

WORDS MATTER

The Planned and Unplanned Impact of Legislative Language

Virginia Marine Debris Summit
Virginia Institute of Marine Science
March, 2016

Ann F. Jennings
Virginia Director
Chesapeake Bay Commission

The Chesapeake Bay Commission

Purposes, Powers & Duties

35 years ago, the declining health and productivity of the Chesapeake prompted the General Assemblies of Maryland and Virginia to create the Commission to coordinate their joint efforts to restore the ailing estuary. In 1985, Pennsylvania joined the Commission to form the tri-state legislative body as it stands today. Its mission is to identify critical environmental needs, evaluate public concerns, and ensure state and federal actions to sustain the living resources of the Chesapeake Bay.

Chesapeake Bay Commission

- Tri-State Legislative Commission
 - Pennsylvania, Maryland, & Virginia
- Established by state law
- 7-Member State Delegations (21 total)
 - 2 Senate
 - 3 House
 - 1 Administration (Cabinet-level)
 - 1 Citizen



Chesapeake Bay Program

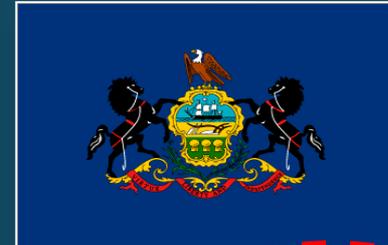
Governor of MD



Governor of VA



Governor of PA



EPA Administrator



Chair of Chesapeake Bay Commission



Governor of NY



Governor of DE



Governor of WV

Mayor of DC



OUR RELATIONSHIP

A two-way introduction



Chesapeake Bay Commission Mission

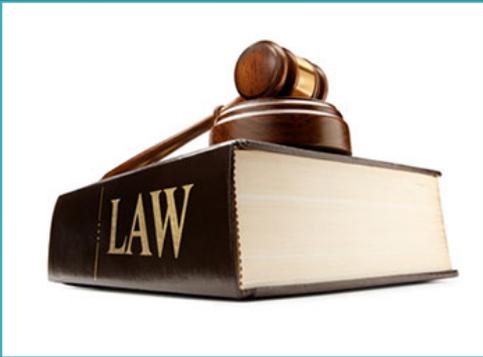
“Identify critical environmental needs, evaluate public concerns and ensure state and federal actions to sustain the living resources of the Bay.”



Virginia Marine Debris Summit Goals

“The goal of this summit is to inspire and empower our partners in marine debris reduction. Summit attendees will receive updates on current marine debris science and trends and will explore techniques and tools effective in enhancing knowledge, changing behavior and influencing policies that reduce marine debris.”

2016 State Legislative Actions



Virginia



AGRICULTURE

- Budget Amendments- \$100K for both budget years to study Virginia's Phosphorus Index
- \$61 million addition to Ag BMP cost-share



STORMWATER

- Consolidating stormwater programs
- Stormwater Local Assistance Fund

TRADING

- Authorizing sediment trading by MS4s.



WATER QUALITY FUNDING

- \$59 M in bonds for wastewater treatment plants
- \$50 Million (2 FYs) for Stormwater Local Assistance Funds

