Testimony of Ann Pesiri Swanson, Executive Director, Chesapeake Bay Commission before the Subcommittee on Water Resources and Environment Committee on Transportation and Infrastructure United States House of Representatives

Hearing on Protecting and Restoring America's Great Waters Part II: Chesapeake Bay July 30, 2008

Thank you Mr. Chairman and members of the Committee for conducting this hearing on the protection and restoration of coasts and estuaries, with a specific focus today on the Chesapeake Bay. My name is Ann Pesiri Swanson. I am here representing the Chesapeake Bay Commission, for which I have had the privilege of serving as its Executive Director for the past 20 years.

THE CHESAPEAKE BAY COMMISSION:

In order for you to place my comments in a context, allow me to provide for the record a description of the Chesapeake Bay Commission, its composition and its work:

The Chesapeake Bay Commission is a tri-state legislative commission, established in 1980 prior to the creation of the Chesapeake Bay Program, to advise the members of the general assemblies of Maryland, Virginia and Pennsylvania on matters of Baywide concern. The catalyst for our creation was the Environmental Protection Agency's (EPA) landmark seven-year study (1976-1983) on the decline of the Chesapeake Bay. Congressional concern prompted our beginnings and has since contributed handsomely to our success.

The Commission is a partner in the Chesapeake Bay Program – one of six signatories to the agreements that make up its leadership. What makes the Commission unique is the simple fact that it is *not* an Executive Branch agency (like the other five partners) and it is not of a single state. Instead, 21 members from three states, 15 of whom are legislators, provide a regional voice for the Legislature Branch within the Program.

RESTORING A NATIONAL TREASURE:

As the largest estuary in North America and, to this day, one of the most biologically productive, the Chesapeake Bay is not only one of America's great waters but, as President Ronald Reagan described it in his 1984 State of the Union Message, a "national treasure." It was the first estuary in the Nation targeted for restoration as a single ecosystem and the model on which the national estuary program was built.

Let me say right upfront that without enhanced state and federal support, in both dollars and policy, we do not believe that the Bay's health can be restored. Federal interest and funding has served a catalytic role for action in the region. Thus, garnering

increased financial support (at both the state and federal levels) has been and remains a principal focus of the Commission's work. You have recently responded to this need with significant increases in agricultural support via the 2008 Farm Bill. Agriculture presents the most cost-effective opportunities in the Bay region to reduce nutrient and sediment loads. On behalf of every member of the Commission and its staff, let me extend a heartfelt thank you. The U.S. Congress has invested wisely and the onus is now on the region to deliver the anticipated water quality gains.

Your subcommittee has asked me to provide my views on "*the adequacy of the current approach to protecting the Bay and new approaches better aimed at improving the health of the Bay.*" The Bay Restoration effort is and will always be defined by the sum of its parts – the many Federal agencies, the states, the local governments, NGO's and private sector. For this reason, I have attached for the record a copy of the Commission's Congressional Agenda for 2008-2010 which describes the many constructive Federal actions that can be taken to authorize and reauthorize Federal programs to do much more. I ask that you give this Agenda your full consideration.

Let me also begin by recognizing that the efforts to date have been substantial and laudable. Yet, despite two decades of exemplary effort, restoration continues to stall. Reductions in the nutrient load, both above and below the fall line, have yet to translate into measurable increases in the concentration of dissolved oxygen in the mainstem of Chesapeake Bay. Whether from Congressmen like you, state legislators like my bosses or the press corps, the question remains the same: *Why so little improvement?*

All of the preceding speakers have grappled with this dilemma. Groundwater lag time, weather variability, lack of funding and enforcement power and the sheer size of the watershed all factor into the equation. But, at the end of the day, this lack of improvement seems to boil down to three essential needs: funding, regulation and enforcement, and targeted implementation. These three needs will be central to my advice today.

THE EPA CHESAPEAKE BAY PROGRAM:

For the most part, concerted Federal involvement in the Bay restoration, and specifically EPA's participation, began with the signing of the Chesapeake Bay Agreement in 1983 and was formally authorized in the Water Quality Act of 1987. Three million dollars annually was authorized under the Act to support the activities of the EPA's Chesapeake Bay Program Office and $10 million annually was authorized for matching Interstate Development grants. The program was reauthorized in the Estuaries and Clean Waters Act of 2000, P.L. 106-457. That Act directed the EPA to ensure that management plans were developed and implementation was initiated to achieve and maintain the goals of the Bay Agreement. It also authorized the Small Watershed Grants Program and required federal agencies in the watershed to comply with the commitments in the Chesapeake Bay Agreement. A total of $40 million a year was authorized from fiscal years 2001 to 2005 for the Program.

