CHESAPEAKE BAY COMMISSION 2013 Policy for the Bay

OUR WORK

The Chesapeake Bay Commission is a tri-state legislative commission created in 1980 to advise the General Assemblies of Maryland, Pennsylvania and Virginia on matters of Baywide concern. Twenty-one members define the Commission's identity, determine its direction and share its workload. Fifteen are state legislators, three are cabinet-level secretaries representing their governors, and three are citizen representatives. The full range of urban, suburban and rural life enjoyed in the watershed is represented on the bipartisan Commission, with each member contributing his or her unique perspective, knowledge and expertise.

The Commission's charge is to address the breadth of issues and policies that take into account the pollution sources, land uses, and human impacts that threaten the health of the Bay watershed, a 64,000-square-mile area spanning six states, our nation's capital and 1,800 local governments. Commission members craft and secure passage of laws and policies that must balance many ecological, societal and economic concerns.

The Commission is one of six signatories to all of the Bay Agreements as a member of the Chesapeake Executive Council, the governing body of the multi-state Chesapeake Bay Program. The successes to date in restoring the Chesapeake Bay have resulted in no small part from the three Bay Agreements, and the Commission has had the privilege to serve in a leadership role in the adoption and execution of each of them.

With a new Agreement pending in 2014, there is wisdom in taking the time to examine the successes that were inspired by the past agreements in the hopes that a new Agreement will similarly propel actions that shape and accelerate the restoration of the Chesapeake Bay and its watershed well into the future.

OUR MEMBERS

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MARYLAND HOUSE OF DELEGATES

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MARYLAND STATE SENATE

The Hon. Thomas McLain "Mac" Middleton
MARYLAND STATE SENATE

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MARYLAND HOUSE OF DELEGATES

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(Served January through May)
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(Served May through December)
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SENATE OF VIRGINIA

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VIRGINIA HOUSE OF DELEGATES

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NAVAL LIAISON

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Rear Admiral Dixon R. Smith
(Served September through December)

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SENATE OF PENNSYLVANIA

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The Hon. Chris Abruzzo
(Served April through December)
PA. SECRETARY OF ENVIRONMENTAL PROTECTION

The Hon. G. Warren Elliott
PENNSYLVANIA CITIZEN REPRESENTATIVE

PHOTO: STEVE DROTER

Chesapeake Bay Commission members, staff and alumni gather among 300 celebrants at the Alliance for the Bay's 2013 Taste of the Chesapeake gala.

OUR NEXT CHALLENGE: PHOSPHORUS

Since the signing of the 1987 Agreement calling for a 40 percent reduction in nitrogen and phosphorus, the Chesapeake Bay Program has focused many regulatory, legislative, and funding decisions on this goal. The good news is that the Program has achieved measurable success. Water quality conditions have improved, with monitoring results showing significant progress in reducing nitrogen and phosphorus. Sewage treatment plant upgrades, the phosphorus detergent ban, agricultural conservation practices and many other actions have made a big difference.

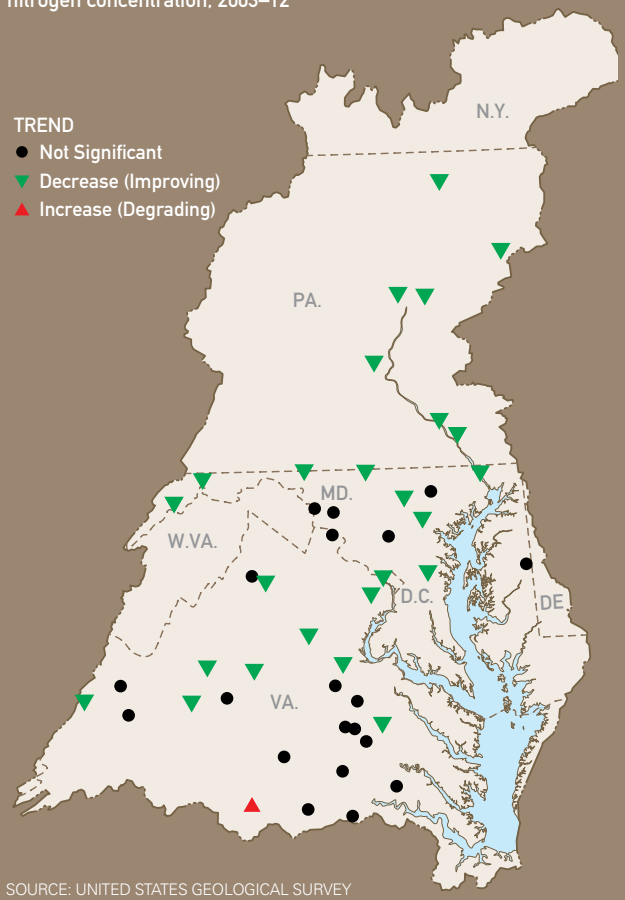
But when it comes to phosphorus, monitoring and modeling results indicate that our success over the past 27 years is being threatened by the trends of the last ten – over this past decade, phosphorus has either ceased to continue its downward trend or has increased. USGS monitoring results show that nitrogen has continued its downward course. Phosphorus has not. (See maps below.)

