area Security Law (in Senate Appropriations Committee).

SB 172 would allow local governments to exempt from local tax millage rate increases any land that has been preserved through a non-profit land trust for agricultural purposes. Current law only permits millage rate freezes for land preserved through the state farmland preservation program (in Senate Appropriations Committee).

HB 951 would provide additional property or income tax authority to local governments for the purpose of open space preservation (passed House, is in Senate Appropriations Committee).

Six bills have been introduced to authorize establishment of a severance tax for Marcellus Shale gas. They vary in how the proceeds would be allocated; with the General Fund, several existing state environmental programs, and local governments all proposed to receive varying percentages of the revenue.

SB 905, SB 997 and SB 1254 (in Senate Finance Committee)

HB 1489 (in House Environmental Resources and Energy Committee)

HB 2438 (in House Appropriations Committee)  
HB 2443 (in House Finance Committee)

SB 1092 would amend the Oil and Gas Act to strengthen well casing requirements to protect groundwater (reported from Senate Environmental Resources and Energy Committee, in Senate Appropriations Committee).

HB 1205 would amend the Oil and Gas Act to strengthen protections for landowners whose water supply is presumed to be impacted by well drilling activities (reported from House Environmental Resources and Energy and Rules Committees, in House Appropriations Committee).

HB 2213 would amend the Oil and Gas Act to increase bonding requirements for wells using hydraulic fracturing, expand the requirements for disclosure of chemicals used in hydraulic fracturing, and strengthen protections for landowners whose water supply is presumed to be impacted by well drilling activities (in House Environmental Resources and Energy Committee).

HB 2235 would impose a five year moratorium on the leasing of state forest land for Marcellus Shale exploration, drilling or production (reported from House Environmental Resources and Energy and House Appropriations Committees).

HR 729 would direct the Legislative Budget and Finance Committee to review the Commonwealth's laws and regulations governing the development of natural gas within the Marcellus Shale formation (in House Environmental Resources and Energy Committee).

### **Friday, May 7th**

#### **National Geographic Society Board Room**

Chairman of the National Geographic Society, Gilbert M. Grosvenor, welcomed the Commission to the National Geographic Headquarters Board Room. National Geographic has been at the forefront of many environmental issues over the years, and has demonstrated a strong focus on the Chesapeake, with the Chesapeake being covered by National Geographic more than any other region since the start of the publication.

Patrick F. Noonan, Chairman Emeritus of The Conservation Fund and Trustee, National Geographic, spoke to the Commission on the recent accomplishments of the Captain John Smith Chesapeake Trail. He also introduced next steps for the Trail and explained how it can be integrated into a number of other ongoing efforts within the same context -- connecting the Chesapeake to its great rivers where historic adventures occurred.

#### **The National Geographic Society**

##### ***Focus on the Chesapeake watershed***

Next Daniel Edelson, National Geographic's Vice President for Education and Executive Director for National Geographic's Education Foundation, and Kathleen Schville, Director of Program Development for the Education Foundation, addressed the Commission. They

presented some of the many great resources National Geographic's Education Foundation offers teachers around the watershed. National Geographic is world-renowned for their print and educational materials. This latest project, the Chesapeake Bay Fieldscope Project, engages communities within the watershed to focus on the land and water connection. School children would have meaningful watershed experiences by going out in the field to measure and collect scientific data and then enter it into a watershed wide database. The two main goals of Fieldscope are to provide an educational experience for students and to help them become better stewards of their environment. National Geographic hopes to reach every school in the watershed and every student in those schools. The Commission members will support National Geographic's outreach efforts and assist by helping to get information to the State superintendants of education.