2016 Resolutions: MD, PA & VA

Chesapeake Bay Awareness Week
2ND week in June



Honoring Maryland
Senator Bernie Fowler



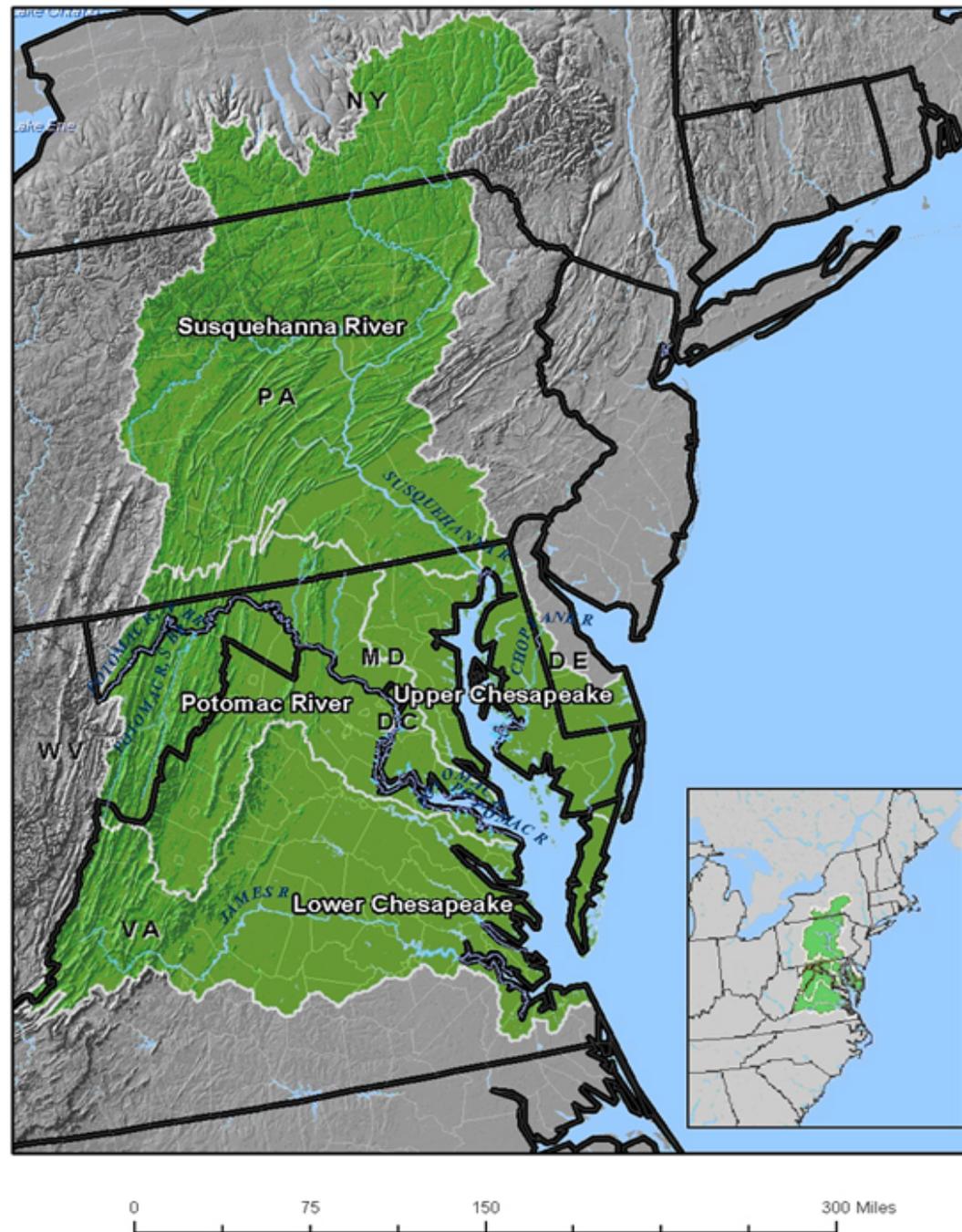
An aerial photograph of a river winding through a landscape with autumn foliage. The river is the central focus, curving through a mix of green, yellow, and orange trees. In the background, there are fields and a few buildings under a clear sky.

Words Matter...

- *Clear?*
- *Intent?*
- *Exclude?*
- *(Un)intended consequences?*

Chesapeake 2000 Agreement

“By 2002, ensure that measures are in place to meet our riparian forest buffer restoration goal of 2,010 miles by 2010.”



Managing Stormwater in VA and MD – May vs. Shall

§ 15.2-2114. REGULATION OF STORMWATER.

A. ANY LOCALITY, BY ORDINANCE, **MAY** ESTABLISH A UTILITY OR ENACT A SYSTEM OF SERVICE CHARGES TO SUPPORT A LOCAL STORMWATER MANAGEMENT PROGRAM CONSISTENT WITH ARTICLE 2.3 (§ 62.1-44.15:24 ET SEQ.) OF CHAPTER 3.1 OF TITLE 62.1 OR ANY OTHER STATE OR FEDERAL REGULATION GOVERNING STORMWATER MANAGEMENT. INCOME DERIVED FROM A UTILITY OR SYSTEM OF CHARGES SHALL BE DEDICATED SPECIAL REVENUE, MAY NOT EXCEED THE ACTUAL COSTS INCURRED BY A LOCALITY OPERATING UNDER THE PROVISIONS OF THIS SECTION, AND MAY BE USED ONLY TO PAY OR RECOVER COSTS FOR THE FOLLOWING:

Chapter 151 (House Bill 987) An Act concerning Stormwater Management – Watershed Protection and Restoration Program

(B) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY **SHALL** ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.
(C) A WATERSHED PROTECTION AND RESTORATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL INCLUDE: (1) A STORMWATER REMEDIATION FEE;



The Trading Omission

§ 62.1-44.19:20. Nutrient credit certification.