Science has established that two components of the problem with phosphorus are the increasing amounts of urban stormwater and the presence of phosphorus-saturated soils. Stormwater is the only growing source of pollution in the Bay watershed. It and manure are among the highest contributors of phosphorus. With manure, while the phosphorus from it often binds to soil and other particles, thereby restricting its movement, new science concludes that there are limits to this binding capacity. When soil is saturated with phosphorus, the phosphorus becomes more mobile. Bottom line: our current practices and priorities are not sufficiently addressing the legacy of phosphorus from manure that now burdens many farm fields.

In 2013, the Commission identified stormwater and manure among its highest priorities. We cannot slide backward when it comes to reducing phosphorus pollution. We have come far, but we have further to go.

NITROGEN: IMPROVEMENT EVIDENT

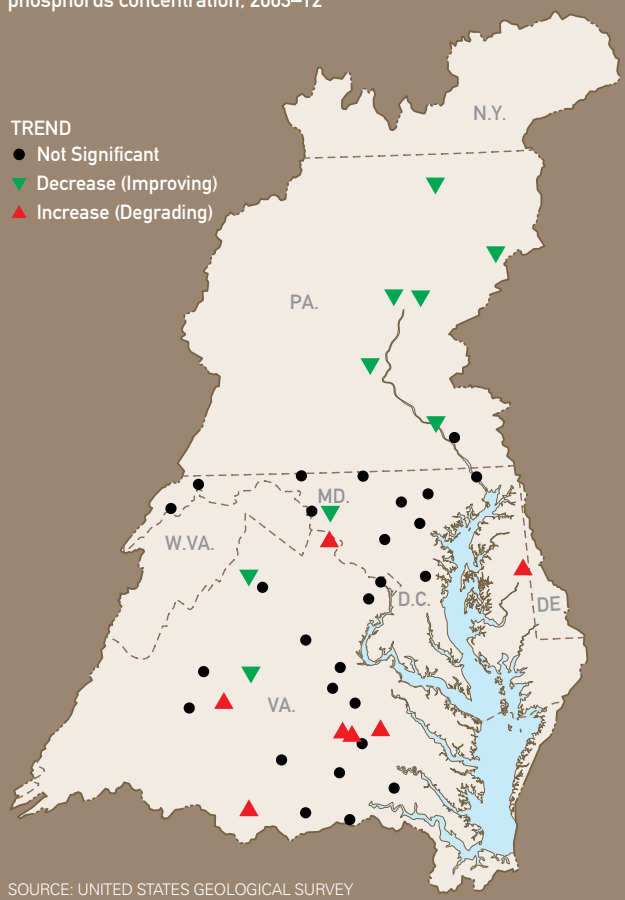
Short-term trend in flow-adjusted total nitrogen concentration, 2003–12



SOURCE: UNITED STATES GEOLOGICAL SURVEY

PHOSPHORUS: WORK REMAINS

Short-term trend in flow-adjusted total phosphorus concentration, 2003–12



SOURCE: UNITED STATES GEOLOGICAL SURVEY

THE COMMISSION, THE

In 1978, Congress directed the EPA to conduct an in-depth study of the Chesapeake Bay. It triggered the largest, most comprehensive ecosystem restoration effort in the nation, one that would ultimately bring six states, the Chesapeake Bay Commission, the District of Columbia, and twelve Federal agencies together as the "Chesapeake Bay Program." Since then, three unprecedented Bay Agreements have guided the Program's actions. In 2014, the Program will add another chapter to the Chesapeake restoration story with the signing of a fourth Agreement.

