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Weak laws

Lawmakers stop short of enacting effective environmental safeguards

By Timothy B. Wheeler

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Second of two parts

If the Chesapeake Bay were a hospital patient, it would need major surgery, not just a tweak to the medicine it's been getting. After 25 years of cleanup efforts, the bay is barely holding its own against the tide of people who have moved into the region - drawn to the very body of water they're fouling.

The prognosis is not encouraging, with Maryland's population expected to grow by another million-plus people in the next 20 years.

The Chesapeake is so large, its ultimate recovery depends on actions by all the states whose waters drain into it. But scientists and advocates say there are steps Maryland could take on its own to revive its rivers - and thus the bay.

Most experts agree, for instance, that there must be a sharp reduction in polluted runoff from farms.

Tough limits on suburban sprawl also are needed, they say, to preserve the forests, meadows and wetlands that naturally filter out pollutants before they can reach the bay. And as part of that, the proliferation of household septic systems that leak pollution into creeks and rivers has to stop.

It's unclear whether those measures will get much consideration in the State House next year, even though no one disputes that they would help the bay. State and local officials have flinched in the past at ordering such steps because of what they would cost. Not just in dollars, but in the restrictions on farmers, builders and homeowners.

Farmers don't want to be told what to do with their land, saying tough regulations will drive them out of business. Builders say restrictions will put housing prices out of reach of working families.

And suburban homebuyers don't want to be told they can't have a house with a two-car garage on a one-acre lot, even if the bay suffers from such outsized development and all the driving it induces.

"We are the problem. All of us are the problem," says Gov. Martin O'Malley, who campaigned two years ago on a pledge to step up the bay restoration effort.

"We all agree conceptually that we shouldn't build on farmlands, woodlands and wetlands," O'Malley said in an interview. "[But] once the development's there and it's our kid that's going through the third grade, we want to be sure there's a new school there. We want to be sure that there's a traffic light and plenty of big roads so that we don't have to wait to get out of our development in the morning."

And so lawmakers in Annapolis compromise. In deference to the bay's popularity, they rarely kill bills to help the Chesapeake, but they water them down to satisfy those whose interests would be hurt. Environmental advocates praise the results as "good first steps," but they have not been enough to improve the health of the bay and its tributaries.

During the past two decades, the water quality of key Maryland rivers - and the bay as a whole - has actually worsened, according to the University of Maryland Center for Environmental Science. The amount of sediment in the Patuxent River has nearly tripled, and nitrogen pollution in the Choptank River is twice as high, the U.S. Geological Survey found.

"Everybody's in favor of healing the Chesapeake Bay until it comes to doing their part," observes Del. James W. Hubbard, a Prince George's County Democrat.

The lack of progress frustrates activists, who say Maryland's reputation as a national leader in environmental protection is in jeopardy.

"We simply can't be compromising down as much as we are," says Dru Schmidt-Perkins, director of the environmental group 1000 Friends of Maryland. "We don't have time anymore."

Regulating farmers

Some advocates argue that the Chesapeake will not get better unless the state starts telling farmers what to do - imposing strict limits on how much fertilizer they can apply to their fields, with inspectors actually checking farms to make sure.

It has been a decade since anyone seriously proposed doing that. A scare over fish kills and reports of human illness on the Eastern Shore generated public pressure to crack down on farm runoff, the leading source of river pollution there. But Gov. Parris N. Glendening's proposal drew an outcry from farmers, who said such a law would threaten their ability to earn a living. The General Assembly rewrote the legislation to create an essentially voluntary program in which farms can draw up their own plans for limiting runoff.

Today, with agriculture still the single largest source of bay pollution, some are renewing their call for tough new farm rules to clean up the bay.

"Tell me where something like this has been accomplished without regulations," says Donald F. Boesch, president of the University of Maryland Center for Environmental Science.

Boesch, who has studied coastal restoration efforts worldwide, says he's unaware of any that achieved significant improvements without stricter farm controls than Maryland has. Denmark, for instance, has cut in half the nutrient pollution from its sizable farming industry by requiring farmers to take specified steps as a condition of getting any crop subsidies, he said.

But the head of the Maryland Farm Bureau says farmers are already taking steps to control pollution and the state should look elsewhere to help the bay. "We've done our share," says Michael Phipps, a Calvert County farmer and the Farm Bureau president.

