



**TESTIMONY
PRESENTED TO THE
SENATE ENVIRONMENTAL
RESOURCES AND ENERGY
COMMITTEE AND THE SENATE
AGRICULTURE AND RURAL AFFAIRS
COMMITTEE
REGARDING EPA CHESAPEAKE BAY
MANDATES**

BY

Joel Rotz, Senior Director

State Government Affairs

**Pennsylvania Farm Bureau
510 South 31st Street
Camp Hill PA 17001-8736**

October 18, 2016

Good morning. I am Joel Rotz, Senior Director, State Government Affairs for the Pennsylvania Farm Bureau. Pennsylvania Farm Bureau is a statewide general farm organization whose membership is comprised of nearly 63,000 family members. We would like to express our appreciation to both Senate committees for the opportunity to provide comments regarding the matters of meeting and financing the Chesapeake Bay Strategy.

Both state and federal officials have noted and documented the significant progress that Pennsylvania has made in reducing nitrogen and phosphorus pollution in the Bay Watershed, including pollution from nonpoint sources, over the past several decades and more recently during the time period that President Obama's Chesapeake Bay Executive Order has been in effect.

Significant progress has been made and continues to be made in Pennsylvania by nonpoint source sectors in reducing nutrient and sediment pollution, relative to years past. Evidence and study clearly show that progress has indeed been made. The question is rather whether the progress by stakeholders in the Bay Watershed has been "sufficient", as appraised by the particular components of "measure" being applied and the particular persons or entity that is applying that "measure."

The mandated segments and time frames for advancement of nutrient and sediment reduction per EPA's Chesapeake Bay TMDL – the requirements for each state and sector to reach full attainment of prescribed levels of nutrient and sediment reduction by 2025 and reach 60 percent attainment by 2017, as well as the requirements for Bay states and sectors to reach targeted levels of nutrient and sediment reductions in designated two-year intervals – are themselves arbitrary. And the reduction targets that have been designated for the Bay states and sectors by federal authorities are severely lacking in meaningful evaluation of practicality or financial capability of the Bay states or of local communities or landowners within these states to accomplish the targeted levels within timeframes and deadlines which federal authorities have selected.

An assessment recently conducted by Penn State University's Environmental and Natural Resources Institute (PSU-ENRI) estimates that to fully comply with EPA's pollution reduction mandates by the 2025 deadline, Pennsylvania will need to incur \$3.6 billion in total costs – or \$240 million each year – just for initial implementation nonpoint best management practices and infrastructure. In order to both implement and maintain such practices and infrastructure, PSU-ENRI estimates that Pennsylvania would need to incur \$378.3 million in costs each year through 2025.

In fiscal year 2014, total state and federal funding available to Pennsylvania for nitrogen, phosphorus and sediment pollution reduction programs statewide (not just the Bay Watershed) amounted to just \$146.6 million.

The estimates described above paint a very sobering picture of the gravity of economic challenge that Commonwealth faces today and in the near future in attempting to meet the demands asserted by EPA in its Chesapeake Bay TMDL. And they highlight the real need for much greater commitment of state and federal funding for environmental improvement programs in Pennsylvania's Bay Watershed than what is being currently provided.

Attempts by the Commonwealth to revise its administrative strategies do not seem to us to be patently unreasonable. And at least for the time being, the planned changes in strategy proposed by the Administration have averted the loss of federal funding that EPA has threatened to impose on Pennsylvania.

As you are likely aware, the Administration's revised strategy is comprised of six components:

- Efforts to demonstrate to EPA annual review of at least 10 percent of farms and nonpoint sources for compliance with state environmental law.
- Proactive effort to quantify and demonstrate to EPA the performance of best management practices being implemented on farms, which are likely not being recognized or given due credit under EPA's measuring system.
- Augmentation in commitment of state financial and technical resources to increase implementation of water quality improvement projects in the Bay Watershed, including the shifting of \$1.250 million in state water quality funding for implementation of low-cost, high-impact water quality projects.
- Significant upgrading of the Commonwealth's computer systems to facilitate source reporting of practices, data collection and transference of data to federal officials to ensure the Commonwealth's environmental efforts are being duly and timely credited in EPA's measuring criteria.
- Identification of regulatory and legislative measures that are necessary to meet the reduction goals required by EPA by 2025.
- Establish a DEP Chesapeake Bay Office to coordinate the Commonwealth's efforts to reduce nutrient and sediment pollution in the Chesapeake Bay Watershed.