Bills amending this Section

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices,;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits....;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant;

f. Establishing a timely and efficient certification process; and

g. **REQUIRING PUBLIC NOTIFICATION OF A PROPOSED NUTRIENT CREDIT-GENERATING ENTITY;**

The Poultry Litter Loophole

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION CHAPTER 1

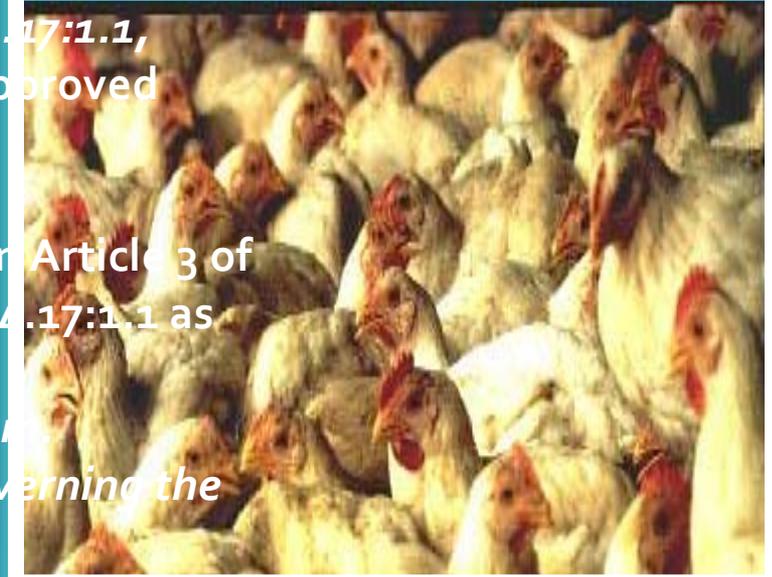
An Act to amend the Code of Virginia by adding in Article 3 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.17:1.1, relating to poultry waste management. [H 1207] Approved January 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.17:1.1 as follows:

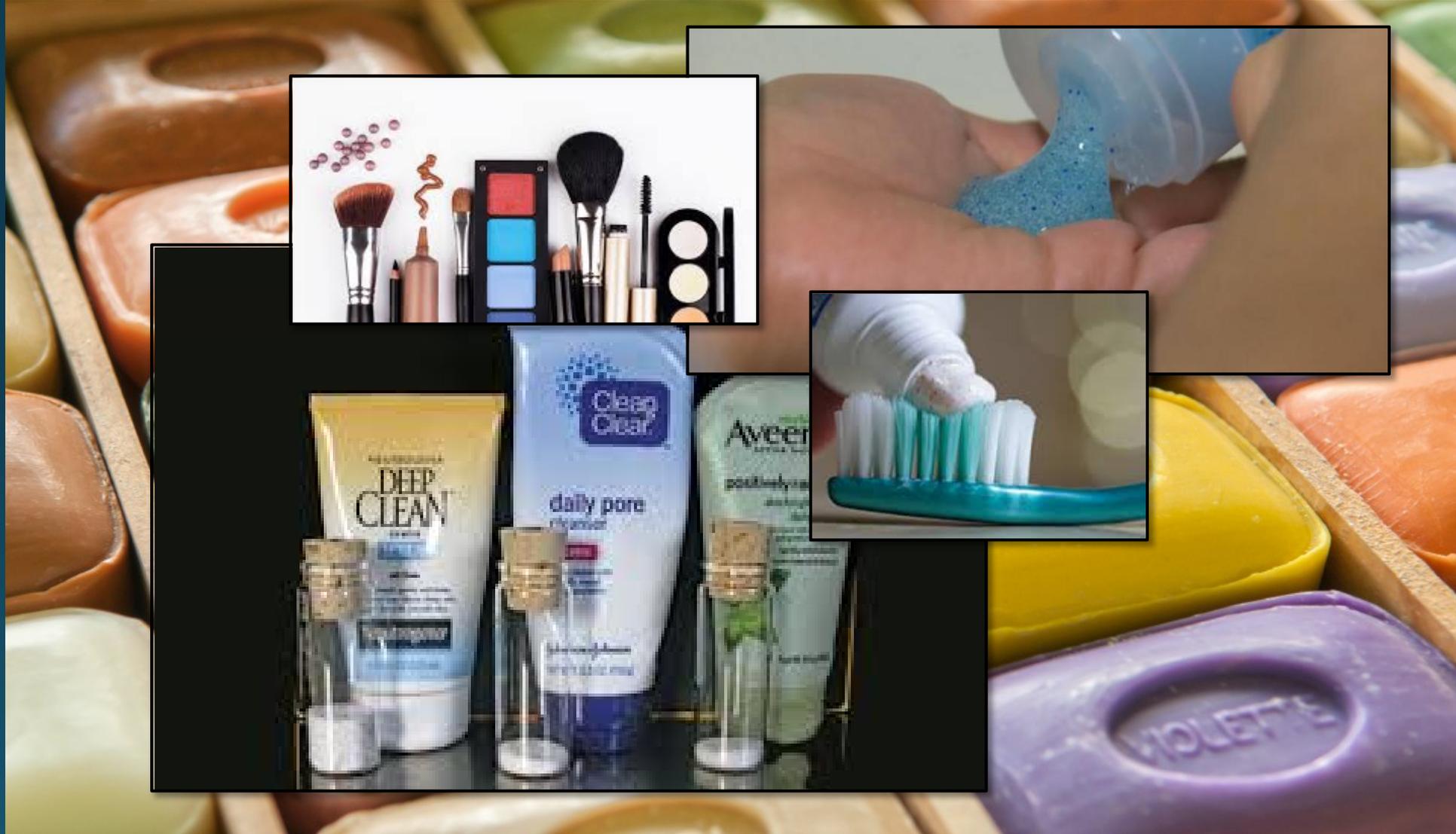
§ 62.1-44.17:1.1. *Poultry waste management program.*
B. The Board shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:

