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PA Senate Bill 994 Addresses Concerns Highlighted at Senate Subcommittee Field Hearing

MANHEIM, Pa. – (September 6, 2013) – A Senate Subcommittee field hearing held on Tuesday, September 3, discussed the four key concerns that are the focus of the proposed *Pennsylvania Senate Bill 994 (SB 994) legislation*. The hearing, led by U.S. Senator Ben Cardin (D-MD), Chairman of the Subcommittee on Water and Wildlife, and Congressman John Sarbanes (MD-03) reviewed progress made by the EPA-administered Chesapeake Bay Program.

The hearing's discussion focused on progress toward Bay recovery and the effectiveness of current programs. The main points made by the speakers focused on accountability, transparency, cost and innovation. "SB 994 and the successful Colorado River Basin Salinity Control Project on which it was modeled, covers these same four points," noted Honorable Ed Schafer, former U.S. Secretary of Agriculture, Vice Chairman of *Bion Environmental Technologies, Inc.* and current chair of the *Coalition for an Affordable Bay Solution*.

SB 994, the Major Watershed Improvement Act, passed the PA Senate Committee on Agriculture and Rural Affairs in June and will be introduced to the full Senate in the Fall Session. The proposed legislation will provide a competitive bidding procurement program for the Commonwealth to acquire the most cost-effective verified nutrient reductions, regardless of source. To summarize the four key concerns:

- **Accountability:** SB 994 requires credits to be 'verified' by the PA Department of Environmental Protection (DEP) to alleviate the uncertainty in non-point source credits such as agricultural BMPs (best management practices) that are modeled on historical data. Certainty is higher for traditional point sources (wastewater treatment plants and industrial facilities) that are monitored, and lower for nonpoint sources (agriculture) that typically are not. Therefore, commencing October 2015, EPA and PA DEP will no longer accept best management practice modeled credits at face value and will require that they be discounted to properly reflect the real and tangible environmental reductions they provide.

According to EPA Technical Memorandum, *Accounting for Uncertainty in Offset and Trading Programs* (June 18, 2013), "EPA expects an uncertainty ratio equal to or greater than 2:1 be applied to transactions involving credits generated by nonpoint sources to mediate any uncertainty generated by assuming average hydrology." As for reductions from data-driven manure technologies, the EPA memorandum further states, "Where direct and representative monitoring of a nonpoint source is performed at a similar level as is performed at traditional NPDES point sources and there is a consistency in operation and direct and representative monitoring of the nonpoint source, an uncertainty ratio as low as 1:1 may be appropriate, provided the jurisdiction can demonstrate through monitoring data that adoption of a 1:1 ratio is justified in such circumstances."

- **Transparency:** Verified nutrient reductions will be acquired by Pennsylvania using science-based metrics vs. the current strategy that accepts modeled reductions and makes subjective conclusions that are endorsed by invested stakeholders. Under SB 994, awards will be made solely on the basis of the most cost-effective proposals using price and other defined benefits such as local phosphorous or sediment reductions.

- **Cost:** SB 994 was designed to reduce the cost of nutrient compliance to both local freshwater and downstream basin water bodies. Its structure and projections of cost benefit were based upon the highly successful *Colorado River Basin Salinity Control Project*; the Chesapeake Bay Commission report, *Nutrient Credit Trading for the Chesapeake Bay – an Economic Study* (May 2012); and the Pennsylvania Legislative Budget and Finance Committee (LBFC) report, *A Cost Effective Alternative Approach to Meeting Pennsylvania’s Chesapeake Bay Nutrient Reduction Targets* (Jan 2013). The LBFC report projected that utilizing an upstream non-point source strategy could provide savings to PA taxpayers and rate-payers of up to \$1.5B annually by 2025. SB 994 will transfer project development and performance risk to the private sector that under the present system of financing is borne by the taxpayer and rate-payer. SB 994 requires payment to the credit vendor only after verified reductions have been certified by the DEP, ensuring that the taxpayer will no longer be required to underwrite the performance of projects.

- **Innovation:** SB 994 will enable the PA DEP to modify its Watershed Improvement Plan to procure verified nitrogen reductions under a competitive bidding program, enabling those verified reductions to be utilized as a substitute for reductions imposed under existing sector allocations, such as storm water. Numerous studies have documented that once nitrogen reductions are incorporated in storm water project requirements; the cost of those projects increases five- to tenfold. With the recent passage of PA SB 351 that enables local communities to form and fund storm water authorities to meet their clean water mandates, the spending fuse has been lit. Absent the passage and implementation of SB 994 or some other mechanism for verified nitrogen reductions to be sourced outside of those storm water initiatives, the PA LBFC report projection of excess compliance costs of \$1.5B by 2025 will become reality.

Little progress has been made in restoring the Bay over the last 30 years, other than to marginally keep up with growth while interior freshwater conditions and habitat continues to decline.

“The issue is not more funding,” says Schafer. “Innovation is needed to allow public funding to maximize its purchasing power using a public/private partnership (PPP) approach. SB 994 provides such an approach, enabling all sectors (public and private) to provide the lowest cost-based solution.”

The EPA Technical Memorandum states the obvious: Modeled reductions are simply not being reflected in measured results. The *Chesapeake Bay Foundation’s statistics* demonstrate that in spite of the hundreds of millions of dollars invested in reducing non-point sources, the programs have not been effective.

As Will Baker, President of the Chesapeake Bay Foundation, admitted at the hearing, “We do not have the luxury of time” to delay Bay cleanup. SB 994 provides for lower cost and more effective solutions for the Chesapeake Bay clean-up program.

For more information on Coalition for an Affordable Bay Solution, as well as a list of founding members and supporters, please visit www.AffordableBaySolutions.org

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