While all of these components will likely have at least some impact on the future management of Commonwealth's administrative and regulatory function in the Bay Watershed, the first three components noted above will likely have a most significant impact on the future of farming and the future performance and management of agricultural production practices in the Watershed. Our remaining comments will primarily focus on these areas.

The Administration's revised strategy will first attempt to increase the Commonwealth's regulatory and enforcement presence among agricultural operations in the Bay Watershed in

order to achieve and confirm that farm operators in the Watershed are meeting state legal requirements. As we understand the revised strategy, the primary objective and focus of Commonwealth's increased inspection and enforcement efforts will be with respect to farmers' compliance with requirements for development and implementation of written farm conservation plans to control erosion and sedimentation loss and written manure management plans on farms generating or utilizing animal manure to control and manage potential risks of excess nutrient runoff in manure storage and land application.

The intended objective under the Administration's revised strategy is for at least 10 percent of farms in the Bay Watershed to be inspected each year for compliance with legal requirements for conservation and manure management plans, with pursuit of additional regulatory and enforcement measures where appropriate.

It is also our understanding that local conservation district staff will be primarily responsible for the increased inspection and follow up regulation activities to be employed on farms under the Administration's revised strategy. We would first note that the increased measures envisioned for conservation districts under the revised strategy is a progression in function of what DEP had originally envisioned in 2012 for conservation districts in Chesapeake Bay Watershed under DEP's Model Agricultural Complaint Response Policy.

The Model Policy essentially requires each conservation district in the Bay Watershed to perform additional inspections of farms for compliance with requirements to have and implement written soil conservation and manure management plans as a condition of eligibility for financial assistance grants for employment of technical personnel under the state's Chesapeake Bay program. The scope and timing of farms to be inspected by the district was complaint-driven, with the requirement for initial inspection of an individual farm being triggered when the district is contacted about a suspected pollution event or adverse environmental condition on that farm. If after initial inspection, the district determined that the farm was not meeting its legal requirements for written plans or viable implementation of plans, the Model Policy prescribed a three-step process for follow-up by districts and response by farmers to achieve compliance by the farmer within time periods identified for each step.

Each conservation district in the Bay Watershed was required by DEP to adopt DEP's version of the Model Policy or adopt a policy and procedure for inspection and follow-up review of farms to attain compliance with requirements for soil conservation and manure management planning that DEP considered to be "consistent" with the Model Policy in order to be eligible for state technician grants..

Development of the Model Policy had taken place over a period of approximately 10 months in 2001 and 2002. During that period, Farm Bureau leaders and staff continuously met with DEP officials and offered numerous amendments to the Model Policy in an attempt to establish a compliance process and timetable that acknowledged and is responsive to the serious lack of

technical and financial assistance available to farmers in development of soil conservation and manure management plans that were both environmentally effective and were financially feasible for farmers to implement and manage in a timely manner. While some of Farm Bureau's recommendations were incorporated into the final version of the Model Policy, many were not.

Throughout DEP's consideration of this Model Policy, Farm Bureau expressed to the Department our serious concerns over the significant change in role and administrative function that conservation districts were being compelled under the Model Policy to perform.

Traditionally, the role and relationship between conservation district staff and individual farmers has been one of advisor and consultant, with staff and farmers openly sharing information and collaboratively engaged in identifying areas where environmental management was inadequate and devising corrective and advanced measures for environmental improvement the farmer believed were practical and were economically feasible and district staff has been able to help farmers attain financial assistance for more complex and higher-cost environmental projects. The positive and personal rapport between conservation district staff and farmer has instilled optimism among farmers that meaningful environmental improvement projects can be undertaken without putting the farm and farm operation at drastic economic risk.

This positive relationship between conservation district staff and individual farmers has also fostered a high level of trust, with farmers more willing to share information about their operations and about conditions on their farms without fear or repercussions or consequences. Farm Bureau was concerned that the increased role in regulation and enforcement that conservation districts would be compelled to perform under the Model Policy would seriously erode the spirit of trust, collaboration and positive personal rapport that farmers and conservation district staff have traditionally held. In its place would be a spirit of mistrust, confrontation and obstruction, which commonly arises between enforcement officials and those targeted by regulation and enforcement.