- 1. Requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation;**
- 2. Provides for waste tracking and accounting; and*
- 3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.*



MICROBEADS:

The very tiny troublemakers where definitions really matter!



MARYLAND HOUSE BILL 216 (2015)

Personal Care Products Containing Synthetic Plastic Microbeads Prohibition on Manufacturing or Sale

....(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BIODEGRADABLE" MEANS CAPABLE OF DECOMPOSING ~~IN ACCORDANCE WITH RELEVANT ESTABLISHED GUIDELINES OF ASTM INTERNATIONAL, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OR COMPARABLE ORGANIZATIONS OR AUTHORITIES RECOGNIZED BY THE DEPARTMENT:~~

(1) IN A MARINE ENVIRONMENT; AND

(E) "PLASTIC" MEANS A SYNTHETIC MATERIAL THAT IS MADE FROM LINKING MONOMERS THROUGH A CHEMICAL REACTION TO CREATE AN ORGANIC POLYMER CHAIN THAT CAN BE MOLDED OR EXTRUDED AT HIGH HEAT INTO VARIOUS SOLID FORMS THAT RETAIN A DEFINED SHAPE DURING ~~THEIR LIFE CYCLE~~ USE BY A CONSUMER AND AFTER DISPOSAL.

(F) "SYNTHETIC PLASTIC MICROBEAD" MEANS ANY INTENTIONALLY ADDED ~~NONBIODEGRADABLE~~ SOLID PLASTIC PARTICLE THAT IS NOT BIODEGRADABLE THAT:

(1) MEASURES LESS THAN 5 MILLIMETERS IN SIZE; AND

(2) IS USED IN A RINSE-OFF PERSONAL CARE PRODUCT FOR EXFOLIATION OR CLEANSING PURPOSES.

MICROBEADS-FREE WATERS ACT OF 2015

114th U.S. CONGRESS

(a) IN GENERAL.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

“(ddd)(1) The manufacture or the introduction or delivery for introduction into interstate commerce of a rinse-off cosmetic that contains intentionally-added plastic microbeads.

“(2) In this paragraph—

“(A) **the term ‘plastic microbead’ means any solid plastic particle that is less than five millimeters in size and is intended to be used to exfoliate or cleanse the human body or any part thereof;** and

“(B) the term ‘rinse-off cosmetic’ includes toothpaste.”.

(b) APPLICABILITY.—

(1) IN GENERAL.—The amendment made by subsection (a) applies—

(A) with respect to manufacturing, beginning on July 1, 2017, and with respect to introduction or delivery for introduction into interstate commerce, beginning on July 1, 2018; and



QUESTIONS?



Ann Jennings, Virginia Director, CBC
ajennings@chesbay.us 804-786-4849