The Chesapeake Bay Commission was created in 1980 following an interstate legislative study, three years before the creation of the Program in 1983. Recognizing the interstate nature of the Bay and its challenges, the states of Maryland and Virginia saw the need for a state-focused, policy-making body to act upon the EPA study's recommendations. Formed by parallel legislative action in the two states, the Commission has worked since 1980 with its state, Federal and local government partners to identify key Chesapeake Bay and watershed restoration opportunities requiring intergovernmental collaboration and legislative action. The Commission's role and effectiveness were amplified when Pennsylvania joined in 1985.

The Commission's earliest actions focused on reciprocity laws governing commercial fisheries. This was but the tip of the iceberg. Upon the issuance of the EPA study, the Commission co-sponsored a conference at George Mason University on December 5, 1983. It was there that the Chesapeake Bay Program was born. The Commission's foresight in organizing a politically broad-based conference in partnership with the states, EPA and the Alliance for the Chesapeake Bay led to the groundbreaking 1983 Bay Agreement, signed at the conference, creating the Chesapeake Executive Council and launching the nation's most prominent and successful ecosystem restoration initiative.

BAY AGREEMENTS AND THE

1983 CHESAPEAKE BAY AGREEMENT

Focus: Purpose and Governance

The congressionally funded, $27 million, five-year EPA study to analyze the Bay's rapid loss of wildlife and aquatic life identified excess nutrient and sediment pollution as the main source of the Bay's degradation. As the study headed toward its conclusion, the attention of all parties turned to a central question: What would governments do to protect and restore the Bay and how would they manage that process?

The original Bay Agreement answered that question. With its signing on December 5, 1983, the Agreement committed the signatories — Maryland, Virginia, Pennsylvania, the District of Columbia, EPA and the Chesapeake Bay Commission — to work cooperatively, across jurisdictional boundaries, to manage and reduce pollution entering the Bay as well as to protect the Bay's habitat and living resources. A simple one-page document, it was oriented to management matters, calling for the establishment of the Chesapeake Executive Council, the governing body of the new multi-jurisdictional effort; the establishment of an Implementation Committee, which over time would become the heart of the "on-the-ground" work; and the maintenance of an EPA liaison office in Annapolis, designed to ensure the ongoing investment of the Federal government in the initiative and to provide support to the Council and the Committee.

1983 Chairman Sen. Joseph V. Gartlan, Jr. (Va.)

This initial agreement would define the Chesapeake Bay Program efforts for the first four years. It would also trigger Pennsylvania's General Assembly to join the Chesapeake Bay Commission in 1985 as a full partner; its House and Senate members had already been monitoring the Commission's work for at least three years.

During those formative years, each signatory to the Agreement returned to its home turf to address water quality, habitat, and living resource issues raised by the EPA study. What we now consider basic and ordinary environmental laws and programs were the result. At the time, however, they were revolutionary: new state sediment and erosion control laws; sewage treatment plant upgrades; Maryland's Critical Areas Law and the beginnings of Virginia's Chesapeake Bay Preservation Act. Most significant, however, was the addition of Section 117 to the Clean Water Act in 1987, which specifically acknowledged the national importance of the Chesapeake Bay and efforts to restore it.

LEGISLATION ARISING FROM THE 1983 AGREEMENT

PENNSYLVANIA

Agricultural Non-point Source Abatement Program ('84)
Agricultural Cost-Share Program ('85)

MARYLAND

Critical Areas ('84)
Sediment & Erosion Control ('80, '84)
Phosphate Detergent Ban ('85)
Rockfish Moratorium ('85)
Stormwater Control Act ('82-'86)

VIRGINIA

Water and Sewer Assistance Authority ('86)
Water Facilities Revolving Fund ('86)
Erosion and Sediment Control ('86)
Dredged Material Use Priority ('87)
Phosphate Detergent Ban ('87)

1987 CHESAPEAKE BAY AGREEMENT

Focus: Measurable, Time-Specific Outcomes

By 1987, it was clear that the restoration of the Bay required a more clearly defined set of goals and objectives, rather than a mere general commitment to cooperative management. Thus, the 1987 Chesapeake Bay Agreement marked a significant expansion from the brief declaration of purpose and governance signed in 1983 to a goal-oriented framework of interstate policy to drive very specific, meaningful and measurable targets and timeframes. The new pact included 32 specific commitments and, in almost all cases, deadlines for achieving those commitments.