Farm Bureau does not have specific data on the number of farms that have been subject to investigation and enforcement by conservation district officials pursuant to the Model Policy or similar policy adopted districts to maintain their eligibility for state grants. We highly suspect that the percentage of farms that will be annually targeted for inspection and follow-up under the Administration's revised strategy will be significantly higher than those that have been targeted under the Model Policy. We have even greater concerns that the positive and collaborative relationship that may still exist between farmer and conservation district staff will be critically undermined by the increased levels of inspection by conservation districts called for under the revised strategy, and erosion of this spirit may practically lead to greater hesitation by farmers to proactively pursue and implement conservation practices and a reduction, rather than increase, in the extent of conservation practices performed on farms overall.

We also have concerns with the diligence and fervor that Administration officials may expect conservation district staff to pursue in prompting or compelling individual farms to fully meet

requirements for soil conservation and manure management planning and implementation. The final version of the Model Policy developed by DEP established a rigid 3-step plan of administrative action by the conservation district, with specific limitations in time that each step of the plan was to be initiated and completed. The expected objective under the Model Policy was that a farmer would meet compliance requirements by 150 days from the date he or she was discovered by the district to be “out of compliance.”

A major concern by Farm Bureau with the Model Policy was the serious lack of flexibility in the process and the schedule of action prescribed and lack of discretion given to conservation district officials in responding to real and serious financial and technical impediments that farmers may face in attaining the degree of progress in farm planning development and implementation that the Model Policy would require them to make. In response, Farm Bureau drafted and proposed for DEP’s review and consideration alternate provisions to the Model Policy that we believed were reasonably responsive to the economic and climate uncertainties that farmers commonly face, but still charted a definitive course for a farmer out of legal compliance to achieve compliance in a more limited timeframe.

While officially rejecting inclusion of Farm Bureau’s alternative provisions, DEP officials did acknowledge that if conservation districts in the Bay Watershed decided to adopt and conduct their compliance program in accord with Farm Bureau’s alternative policy provisions, the district would be considered to be acting “consistently” with DEP’s Model Policy, and would remain eligible for state Chesapeake Bay program funding.

Without going into specific detail, we also believe it is important to point out to the committees that Pennsylvania farmers have been experiencing dismally low prices for more than a year on many of the major commodities produced in the Commonwealth. We are hearing anecdotally from numerous farmers that they are at serious financial risk of terminating their farm operations.

We are not entirely sure at this point of the lengths that conservation district officials may be required to go to in carrying out their responsibilities to invoke a “culture of compliance.” But hope that in carrying out their responsibilities in the revised strategy, conservation staff will be given the flexibility and latitude to make reasonable and workable adjustments in demands and schedule for farmers to meet those demands that will provide a culture of human empathy and compassion as well.

We would note that attainment of total compliance of farms in the Bay Watershed with state legal requirements for development and implementation of written soil conservation and manure management plans has been a key objective of Pennsylvania’s approved Watershed Implementation Plan for agriculture in Phase 1 of EPA’s TMDL. We would also note that at public presentations offered before the agricultural community, EPA has acknowledged that even if Pennsylvania’s agricultural sector would fully attain the standards for legal compliance in

production practices, the resulting reduction in nutrient and sediment pollution would not reach the pollution reduction goals that the Bay TMDL requires the agricultural sector to reach by 2025, according to EPA's own estimates and analysis. This is a disturbing conundrum for those 33,600 Pennsylvania farmers in the Bay Watershed who are struggling to determine a course of action that will provide them some reasonable confidence that the future function and existence of their farms will not become extinguished by future "changes" to federal or state regulatory standards or administrative strategies that will apply to the Bay Watershed.