### **CAPT. JOHN SMITH CHESAPEAKE TRAIL & TREASURED LANDSCAPES**

With the Capt. John Smith Chesapeake Trail management plan nearly complete, opportunities to realize the full potential of the Nation's first water-based National Historic Trail are taking shape. The Honorable Will Shafroth, Deputy Assistant Secretary for Fish, Wildlife and Parks at the U.S. Department of Interior, spoke to the Commission about the DOI's connection to the Trail and other similar efforts. A renewed and focused effort on land conservation is an incredible opportunity for the Bay restoration community to improve the health of the Bay. Mr. Shafroth explained that the DOI is a partner in supporting land conservation in the watershed. As a partner, they hope to work efficiently and creatively to leverage more and more resources. By pooling existing resources the states and Federal government can expand and enhance historical and cultural preservation and increase public access to our natural resources.

Next, the Commission was addressed by one of the Bay's most ardent supporters, Congressman Jim Moran, who represents Virginia's 8<sup>th</sup> District in Northern Virginia. As Chair of the Appropriations Subcommittee on the Interior and the Environment, some of the agencies under his purview include: the EPA, Department of the Interior and the National Forest Service. Congressman Moran has a long track record of protecting our nation's natural resources and our local national treasures. The Congressman challenged the Bay Commission to go beyond land conservation because much more is needed to turn the Bay around. Also, much more is needed to protect human health and the environment. The Congressman said that we need to invest more to protect our children's health and cleaning up our water is a good start. There are opportunities to clean up industrial farming operations and to improve on development of our lands. He stated that the Bay Commission has the wherewithal to mobilize the state legislatures to get the work done. Congress cannot do it without the states working side by side.

Chairman Middleton, together with Senator Brubaker and Delegate Cosgrove presented Congressman Moran with a CBC resolution. The resolution directs the Commission to work together with the Congress in conserving historic lands, increasing public access, improving educational opportunities, and increasing federal funding. The Commission will also work with the Chesapeake Conservancy to revise and update the 2001 CBC land conservation report.

Next, Charles A. Stek, Chairman, Chesapeake Conservancy/Friends of the John Smith Chesapeake Trail, spoke to the Commission on Secretary Salazar's Treasured Landscape Initiative. He also asked for Commission support to expand tourism, recreation and conservation

along the Trail and the Chesapeake's Great Rivers. Mr. Stek presented an action item to the Commission to support a \$10M appropriation for the Department of the Interior's budget that would support land acquisition. The Commission agreed to act, with one member objecting.

Lastly, David O'Neill, President of the Chesapeake Conservancy/Friends of the John Smith Chesapeake Trail discussed revising the Commission's 2001 report "Keeping Our Commitment: Preserving Land in the Chesapeake Watershed." The Commission's 2001 report was received with many accolades for clearly presenting existing state data and strategies in a user friendly format to be shared throughout the watershed. The Chesapeake Conservancy proposed updating this report with the Commission to take a fresh look at what the states have accomplished and what new programs have been enacted. Many previous land conservation goals have been met and new land conservation goals are currently being presented. These include the Chesapeake Bay Program's 2007 goal of preserving an additional 695,000 acres of forestlands, the President's Executive Order goal of two million acres, and Virginia's new goal of preserving another 400,000 acres. The Commission voted in favor of updating the report.

### **COMMISSION BUSINESS**

After discussing the Commission's next undertaking to report on land conservation, the roll was called by the Chairman. The minutes from the January 7<sup>th</sup> Commission meeting were adopted with amendments and the agenda was adopted as proposed. The Commission's FY 2011 Budget was also adopted as proposed.

### **CHAIRMAN'S UPDATES**

Chairman Middleton will be representing the Commission at the Chesapeake Executive Council (EC) Meeting in Baltimore on June 3. The federal government will be releasing its Executive Order Strategies on May 12. There will be seven reports with a strategy of 12 goals, including permanently conserving two million acres of land in the watershed, increasing public access to the Bay and improving water quality.

The 2011 Meeting Dates were approved: January 7; May 5 & 6; September 8 & 9; and November 3 & 4.

The meeting adjourned at 12:35 p.m.

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The next meeting of the Chesapeake Bay Commission  
will be held at the Marriott Lancaster at Penn Square in Lancaster, PA  
on September 9 & 10, 2010.