



An Accountability Mechanism for the Chesapeake Bay

Interview Findings

By Rena Steinzor, Member Scholar
Shana Jones, CPR Policy Analyst

About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation and improved public access to information. The Center for Progressive Reform is grateful to the Bauman Foundation, the Beldon Fund, and the Deer Creek Foundation for their generous support of its work in general.

About the Authors

Rena Steinzor is the Jacob A. France Research Professor of Law at the University of Maryland School of Law, and is the President and a Director of CPR. **Shana Campbell Jones, J.D.**, is a Policy Analyst at CPR. The authors would like to thank **Catherine Jones**, Special Projects Administrator for CPR, who assisted with the interviews for this report.

For more information about the authors, please see page 19.

www.progressivereform.org

Direct media inquiries to Matthew Freeman at mfreeman@progressivereform.org.

For general information, email info@progressivereform.org.

© 2008 Center for Progressive Reform

Acknowledgments

The Center for Progressive Reform is grateful to the Keith Campbell Foundation for its generous support of this project.

Printed in the U.S.A.



Introduction

The Chesapeake Bay Program and its state partners (Program) are considering adopting an “accountability mechanism” to monitor the Program’s performance. Working with an *ad hoc* committee of the Bay Program’s Principals’ Staff Committee (PSC), the Center for Progressive Reform (CPR) provided recommendations to help establish a framework for the accountability mechanism. Part of CPR’s participation in this effort included interviewing key stakeholders to gain insight into how they perceive the Program’s strengths and weaknesses, as well as their thoughts about various ways to improve Program effectiveness and address problems preventing the Program from achieving its statutory mission. This report outlines the interview results.

CPR interviewed 11 high-level people who have been actively involved in Bay restoration efforts for many years. At least one individual from each state in the watershed was interviewed. Interviewees were asked to respond to a set of general questions designed to promote a free-flowing conversation about improving accountability for the Bay Program. To encourage a frank and open discussion, the interviewees were informed that their comments would be reported without attribution. The interviews lasted from thirty minutes to one hour. A list of the interviewees is below.

Interviewees were told at the outset of the interview that an accountability mechanism had been proposed for the Program in the context of an effort to reorganize the Program. Since 2005, the Program has been under increased scrutiny from the Government Accountability Office and the Inspector General for EPA for not having a comprehensive implementation strategy and for not effectively and credibly reporting the state of the Bay’s restoration progress.¹ In response to the GAO report, the Senate and House Appropriations

In this report, CPR interviewed 11 high-level stakeholders who are actively involved in Chesapeake Bay restoration efforts:

- **William Brannon**, *West Virginia Department of Environmental Protection*
- **George Hawkins**, *District of Columbia Department of the Environment*
- **Katherine Bunting-Howarth**, *Delaware Department of Natural Resources and Environmental Control*
- **Roy Hoagland**, *Chesapeake Bay Foundation*
- **Jeff Corbin**, *Office of the Secretary of Natural Resources, State of Virginia*
- **Jeff Lape**, *Chesapeake Bay Program*
- **Richard Eskin**, *Maryland Department of the Environment*
- **William Matuszeski**, *Alliance for the Chesapeake Bay*
- **Ann Swanson**, *Chesapeake Bay Commission*
- **Peter Freehafer**, *New York State Department of Environmental Conservation*
- **Robert Yowell**, *Pennsylvania Department of Environmental Protection*

The focus on accountability is an important milestone in the history of one of the oldest and most respected regional ecosystem programs.

Committee has withheld \$5 million from the Program until EPA implements GAO's recommendations. Consequently, among other efforts, the Bay Program and its Partners have responded by focusing on reorganizing the Program and increasing accountability.

The focus on accountability is an important milestone in the history of one of the oldest and most respected regional ecosystem programs. Restoring environmental quality throughout the Chesapeake Bay is an exceedingly difficult job. The Program's recognition that it must make hard choices and shift from a tone of mutual celebration to one of enforceable expectations is a landmark in its institutional maturation. Ensuring accountability is a pressing issue for all ecosystem management programs – the Bay Program is far from alone in this quest. In fact, our review of similar programs reveals that, while some of their approaches to accountability should inform this effort, none of their approaches squarely address institutional accountability or the cross-jurisdictional issues inherent in the Bay Program's makeup. Given its stature, whatever accountability mechanism is developed for the Program is likely to be emulated by other programs for many years to come.