This new Agreement re-defined the roles for the states and Federal agencies, forging a partnership within the Program that necessitated greater shared regulatory and legislative actions. With six broad categories of focus

LEGISLATION THEY INSPIRED

The Chesapeake Bay Commission is unique in the world of conservation policy-setting bodies. It is comprised primarily of legislators focused on a common goal to conserve the Bay through enactment of strong, scientifically-based and economically-sound laws and regulations. The work of the Commission and its members has been guided by all three Bay Agreements and the aspirations, goals, and policy directives set forth in each. As a result, the Commission and its members have historically played, and will continue to play, a pivotal leadership role in Maryland, Pennsylvania and Virginia to protect and restore the Bay.

2013 Chairman Delegate Maggie McIntosh (Md.)

Listed here, organized by State and Agreement date, are some of the most important pieces of legislation enacted in support of Chesapeake Bay restoration. The Commission is proud of its role in crafting and supporting passage of these legislative achievements.

(water quality, living resources, public access, population growth and development, public information and education, and Program governance), the most notable commitment was to reduce nitrogen and phosphorus entering the waters of the Bay by 40 percent by the year 2000. Agreeing to numeric goals such as the 40 percent reduction, with specific deadlines, was unprecedented in 1987, but has since become a hallmark of the Program.

1987 Chairman Rep. Kenneth J. Cole (Pa.)

Five years later, recognizing the need to move beyond the Bay itself to achieve the 40 percent reduction, the Program adopted a set of amendments, drafted by the Commission staff, to the 1987 Agreement. These amendments moved the restoration effort watershed-wide, establishing the critical commitment to reduce nitrogen and phosphorus by 40 percent in the Bay's largest tributaries by 2000, and to cap those nutrients upon achieving the reduction. This new "tributary strategy" approach led to the creation of river-specific clean-up plans and load reduction goals specific to sub-watersheds across the states of Pennsylvania, Maryland, Virginia and the District of Columbia. For the first time, the Program recognized that the restoration of the Bay was a "sum of its parts."

In spite of the best efforts of the Program partners, the achievements of the 1987 Agreement were mixed. Without question, the Agreement and amendments spawned a wide array of legislation at the state and Federal level. However, when 2000 arrived, the waters of the Chesapeake were still receiving too many nutrients. The 40 percent goal remained unmet.

LEGISLATION ARISING FROM THE 1987 AGREEMENT

PENNSYLVANIA

Farmland Preservation Program ('89)
Phosphate Detergent Ban ('89)
Agricultural Nutrient Management ('93)
Growing Greener I ('99)
Environmental Education ('93)

MARYLAND

Agricultural Nutrient Management ('88)
Sewage Treatment Plant Compliance ('90)
Forest Conservation ('91)

Smart Growth ('97)
Blue Crab Targets and Thresholds ('99)

VIRGINIA

Nutrient Management Certification ('94)
Blue Crab Fishery Management Plan ('95)
Water Quality Improvement Act ('97)
Poultry Waste Management Act ('99)
Land Conservation Fund ('99)

CHESAPEAKE 2000

Focus: Broad-based Precursor to the TMDL

The new millennium was more than a symbolic opportunity for a renewed commitment to Chesapeake Bay. Judicial action in 1999 led the Program to consider, adopt and embrace the most ambitious of agreements in 2000. Known as Chesapeake 2000 (C2K), it was the most comprehensive agreement to date, and committed the partners to an aggressive strategy for future restoration actions. In response to overtures from the Program partners, the Commission took the lead in drafting this precedential agreement.

Chesapeake 2000 established five broad goals and an ambitious set of 102 commitments to reduce pollution, restore habitats, protect living resources, promote sound land use practices and engage the public in Bay restoration.

Most important was the water quality section, which became the dominant driver for the next decade. Poor water quality resulting from excess nitrogen, phosphorus and sediment had led portions of the Bay to be listed as "impaired" under the Federal Clean Water Act. Collaborative actions to generate cleaner and healthier waters in order to remove the Bay from this list became the primary focus of C2K. And, in an unusual recognition by the Program partners, the Agreement acknowledged that if the Program was unsuccessful in removing these waters from the "impaired waters list" by 2010, as required by a judicial consent decree, the Federal government would develop a clean-up plan known as a Total Maximum Daily Load, or TMDL.

To accomplish this task, C2K contained a series of clearly defined steps. First, the Program would define the water quality conditions necessary to protect living resources. Then, the Program would identify pollutant load reductions for nitrogen and phosphorus for each major tributary. Finally, the state signatories and the District would adopt the legislative and regulatory elements necessary to achieve these reductions and determine when water quality goals had been met.