The Program certainly has had its successes. In the past quarter century, since the signing of the first Chesapeake Bay Agreement, EPA, and the financial assistance made available under the EPA Bay Program, has played a critical role in helping to bring together some of the most diverse and broad stakeholder interests – initially three, but now parts of six states, the District of Columbia, more than a dozen Federal agencies, thousands of local governments, academic and scientific institutions, private and non-profit organizations, and citizens – all with their own particular interest and capacity in restoring the health and vitality of this 64,000 square mile watershed. It has helped advance the scientific understanding about the Bay. Perhaps no where else on earth is the science of an estuary more advanced. This science has been solidified through both world class modeling and extensive monitoring. Not only do we understand what is causing the Bay's decline, we also know how to restore it.

The science, expertise, and crucial relationship-building among Bay Program partners led to the development of the *Chesapeake 2000* agreement, a blueprint for addressing watershed degradation that is considered a model nationwide. Since then, the EPA Bay Program has led a rigorous process to establish new water quality goals and standards and has embarked on an innovative basin-wide permitting approach that will achieve major nutrient reductions from wastewater treatment facilities in our region.

Unfortunately, despite these successes in partnership building, advancement of science, and 25 years of effort, we are still falling far short of achieving our water quality and living resource goals. It is now recognized that the goal of restoring the Chesapeake Bay by the year 2010 will not be reached. Why? Simply, there are inadequate resources and programs to get the job done. The EPA Chesapeake Bay Program is managing a restoration effort that carries with it a price tag in the multiple billions of dollars, yet it is operating on only $20 million per year. Annual funding from all sources – Federal, state, and local – is at minimum roughly one-quarter of the funding needed.

NEW APPROACHES BETTER AIMED AT IMPROVING THE BAY'S HEALTH:

During the 109th Congress, the Chesapeake Bay Commission strongly supported legislation that was introduced in both the House and the Senate to reauthorize and enhance the EPA Chesapeake Bay Program and improve its accountability. We would urge the Committee to, at a minimum; incorporate the following provisions of those bills in a reauthorization of the Chesapeake Bay Program.

First, direct the Administrator to develop and submit to the Congress a strategy for reaching the goals agreed to in the *Chesapeake 2000* agreement including an estimated timeline with specific annual goals for nutrient and sediment reduction and the associated costs. The report should also identify any federal or non-federal parties responsible for carrying out the activities needed to reach the goals. Let me make it clear that we are not calling for a plan. We have plenty of those, the most recent of which, the *Chesapeake Action Plan*, was just submitted to the OMB by the EPA Bay Program Office. Instead, we are calling for a strategy that identifies timelines, along with the funding and regulations needed to get the job done.

In the conference report to accompany the Consolidated Appropriations bill for Fiscal 2008, the Congress directed the EPA to develop a Chesapeake Bay action plan for the remaining years of the *Chesapeake 2000* agreement setting realistic targets, identifying activities and funding to be undertaken to meet those targets, and to track progress. While this CAP provides an excellent inventory of all that is being done and identifies opportunities for improvement, it falls short in two areas; areas that you, through your reauthorization, may be able to fix:

1. It does not offer a timeline; and
2. It does not identify the total funding necessary to restore the Bay.

Instead, it only illustrates the funding available which gives the false impression that these areas of need are adequately addressed. The EPA must be required to identify funding gaps along with opportunities for Federal Agencies to fill those gaps, at least in part.

The Congress should call for a strategy that explicitly includes these provisions.

Second, direct the Administrator to publish and widely circulate an annual report card for each major tributary or tributary segment describing the progress made in achieving and maintaining the nutrient and sediment reduction goals. Because the health of the rivers and streams that flow into the Bay directly impacts the health of the Bay, we believe that EPA should develop and implement action plans and report cards for each of the major rivers that flow into the Bay. If the Bay is to be restored, action must be taken on a river-by-river basis. Many of the rivers and streams that drain into the Bay, and the Bay itself, are on the Federal impaired waters list. These action plans should build upon the work of the State Tributary Strategies teams which are focused on water quality improvements, engage local governments, but also address the other four principal Bay restoration goals: living resources, vital habitats, sound land use, and stewardship and community engagement. These report cards would provide the public with a clear and accurate picture of the progress toward restoring these rivers and ultimately the Bay, which is currently lacking.