Key Findings

- Interviewees overwhelmingly agreed that the Program's science – its monitoring and modeling capabilities – is far and away its greatest strength. Interviewees did not believe that an accountability mechanism evaluating the Program's science was needed. Rather, interviewees wanted a focus on program and Partner activities.
- There was an overarching sense from many interviewees that while the Program identifies problems well, the Program did not describe actions taken or not taken by each state or local jurisdiction. Nor did it follow up with specific recommendations about what should be done and by whom.
- Interviewees agreed that the accountability mechanism must be an ongoing commitment to constantly improve the Program and not a "one shot" report.
- Interviewees agreed that high-level buy-in for accountability by elected officials at the federal and state level was crucial for it to succeed.
- When considering an accountability mechanism for the Program, interviewees expressed concerns about fairness, funding, and the development of yet another "planning" report that consumes time, energy and resources while delaying on-the-ground action.
- Interviewees overwhelmingly agreed that an accountability mechanism for the Program should be independent but differed over where independence was most needed. Generally, interviewees agreed that independence was greatly needed in the first stage of an evaluation or accountability mechanism, namely with respect to determining who or what would be evaluated. Interviewees were divided on the need for independence for the information gathering and reporting stage, with some interviewees pushing for a stronger "auditing" and quality control role than others.

- The Bay Program’s slow-moving collaborative structure was mentioned by almost all of the interviewees as its greatest weakness, resulting in “lowest common denominator solutions” and a lack of focus instead of increased accountability for progress.
- Several interviewees pointed to Tributary Strategies as being an existing information resource by which to promote accountability, noting that an “on the ground check of what was promised” of what was happening “on the ground” was greatly needed.
- Several interviewees felt that an accountability mechanism would be most successful if it focused on a specific area, with some pointing to focusing on a sub-set of Tributary Strategies, and others pointing to water quality or agricultural practices.
- Several interviewees indicated that it would be helpful for the accountability mechanism to function in a way that supported the Baywide TMDL or “total maximum daily load” for the Bay. Established pursuant to the Clean Water Act, a TMDL is the combined amount of pollution from point and nonpoint sources that a waterbody may receive and still reach applicable water quality standards.² Currently, a Baywide TMDL is under development for the Chesapeake Bay watershed. Once the Baywide TMDL is implemented, several interviewees indicated that a useful role for an accountability mechanism would be to evaluate whether non-point sources were meeting the TMDL’s “reasonable assurances” standard.

Interview Summaries

Interviewees were asked to discuss the Chesapeake Bay's problems generally, the Bay Program's strengths and weaknesses, and how an accountability mechanism for the Program might be designed.

The Chesapeake Bay

The Most Pressing Problems

Almost all of the interviewees agreed that **excess nutrients (nitrogen and phosphorus) from agriculture constitute one of the primary problems with the Bay.** "Agriculture is simply not controlled well under the Clean Water Act," one interviewee said, "and it shows in the Bay." Sediments were also mentioned by almost all of the interviewees, although one interviewee strongly felt that sediments were not a pressing problem.

Several interviewees mentioned **over-fishing as serious problem, with almost all of them expressing concern that the problem wasn't getting sufficient attention.** One interviewee emphasized that over-harvesting Bay resources generally was a problem. "It is not just oysters," the interviewee explained, "It's oysters, crabs, menhaden, forests and wetlands. All of our resources are being over-harvested."

Several interviewees also pointed to **local land use and population growth, which, as one interviewee put it, "defeats all the progress we seem to make."** It's the "800 hundred pound gorilla," another interviewee said. "And we just aren't addressing what we need to do with land use. Everyone is very hands off." Stormwater runoff was often mentioned as a problem, but at least two interviewees felt that it wasn't as pressing as other problems while others felt it was a very serious problem. "We do a very bad job of working with local governments," said one interviewee, expressing a common sentiment.

The Bay Program

Greatest Strengths

All of the individuals interviewed agreed that **the Bay Program's greatest strength is its science.** More than one interviewee remarked that the Chesapeake Bay is the most studied and investigated body of water on the planet, thanks to the Program's monitoring and modeling capabilities. Another interviewee emphasized the Program's history, explaining that the Program began as a science program. Indeed, across the board, the interviews ranked the Program's science as being, "by far," its greatest strength. "People always come back to the Program," one official said, "because they need and respect the science. This is a core service." "We have the best understanding of any ecosystem in the world," said another. "The talent in the Program is fantastic," was another comment, echoing several interviewees who praised the scientific and technical abilities of both the Program as well as participants on Program committees. "And it is not just the analytical science," said yet another official, "it's the Program's ability to continuously monitor and test" that sets it apart. Several interviewees

wees praised the Program for also bringing together research institutions within the watershed.