Phipps points out that raising food is a chancy and difficult business. If farmers are faced with onerous government regulation, he predicts, many would just quit and sell their land to developers. "Farmers have enough worries," he says.

The Chesapeake Bay Foundation, the largest environmental group in the region, has split with other activists in supporting a cooperative approach with farmers. It has for several years lobbied hard for financial programs to encourage farmers to curtail polluted runoff voluntarily. Partly as a result, the emphasis in government discussion of farm pollution has shifted to increasing money for such programs.

The best way to get farmers to adopt pollution controls "is to have the farmer want to do them and be able to do them," says William C. Baker, the bay foundation president.

The O'Malley administration has more than doubled, to \$18 million, the total the state will pay farmers to plant "cover crops" - grains, such as oats and barley, planted to soak up fertilizer left in a field after the primary crop has been harvested. The administration also plans to use some of a new \$25 million "bay trust fund" to help farmers to reduce pollution.

Even more money to promote conservation could be on the way from Congress, which authorized \$400 million over the next 10 years to be paid to farmers in the six-state bay region. It's not clear whether that money will survive efforts by the Bush administration and some in Congress to cut it.

With more state money being offered to farmers, some are suggesting that it's time to demand more of them.

"You need both a carrot and a stick," says Gerald Winegrad, former state senator from Annapolis, who says that the millions already paid out to farmers over the years to get them to control pollution voluntarily have had no measurable effect. "If you only have carrots, the bay is going to continue to decline."

Even a farm advocate says that with additional money available for farmers, the state may be in a better position to require some changes.

"There comes a point in time where you have to say, 'Enough is enough. You've got to do this on this field or that field,'" says Russell B. Brinsfield, executive director of the University of Maryland's Center for Agro-Ecology and a part-time farmer. "I think we're headed there."

Recently, the O'Malley administration did propose new regulations on how the state's largest poultry farmers handle their chicken manure, a major source of the nutrients fouling Eastern Shore rivers. The idea was first broached a decade ago but abandoned in the face of opposition both from the chicken farmers and the poultry industry. The latest draft of the rules will get hearings in November.

The administration has not proposed new "nutrient management" regulations for crop farmers.

Though their numbers have faded, farmers remain a potent lobby in Annapolis, buttressed by nostalgia for the state's rural past and by their enduring image as plucky producers of the food we eat.

'Pave the bay'

Daunting as farm pollution may be, consider this:

More than 100 acres of woodlands are bulldozed daily around the Chesapeake to make way for houses, roads and parking lots, according to the federal government. Regionwide, new asphalt and concrete claim an area the size of Baltimore every two years. A bumper sticker that reads "Pave the Bay" might more honestly describe our behavior.

What's needed, advocates say, are strict curbs on new development, especially near the bay and its tributaries. Growth needs to be concentrated more tightly in and around existing cities and towns.

"At some point, we're going to have to put lines on a map [and say] where we want growth to occur and where we want open space maintained," the bay foundation's Baker contends.

But others say there's a limit to how much government can tell people where to live or what they can do with their property.

"You can't push the envelope of regulation unreasonably because you risk citizen backlash," says David Bliden, executive director of the Maryland Association of Counties. In Anne Arundel County, for instance, complaints from waterfront property owners recently prompted officials to table plans to crack down on shoreline building projects.

The state has regulated shoreline development for 24 years, but it's up to the counties to enforce that law - and often, critics say, they don't. Illegal buildings or additions sometimes go up before a county even knows this has happened.

The legislature approved an O'Malley administration bill this year to strengthen the law and its enforcement, after much compromise. It's too soon to say if it will fix the problems.

Maryland's 1997 "Smart Growth" law was designed to contain sprawl, but in many ways has failed, even its champions agree. Towns and counties comply with the mandate to draw "growth areas" where they want to channel development - but those areas may spread across farms and forestland.

O'Malley has pledged to reform state growth laws next year. He has not said what he'll propose.

"I think we've nibbled at the edges of how we grow," says Del. Maggie McIntosh, a Baltimore Democrat and chairwoman of the House Environmental Matters Committee. What we need, she says, is "real 'smart growth.'"

Maryland's Smart Growth law uses state money as a carrot to encourage more compact development. Counties, cities and towns identify where they plan to grow, and those areas get priority for state money for roads, sewer and other infrastructure. Local officials can still permit development elsewhere, but they won't get state money to serve those communities.