Third, call upon the Chesapeake Bay region to create a TMDL that calls for Reasonable Assurance and margins of safety that are enforceable. Reasonable assurances to date have varied widely and contain varying levels of specificity and interpretation. They have achieved varying levels of assurance of meeting water quality goals. There simply has not been a TMDL with a solid, precedent-setting reasonable assurance provision yet in this nation. We thus have a tremendous opportunity before us – an opportunity to set a national precedent, and what better place than the nation's largest and most treasured body of water but the Chesapeake Bay?

Congress has the opportunity to determine, with absolute certainty, that load allocations from nonpoint sources and wasteload allocations from point sources are met within the Chesapeake Bay watershed. To achieve this, we recommend the following parameters be

included in calling for a clear and enforceable reasonable assurance provision of a TMDL mandated through the reauthorization of the Chesapeake Bay Program:

1. Any Chesapeake Bay watershed-wide TMDL must include an implementation schedule with incremental benchmarks and metrics;
2. A Bay TMDL must include serious and sobering legal and/or financial consequences for unattained load allocation goals;
3. Enforcement and verification that practices and loads are being met, particularly with nonpoint source control plans, must play a critical role;
4. Both wasteload allocations from point sources as well as load allocations from nonpoint sources needed to remove the Chesapeake Bay from EPA's "impaired waters" list must be quantifiable and consistently, amply, and comprehensively measured;
5. For nonpoint sources, actions taken by the Federal government, states, or local authorities to implement load allocations should include the four points outlined in EPA's withdrawn final rule of 2000 (65 FR 43599).

Two examples of past TMDLs that we suggest may be helpful guides for developing a sound and enforceable TMDL for the Bay watershed are (1) Long Island Sound Nutrients TMDL (decision rationale published April, 2001) and the Northeast Regional Mercury TMDL (decision rationale expected December, 2008).

The Long Island Sound Nutrients TMDL offers a good example that can be expanded and improved upon for integrating a schedule with metrics into a TMDL. And the Northeast Regional Mercury TMDL offers a good example for a multi-jurisdictional plan that can involve all stakeholders at all levels of government in achieving load allocations outlined in a TMDL.

Fourth, direct the appropriate federal agency to establish a watershed-wide stormwater action plan. Unabated development and urban/suburban sprawl is quickly overwhelming Bay restoration efforts. Land use planning at the local level just simply isn't taking into consideration its inevitable impacts on local waterways and the Chesapeake Bay. We therefore recommend an expanded role of the U.S. Army Corps of Engineers in stormwater management and tributary and small watershed restoration. The Corps has been engaged in Bay restoration from very early on – it was the first Federal agency to complete a comprehensive study of the Chesapeake Bay's water and related land resources, for example. But we believe there are additional opportunities to further engage the Corps of Engineers in Bay restoration. The Corps therefore should be directed to develop a Chesapeake comprehensive plan, and the Corps' authorities should be expanded to cost-share stormwater management solutions as well as enable the agency to pursue other fish and wildlife and habitat restoration work such as underwater grasses.

We understand that this Committee is currently considering H.R. 6550, a bill that amends Section 510 of the Water Resources Development Act of 1996 to make modifications to the Chesapeake Bay environmental restoration and protection program by expanding the role of the Corps in Bay restoration. We encourage your careful consideration of this

legislation; it contains many of the suggestions we have just made.

Finally, I close by once again appealing to the members of this Subcommittee for substantially increased Federal support, including an increase in the authorization of the Bay Program to at least $50,000,000 a year. The Chesapeake Bay Commission recognizes the budgetary constraints under which the Congress is operating. We also recognize that the EPA Bay Program funding represents only one of a wide array of programs and funding that are needed to protect and restore the Bay and its resources. As I mentioned at the start of this testimony, earlier this year the Commission developed and submitted a proposed Federal agenda for 2008 – 2010, program-by-program, as a limited set of recommendations on ways the Congress can move Bay restoration forward over the next three years. I ask that you review this report and consider the advice that we have offered.

The Commission and its colleagues appreciate your commitment to improve the environmental results that flow from Federal, state and local investments in the Bay. With the improvements that we proffer, comprehensive reporting and clear accounting of progress is at hand. For those reports to detail significant, measurable improvements in water quality and ecosystem health, I urge you to make every effort to enhance the Federal investment in the Bay. We still have an enormous task before us, and it can not be done without you.

Thank you. I am happy to answer any questions you may have.