# COMMONWEALTH of VIRGINIA

*Office of the Governor*

Doug Domenech
Secretary of Natural Resources

April 20, 2010

TO: Chairman and Members, House Committee on Agriculture, Chesapeake and Natural Resources

Chairman and Members, House Appropriations Committee

Chairman and Members, Senate Committee on Agriculture, Conservation and Natural Resources

Chairman and Members, Senate Finance Committee

FR: Douglas W. Domenech, Secretary of Natural Resources

SUBJECT: Report on the Chesapeake Bay and Virginia Waters Clean-up Plan (House Bill 1150; 2006)

I am pleased to present my office's first report regarding the Chesapeake Bay and Virginia Waters Clean-Up Plan. This report is submitted per Chapter 204 of the 2006 Acts of Assembly. As you may recall, my predecessor provided you an update of the plan every spring with progress reports detailing the status of implementation provided in the fall of each year.

Last fall the U.S. Environmental Protection Agency ["EPA"] notified the Commonwealth, as well as the other states within the Chesapeake Bay watershed, of their expectations for the states to develop Watershed Implementation Plans in conjunction with EPA's development of a Total Maximum Daily Load, or TMDL, for the Bay and its tidal rivers. A TMDL is required when the quality of waters, such as the Bay, does not meet water quality standards and are therefore designated as impaired. The Chesapeake Bay TMDL, which is part of the federal court consent decree for Virginia signed by EPA in 1998, must be completed by EPA by May 1, 2011.

To our knowledge this is the first time EPA has called upon states to prepare an implementation plan as part of a TMDL development process, rather than upon completion of the TMDL. EPA believes the plans, which will describe specific actions that will be taken to control nutrient and sediment pollution in the Bay watershed, will provide them reasonable assurance that the TMDL will be fully implemented by 2025. Their expectations also include a highly ambitious schedule for producing the plans and TMDL by December 31 of this year, which reflects previous agreement by the Bay states Governors and EPA Administrator.

Developing plans to implement TMDLs is not a foreign idea to the Commonwealth. The Code of Virginia at §62.1-44.19:7 calls for development and implementation of "a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring." Through the end of last year Virginia had 774 TMDLs developed or under development, most required by the consent decree. In addition, Virginia had 151 Implementation Plans developed or under development. The process Virginia has found successful is to develop the implementation plan after the TMDL is established. While the consent decree required development of 644 TMDLs, it did not require development of any Implementation Plans.

During my first few months as Secretary it is becoming more apparent that EPA's approach for the TMDL and implementation plans has several serious shortcomings:

- Preparing an implementation plan for a TMDL that is still under development presents significant technical and management challenges. In order to restore the Chesapeake Bay, the overall input of pollution will need to be reduced by a considerable amount. That pollution loading cap needs to be established by a TMDL. The states are challenged to allocate the TMDL load among each of the source sectors -- agriculture, wastewater, storm water, on-site systems and forest. Those allocation decisions should meet several criteria: be equitable among the sources, cost-effective as possible, and capable of achieving the desired goals. Without having the TMDL that establishes the firm pollutant caps or allocations, it is proving difficult to make headway in developing the implementation plan.

- This highly complex and often technical process has become frustrating for the public, representatives of the source sectors, and stakeholders. Compounding the situation, EPA does not have firm data available to answer people's direct questions and many have expressed concern over the use of simplifying assumptions that might work when viewed from the scale of the Bay's 64,000 square mile watershed but make little sense when applied at the local level.

- The overwhelming concern expressed by participants is the extremely tight schedule to complete such a comprehensive undertaking. Not unexpectedly, as the process has unfolded over these past months, EPA has fallen behind on producing the essential technical data and modeling tools. They need to adapt approaches and schedules that might have looked possible last year to reflect the conditions we face today.

For my part, I will be engaging in serious discussions with EPA and our partner states over the coming weeks and months on the overall timeframe and expectations for this effort. As it currently stands, unless these shortcomings are resolved, the states and our stakeholders are being put in a nearly impossible position of meeting EPA's unrealistic deadlines.

During the course of this highly complex, evolving process, I plan to provide your committees with periodic progress reports, with both the good news and the bad as we work through these challenges. We look forward to continuing to work with your committees, other interested

legislators, and all Virginia citizens to restore and protect the Chesapeake Bay and all of the Commonwealth's streams, rivers, lakes, and estuaries.

For additional details, you may view materials about the Chesapeake Bay TMDL development process on the following websites:

EPA: http://www.epa.gov/chesapeakebaytmdl/

VA-DEQ: http://www.deq.virginia.gov/tmdl/chesapeakebay.html

VA-DCR: http://www.dcr.virginia.gov/soil_and_water/baytmdl.shtml

In summary, the July 2009 Chesapeake Bay and Virginia Waters Clean-Up Plan remains unchanged. While implementation of the Plan has continued during 2010, the December 31, 2009 Progress Report that you received still provides a timely update of our progress. Our current focus and energies continue to be directed towards developing an implementation plan for the Chesapeake Bay TMDL that will make sense for Virginia and keep us on track towards restoring the Chesapeake Bay.

Should you have questions or desire additional information, please let me know.