The Bay Program’s collaborative structure, which brings a wide variety of organizations and people together, was the second-most mentioned strength of the Program, although many interviewees qualified their statements by saying “it was also the Program’s greatest weakness.” As one interviewee put it, “the ability to even bring together both the policy people and the technical people from all of the watershed states around the central goal of cleaning up the Bay is an enormous task” that the Program does well. “It’s a unified effort,” said another interviewee, “with little debate that it is important.” Several interviewees pointed to the Water Quality Steering Committee as a good example representing the best of the Program. One interviewee particularly praised the voluntary nature of the partnership, as it “allows flexibility and allowed progress beyond what could be mandated by law.” “Partnership,” said another, “gives you the ability to leverage tools, and it is pretty unique and very helpful for states to come together periodically to share information and tools.” Similarly, another interviewee praised the Program for “providing a forum for the jurisdictions to come together, and the fact that the Program is staffed to provide structure to the forum” as being important.

Greatest Weaknesses

The Bay Program’s slow-moving collaborative structure was mentioned by almost all of the interviewees as its greatest weakness. “Collaboration is the Program’s strength and its Achilles’ heel.” Interviewees blamed the Program’s penchant for consensus as resulting in several distinct problems:

- **The emphasis on collaboration results in “lowest common denominator solutions,” with the Program being “captured by the states.”** More than one interviewee described the drive for consensus as resulting in a “lowest common denominator solution” that pleases all partners. Meanwhile, “leadership at Region 3 and EPA is lacking to raise the stakes higher and push the partners further.” Similarly, the collaborative structure makes it “difficult for the Program to question a partner,” with the result being that the “Program is held captive by the states.” Several interviewees — including some state officials — complained that states politically “manage” the Program in order to influence its direction.
- **The emphasis on collaboration has created an unwieldy bureaucracy with no sense of focus or a strong leadership that makes tough decisions.** As one interviewee explained, “there is a fundamental tension between cooperation and leadership, and the Bay Program is designed to promote cooperation and not allow for strong leadership.” Another noted “there is a tendency to push things down to subcommittees for them to come up with recommendations so that no one is responsible for a decision.” Yet another interviewee described the problem as a structure that relies on consensus for everything. “We have blindly applied consensus to every process,” this interviewee said.

The Chesapeake Bay is the most studied and investigated body of water on the planet, thanks to the Program’s monitoring and modeling capabilities.

“We need to become smarter and use consensus for the big decisions that require everyone’s participation and let go of the consensus model for less important decisions. Sometimes the director simply needs to be empowered to act; sometimes we need to call for a vote and move on.” The Program has become a “three-headed” beast, explained another interviewee, because “partnership has come to mean bringing everyone to the table to talk about everything.” There is so much time spent on consensus that little action is ever taken. Another interviewee lamented that the Program lacks focus — there are seemingly “hundreds of obligations” and no sense of which ones take priority. As one interviewee put it, “the laundry list of committees is just too long.” “The Bay Program tries to do too many things and that drains resources. It diminishes focus to try to please everyone, and there are a lot of people to please.”

- **The emphasis on collaboration has created an unwieldy bureaucracy that results in too much talking and not enough doing, as well as strains limited staff resources.** For example, more than one headwater state (in the Bay Program, Delaware, New York, and West Virginia are called “headwater states,” as many of the streams and rivers that ultimately flow into the Bay begin in these states) mentioned how difficult it was to dedicate the staff necessary to participate fully in the various committees and working groups. As one interviewee observed, “There are significant differences between the states with population, funding, and technical resources.” Yet another interviewee expressed frustration that the Bay Program did not do enough to increase its state’s ability to participate by giving it more funding or resources.
- **The emphasis on coordination reflects a science- and research-oriented program, but not a focused, action-oriented program that tackles the most pressing problems.** “We need to figure out the two or three tough things that we can’t get done as individual states and focus on doing these things,” said one interviewee. “The Program has to move from research and coordination to taking action,” said another. The Program “always falls back on looking for more data instead of dealing with the issues at hand.” As one interviewee put it, “there are plenty of glossy reports about the Bay’s problems, but not about what is being done.” As another official noted, “writing down something and actually doing it is a big difference.”

The Bay Program lacks the basic statutory and regulatory authority it needs to be successful at cleaning up the Bay. Several interviewees noted that the Program is designed to do science, which it does well, but it is not designed for program implementation or regulatory action. “People forget that the Program has no *authority* to coordinate efforts – it coordinates the best it can by means of cajoling and agreement.” Another interviewee similarly bemoaned the Program’s lack of authority to coordinate. “Lots of groups are doing oyster restoration,” this interviewee noted, “but the Program has no authority to coordinate their actions.”

