

November 9, 2009

Senator Benjamin L. Cardin
Chairman, Subcommittee on Water and Wildlife
U.S. Senate Committee on Environment and Public Works
509 Hart Senate Office Building
Washington, DC 20510

Senator Mike Crapo
Ranking Member, Subcommittee on Water and Wildlife
U.S. Senate Committee on Environment and Public Works
239 Dirksen Senate Office Building
Washington, DC 20510

Senators Cardin and Crapo,

We write today in regards to S. 1816 and as part of the November 9, 2009 Water and Wildlife Subcommittee hearing, "Great Body Water Legislation." We ask that you carefully consider the broad implications of this legislation for production agriculture and the important role our industry will play in assuring water quality.

This legislation subjugates state and local actions to the approval of federal authority through the Environmental Protection Agency (EPA). Our producers and members are concerned about the requirements established by this legislation with little or no consideration to economic impact or future growth. By codifying the May 2009 Executive Order, S. 1816 would establish broad and undefined new authorities for the U.S. Environmental Protection Agency (EPA) and other federal agencies. Many of the reports required by the Executive Order are still being drafted and not yet publicly released. Language in this bill significantly expands EPA authority to include withholding state funds, withholding current and new permits, superseding state and local programs and other measures. We believe codifying the Executive Order cedes the legislative process to the executive branch and establishes questionable authority, particularly since the administration's proposals are still being developed.

This proposed legislation also codifies already court-ordered Total Maximum Daily Loads (TMDLs) while shortening the process for TMDL completion. The TMDL process, which includes 92 TMDL's throughout the watershed, is the most complicated TMDL process ever undertaken by EPA and is only given 8 months to complete according to S. 1816. In addition, the current nutrient trading or offset program would be rendered worthless. Because of the strenuous baseline cap established by EPA through the TMDLs, less than 10% of the agricultural acres in the watershed would be eligible to participate in offsets. Additionally, certain agriculture sectors will mostly likely need to buy offsets to update or expand their operations. Without adequate time and science to effectively evaluate the TMDL process, S. 1816 will impose burdensome regulations and penalties before procedures and practices for efficiently achieving desired water quality goals are defined.

Along with the Executive Order, the Chesapeake Bay Program announced two year milestones with which to track TMDL progress through 2025 -- the estimated duration of full Chesapeake Bay

restoration. Currently, milestones have only been drafted through December 31, 2011 which leaves approximately 14 years of unknown regulations that would be codified by S. 1816. In addition, this legislation carries strong penalties such as a 90 day period to correct any missed two year milestones. In the case of production agriculture, this penalty leaves no room for weather problems or delayed harvest which is a common challenge. This lack of flexibility demonstrates the absence of economic impact evaluation for the agricultural sector.

In addition, this language also exposes family farmers to potential citizen action lawsuits both through the permit process and by establishing mandatory regulations. In respect to water quality, agriculture is the Chesapeake Bay watershed's most effective and efficient land use; however, farmers would bear such significant economic hardship from S. 1816 that many farms would be sold into less desirable, detrimental land uses. We believe this type of approach will not achieve desired water quality benefits because it seeks to penalize production agriculture -- the very industry that stands to provide the most benefit to the Bay. Agriculture is the watershed's top economic industry and the only non-point sector that has consistently made progress toward water quality goals over the past decade.

While efforts to improve the Chesapeake Bay are critically important, achieving water quality must be a cooperative partnership instead of cumbersome regulations. With extremely diverse agriculture inside the Bay watershed, no "one size fits all" approach will work. Flexibility and voluntary measures are key to successful water quality programs.

While many changes could be made to this legislation, we believe sufficient scientific information is not in place to support S. 1816. It has been acknowledged and proven that the Chesapeake Bay Model operates from incomplete information, and production agriculture has produced numerous examples of currently implemented farm conservation practices that have not been counted or included in the Chesapeake Bay Model's current process. Without complete information or current science, this current proposal is unwise for Bay health and economic growth.

There are some positive aspects included in S. 1816 such as data protection and technical assistance. However, these measures are pale in comparison to the unintended consequences and broad implications of this bill. We ask the Water and Wildlife Subcommittee to reauthorize the Chesapeake Bay Program without substantive changes in order devote adequate time and science to develop creative ways for economic recovery and growth to coexist with water quality goals and initiatives. We welcome any opportunity to continue working with the subcommittee to achieve improved water quality in the Chesapeake Bay and thriving farming operations throughout the region.

Sincerely,

Maryland Grain Producers Association
National Association of Wheat Growers
National Corn Growers Association
New York Corn Growers Association
Virginia Grain Producers Association