Environmentalists say, though, the law has loopholes. The state still pays to build schools in outlying areas. Counties and towns aren't required to draw small growth areas that preserve open space. And the carrot isn't big enough - builders and advocates agree that more money must be spent to make the designated areas attractive to home buyers.

County officials are expected to fight any proposal to give the state more say over development, arguing that such decisions should be made by those closest to the voters. And builders point out that little is being done to curb polluted runoff from existing homes.

"You can't say, 'If we don't build one more house, thank God, we'll be able to clean up the bay,'" says Kathleen Maloney of the Maryland State Builders Association. "It's a multi-faceted problem."

Some local officials aren't waiting for state action. Queen Anne's County now requires nitrogen-removing septic systems for new homes built near the water. And all septic systems must be pumped out every five years, to ensure they're working as well as they can.

"We realize if you really want something to happen, unfortunately, regulation is necessary quite often," says Eric Wargotz, president of the Eastern Shore county's commissioners.

The General Assembly balked at requiring statewide regulation of septic systems in 1999. Instead, four years ago, lawmakers set up a fund to provide grants to upgrade old septic systems to make them less polluting. Only a fraction of eligible homeowners have taken advantage of the grants.

O'Malley administration officials say they're looking at how to get more septic system owners to replace their old, polluting tanks.

And the governor says he will unveil a plan for preserving what he calls the "greenprint" of the state - its forests, wetlands and open land.

"I think we're going to make some great strides in the six years ahead, I do," says O'Malley. "I think we're all going to be proud to look over our shoulders."

Waning commitment?

Still, Harry R. Hughes can't hide his dismay.

As Maryland's governor, he helped launch the bay restoration effort 25 years ago. The public was alarmed by a federal report saying the Chesapeake was dying, and Hughes seized upon the opportunity to act. He boosted funding for bay cleanup efforts and steered a batch of laws through the General Assembly, including the then-pioneering shoreline development restrictions.

By now, "I expected and hoped we'd be further along," the 81-year-old former governor says.

He recalls that back then, people called out at parades urging him to "Save the bay! Save the bay!" Hughes thinks the public today is less engaged in the cause.

"I do think it's waned over the years," he says of the public's commitment to cleaning up the Chesapeake. "It needs to be rejuvenated."

But Hughes says he believes Marylanders still love the bay, and will make sacrifices if their leaders make the case for action.

"If they're convinced whatever help is asked for is going to restore the bay, I think they'll go along," he says.

Baltimore Sun reporter Greg Garland contributed to this article.

cleanup efforts

Here are some key Maryland laws that have been passed as part of the Chesapeake Bay cleanup effort:

CRITICAL AREA: Passed in 1984, the Critical Area law restricts development within 1,000 feet of the bay and its tidal tributaries. It also prohibits building or clearing vegetation within 100 feet of the water. But counties have often failed to enforce the law, critics say. And the 1,000-foot provision still allowed development of some pristine waterfront. The General Assembly voted this year to strengthen the law, after many compromises. The shoreline building setback was doubled to 200 feet, but enforcement remains in local hands.

SMART GROWTH: Passed in 1997, the law is designed to encourage more compact development by steering state money for roads, sewers and other infrastructure to designated growth areas. But critics say local officials drew growth boundaries well beyond existing city and town borders. And the state continues to pay for new schools in outlying areas. The governor says he will propose legislation to strengthen the law.

FARM POLLUTION: Prompted by a scare over fish kills and reports of human illness around rivers polluted by farm runoff, legislation was proposed in 1998 to limit how much fertilizer farmers could use. The General Assembly passed a significantly weakened bill - allowing farms to draw their own "nutrient management" plans, extending deadlines for compliance, and reducing penalties and enforcement.

FLUSH FEE: In an attempt to boost the bay cleanup effort, lawmakers in 2004 approved a "flush tax" on sewer users and septic system owners proposed by Gov. Robert L. Ehrlich Jr. The \$2.50 monthly fee on sewer bills has generated \$60 million per year for upgrading sewage treatment plants, a major source of nutrients fouling the bay. A \$30 annual fee charged to homeowners on septic systems has raised \$12 million a year to help pay farmers to plant pollution-preventing "cover crops." The fee also pays for grants to improve septic systems.

BAY TRUST FUND: In 2007, the General Assembly agreed to earmark \$50 million for projects aimed at reducing polluted runoff from farms and pavement. Budget woes prompted lawmakers to cut the fund to \$25 million.

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