Because the loadings of nutrients and sediment came not just from the signatory states and the District of Columbia but also from Delaware, New York and West Virginia, the water quality commitments of C2K led the Program to seek the engagement of those three "headwater states." By 2002, all three had officially joined the Program's water quality restoration efforts through a memorandum of understanding. Though these states were not signatory members of the Executive Council, the Program, with its history of inclusivity, invited them to participate in all Program efforts.

2000 Chairman Senator Bill Bolling (Va.)

C2K drove significant restoration gains in key areas, such as land conservation, forest buffer restoration, and fish passage reopening. In the legislatures of the Commission member states as well as Congress, C2K provided the basis for the Commission's partnership work on legislative initiatives that funded sewage treatment plant upgrades, installed advanced septic systems, incentivized land preservation, and garnered never-before-seen levels of Federal dollars for agricultural conservation practices.

By the year 2008, however, it became clear that in spite of the myriad of initiatives designed to reduce the loads of nitrogen and phosphorus pollution, the Program would not succeed in removing the Chesapeake Bay and its tidal tributaries from the "impaired waters list" by the 2010 deadline. The Executive Council members, along with the headwater states, agreed to the development of a Federal TMDL.

LEGISLATION ARISING FROM CHESAPEAKE 2000

PENNSYLVANIA

Growing Greener I Funding ('02)
Water & Wastewater Treatment Bond ('04)
Manure Hauler & Broker Certification ('04)

Growing Greener II ('05)
REAP (Transferable Ag Tax Credit) ('07)

MARYLAND

Bay Restoration Fund ('04, '12)
Bay and Coastal Bays Trust Fund ('07)
Lawn Fertilizer Restrictions ('11)
Stormwater Utilities ('12)
Septic Tanks ('09, '12)

VIRGINIA

Land Preservation Tax Credit ('00)
Nutrient Credit Exchange ('05)
Major Point Source Upgrades ('05)
Crab Dredging Ban ('08)
Lawn Fertilizer Restrictions ('12)

TWO-YEAR MILESTONES

Focus: Short-term Accountability

To help accelerate the implementation of the water quality elements of C2K and the impending TMDL, the Program partners in 2009 adopted a short-term strategy for evaluating success. Called milestones, this elegantly simple strategy committed the seven Bay jurisdictional partners to set and meet two-year incremental goals. Assessment and re-evaluation would occur every two years, allowing the Program and the public to see, understand, and critique progress. These milestones would also provide the Commission with windows of opportunity by identifying initiatives that required policy attention.

2014 CHESAPEAKE BAY AGREEMENT

Focus: Full Watershed Representation and Adaptive Management

With the adoption of the Federal TMDL at the close of 2010, the Bay Agreements took a back seat to the water quality efforts defined by the TMDL. Implementation of the TMDL led the Program in 2013 to consider the next chapter of the broader restoration effort. Since the signing of the first Bay Agreement, the Program had accomplished much. While population in the watershed has doubled, nitrogen and phosphorus loads have been reduced by almost half. New management schemes for fish and shellfish — systems identified in the agreements — are in place. Fully 20 percent of the watershed's landscape is conserved and many of the region's waste treatment plants are "state of the art."

A new Chesapeake Bay Watershed Agreement is now a work in progress. With the TMDL governing the water quality goals and actions of the Program partners, the draft agreement looks to other priorities: oysters, crabs, forage fish and wetlands, for example. But what distinguishes the proposed new agreement from all others is its embrace of the concept of adaptive management and the expansion of the formal partnership.

To achieve the former, the Agreement creates a set of principles for the Program that the partners will employ through a series of "management strategies." The Agreement's commitment language allows these strategies to evolve over time as conditions and circumstances change. To achieve the latter, the headwater states are expected to join as full signatory members, and special consideration will be given to local governments and their important role in implementation.

With these changes, the Commission encouraged a discussion on governance, challenging the Program to define clearly the rules of engagement. With flexibility a hallmark of the new agreement, how will decisions now be made? How will goals and outcomes change in response to changing environmental, cultural and economic conditions? Will new levels of transparency and verification also be hallmarks of this agreement?

In 2014, with the anticipated signing of a new Agreement, the Program will plot a renewed trajectory for the restoration of the Bay and the rivers and streams that feed it. Challenges remain. As we have done since 1980, the Chesapeake Bay Commission will face these challenges with a team of legislators and staff committed to a healthy and vibrant resource, and will continue to play a critical role in the restoration of this vital and incomparable estuarine ecosystem.

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Chesapeake Bay Commission
Policy for the Bay

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