“The Bay Program lacks the fundamental tools – authorities and resources – to be successful,” said another interviewee. “For example,” the interviewee further explained, “animal

waste is a big problem for the Bay, yet in 2008 only half of the CAFOs (concentrated animal feeding operations) in the watershed have permits.” “The Clean Water Act is not functioning well for the Bay Program,” noted yet another interviewee. “Watersheds generally do not have the tools they need. The Bay Program, in fact, could do a great service for watersheds across the country by identifying ways the Clean Water Act could be improved.” One interviewee felt that the Program and its partners had the ability to “push for taxes and regulation,” but “would never take the political risks” to do so. “Everyone knows that the states need to do more with regulating agriculture and stormwater, but no one wants to take the heat for pushing them to do so.” Similarly, another interviewee observed, “Theoretically, the states could go beyond the Clean Water Act, but politically it’s a non-starter.”

The Bay Program needs to do a better job dealing with land use issues and local governments. Land use, as one interviewee put it, is the “800 pound gorilla in the room.” The Program has an advisory committee, but there’s no strong leadership or sense about how the Program is going to lead on the issue. Another interviewee said the land use problem was crucial, but that the Bay Program had no plan and no people on the ground working with local planning boards and towns. “The Bay Program,” the interviewee went on to say, “could do a great service by identifying and standardizing land use solutions and zoning guidelines for planning boards and communities to use, because while each town is unique, a common set of solutions usually applies in most circumstances. There then needs to be folks on the ground getting to know these folks and gaining their trust. We have a tendency to sit in our offices.”

The Bay Program is too “bay-centric” instead of “watershed-centric.” Several interviewees observed that the partnership could be strengthened if the Bay Program took more of a watershed-based approach. “We have to have the support from everyone in the watershed; the Bay won’t be clean until the streams and rivers in the watershed are clean.” As another interviewee noted, “there’s a problem because the Bay matters more for the Maryland and Virginia, who get a direct economic and way-of-life benefit from the Bay. Thus they dominate the Program, understandably, but then expect other states to come along with the same level of commitment.” “We need to promote programs that connect to local environmental improvements in watershed states – not just the Bay,” said another interviewee. “We can’t paint the watershed with a broad brush.”

Accountability for the Bay Program

Where Should Accountability Come From?

The great majority of interviewees agreed that increased accountability for the Program and its Partners was needed. Articulating the specifics of what increased accountability should look like for the Program and Partners, however, was much more difficult. In particular, the interviewees had differing responses when considering *who* or *what organization* should be responsible for holding the Program accountable for ensuring that restoration goals were met. Interviewees also often discussed more than one organization as a

possibility. Generally, interviewees pointed to the Executive Council, EPA, the National Academies of Science, Program Partners, and an Independent Evaluator with no previous ties to the Program. No one, however, had a specific solution – as one interviewee put it, “you’ve asked the big question, and no one really knows how we do this.” Only one interviewee felt “that there was enough accountability already, given all that is submitted to EPA.”

Interviewee comments with respect to some of the most often mentioned options are below.

- **The Executive Council.** “Accountability simply has to come from the political leadership at the top,” said one interviewee. “At the Executive Council, because they are the elected officials.” Another interviewee had a completely different perspective. “The EC is subject to the electorate and all the pressures on them. If people think this is full of politics now, it will reek of politics if the EC is responsible for ensuring accountability. If an independent person reported to them, that would be fine. But otherwise the process is doomed, and certain states will manage the political process to try to push things in the direction they want to go.”
- **EPA.** Several interviewees stated that accountability should come from EPA, while also observing that was unlikely to happen. As one interviewee put it, “they have the authority to hold states accountable – they could say ‘do x-y-and-z or we will take over your permit program,’ but they just aren’t going to do that.” Several interviewees noted that EPA also needed to be held accountable for progress, and, as one interviewee put it, “they can’t judge their own accountability.” Yet another interviewee lamented that, “for the past five or six years or so, all EPA has had is negative news, creating pressure on the staff to hang their heads low and stay out of trouble.”
- **National Academies of Science.** Several interviewees suggested that the National Academies of Science (NAS) could play a role in ensuring Program accountability. All of these interviewees emphasized NAS’s prestige and independence as a factor underlying their views. “NAS is just about as independent as I can imagine,” said one interviewee. “They could be a great auditor, which is what we need. They can be frank.” Another interviewee described NAS as “being just about the only group who could come in with the skills, experience, and framework necessary to get things done.” “If accountability is focused on specific issues,” said yet another interviewee, “then NAS may be appropriate.”