The Administration's revised strategy also attempts to engage the Commonwealth in a more proactive effort to facilitate reporting of those best management practices actually being performed by Pennsylvania farmers that have been proven to provide measureable impacts in improving water quality in the Chesapeake Bay and to advocate for the inclusion and crediting of reported practices in EPA's assessment of achievement of water quality by Pennsylvania's agriculture sector in the Bay Watershed

More specifically, DEP and the Department of Agriculture have recently teamed up with Penn State University and agricultural organizations in the development of a program that reaches out to farmers in the Bay Watershed and provides them an opportunity to report by survey all of those practices recognized in the Bay Model as improving water quality and to do so in an atmosphere that protects them from adverse consequences from their participation. And it is our understanding from engagement of the Secretaries of Environmental Protection and Agriculture in the development of this survey project that the Administration will take assertive action with EPA to have results of agricultural best management practices reported and statistically verified under the survey's procedures to be included and credited in EPA's Bay Model and EPA's overall evaluation of achievement of nutrient and sediment pollution reduction by Pennsylvania's agricultural sector in the Bay Watershed.

Farm Bureau welcomes this feature of the revised strategy, and strongly supports the Commonwealth's effort. Farm Bureau firmly believes that EPA's current administration and methodology for computing and crediting best management practices fails dramatically to capture and credit a multitude of best management practices that Pennsylvania farmers are performing of their own volition, without receipt of public grants or other form of public financing. And for years, EPA officials have flatly rejected attempts by the agricultural sector to provide a feasible methodology for recognition and crediting of reported agricultural best management practices that would allow verification by persons other than a "qualified" government official or allow a crediting of pollution reduction for reported best management practice on any acre of farmland in which the "qualified" official has not personally inspected and verified the practice is actually performed.

The Commonwealth's engagement in this survey and this overall endeavor to spotlight and attain due recognition of Pennsylvania agriculture in the performance of voluntary best management practices are significantly positive steps, and we hope the Administration will be strongly

committed in its completion and the procurement and proper crediting by EPA of those practices reported by Pennsylvania farmers through this survey.

The Administration's revised strategy is also proposing greater commitment of state funding for water quality improvement projects in the Chesapeake Bay Watershed – more specifically, a diversion of \$1.250 million in state funds for implementation of low-cost, high-impact agricultural and stormwater water quality improvement projects. Every additional dollar of public funds that is committed to helping farmers, landowners, businesses and communities in the Bay Watershed to manage the financial challenges of implementing water quality improvement practices and infrastructure is certainly welcome, but the level of state funding being diverted under the revised strategy will, in our opinion, have little real impact in timely or meaningfully advancing Pennsylvania toward the pollution reduction goals that EPA has mandated for the Commonwealth. When considering the dramatic disparity between the costs that must be incurred to implement the type and number of projects needed for Pennsylvania to fully and achieve the pollution reductions required under EPA's Bay TMDL and the level of public funds actually available to financially assist these projects is a proverbial drop in the bucket.

Farm Bureau believes it is critical to the future well-being of farmers, business owners, landowners, local communities and local taxpayers and ratepayers in the Bay Watershed that both the Administration and the General Assembly seriously consider and adopt a viable plan for enhanced commitment of state funds at levels that will provide citizens and local officials in the Bay Watershed a more realistic opportunity to financially manage the mammoth future cost challenges they face in meeting the water quality demands imposed by EPA in the Bay TMDL. The private sector alone cannot feasibly finance the types and numbers of projects that are estimated to be necessary for Pennsylvania to reach its reduction goals within the timeframe commanded by EPA.

The Commonwealth must work smarter in directing committed funds in a way that will provide the most efficient use and management of public funds reasonably possible relative to the degree of environmental benefits to be attained. One component that we believe to be highly important and that seems to be missing in the Administration's revised strategy is a more concerted effort to evaluate and identify programs, projects and areas in the Bay watershed that provide the opportunity for the highest reduction in nutrient or sediment reduction per each dollar of financial assistance committed.

More recent studies by Penn State University and others are providing greater awareness to the public that the one-size-fits all regulatory approach taken by EPA in the Bay Watershed is not just practically unworkable but also very inefficient in managing costs or directing the effective utilization of public funds, and that other alternatives to EPA's approach will provide both greater environmental benefit and greater efficiency in management of project costs and public financing. Not only should a much greater level of funds be provided for financial assistance,

Farm Bureau believes it important for the Commonwealth to complete a thorough evaluation of relative cost needs in the Bay Watershed and devise a coordinated plan that will create, manage and direct funds in a manner that provides the highest level of environmental benefit per dollar of financial assistance provided.

Again, Farm Bureau thanks the committees for the opportunity to share with you our views. I would be happy to respond to any questions that you may have.