Several interviewees, however, expressed concern that NAS would “simply issue yet another report,” which “not only would be expensive,” but would also be something that “everyone would ignore.” “They get money, issue a report and then leave. What the Program needs is a living accountability office that stays around.” One interviewee was very critical of the idea of using NAS, saying bluntly “NAS is a dumb idea and is missing the point. The point is not to gather scientific data. The point is to reveal what is and is not being done.”

- **Outside Group of Scientists and Experts.** Several interviewees indicated that a group of outside scientists and experts could serve an accountability role, similar to the National Academies of Science. As one interviewee put it, “we could assemble a group of scientists not currently affiliated with the Program. That’s not significantly different from the NAS idea, but it might be cheaper.” Two interviewees suggested that such a panel could be formed from experts working with other watersheds in the country, and the agreement could involve Bay Program scientists and experts agreeing to evaluate *their* watershed programs. “A rotating evaluative group,” as one interviewee put it. “Watersheds should help each other and learn from each other.” Another two interviewees pointed specifically to the Virginia oyster environmental impact panel, as being a good model. “It could have five to seven to ten folks on an advisory panel independent from the Bay program, national people.”
- **Program Partners.** Several interviewees indicated that the states should agree to hold themselves more accountable, pointing to the Bay-wide TMDL as a way to do that. As one interviewee said, “the states could police themselves, if they wanted to do so. But the states have to agree to real ramifications for missing deadlines, and we’ve got to figure out how we are going to agree to repercussions But politically, we have to remember that states are in a real bind – it’s really difficult to punish ourselves.”
- **Independent Evaluator/Office.** Several interviewees expressed interest in an independent, auditing type of compliance office, but worried about increasing the bureaucracy. “The Program and its Partners should be holding themselves accountable by establishing an independent office, as they’ve done through the TMDL incremental benchmarks. Where this office is located is a hard problem. This could be a contract with the National Academies or someone with an Inspector General function, whose role would be to hold everyone’s feet to the fire. We just have to be sure it is not a new bureaucracy build.” Another interviewee pointed out as a good example an approach taken in New York, where an “Inspector General entity” was utilized to oversee compliance with upgrading sewage treatment plants in the New York state watershed. On the other hand, at least one interviewee expressed doubts that “a third-person can just come in and tell us to do things differently. We still have the same legislatures. How will a third-person really make things different?”
- **Environmental Coalition.** Only one interviewee expressed strong support for a coalition of environmental groups to perform an accountability function. Most of the interviewees emphasized that they supported the “watchdog” role that environmental groups serve, but several expressed concern that such a group could be truly independent or even perceived as independent. Several interviewees also lauded the focus an environmental group such as Ducks Unlimited could bring to a problem, and lamented that the same type of focus was missing from the Program. One interviewee was particularly blunt: “It would be an utter waste of time to have a group of conservation groups. They would be instantly discounted as biased.”

Information Resources and Metrics

Generally, interviewees felt that existing reports such as the *Health and Ecosystem Assessment* related to the Bay's health worked well. "The annual reports are getting better and better," said one interviewee. "They're working hard on that." Interviewee responses to the proposed *Dashboards* were predominantly neutral and non-committal, although one interviewee felt like they were very time-consuming and another said "a lot isn't captured." "An accountability mechanism like a River Report Card would be much more useful. Let's choose four or five practices we want in a river – sewage treatment plants meeting a certain standard and certain best practices for farms, for example – and measure from there. We can't get too complex because people won't understand."

There was an overarching sense from many interviewees that while the Program identifies problems well, the Program did not follow up with specific recommendations about what should be done and by whom. As one interviewee put it, "we have legitimate tools for assessing progress for documenting accountability, but the tools are not sufficient to drive change. The accountability program currently identifies the problem but does not add 'and therefore they must do x, y and z.'"

Another interviewee put it similarly. "If the answer to a question is failure," the interviewee said, "then the key is to dissect why you didn't succeed. Was it a poor goal, or was it implementation problems? Or was it goal for which you had no authority or control? From a logical perspective, I suspect the answers will be pretty clear, but from a political perspective, there are no answers at all." The interviewee went on to suggest that goals should have contingencies for failure, so that the state legislatures would understand the consequences for failure at the outset.

Similarly, another interviewee said, "We don't need to know more about the science – what we need to know is where we need to make improvements." This interviewee went on to describe the problem as being one where existing information needed to be compared to information that was not known but could be gathered. "For example, we have data about what cover crops are being planted by county. But what we don't know is how many farmers could be doing this practice – in other words, we don't know the difference between existing participants and potential participants. And we need to know this gap. We need to know why the gap is there. Is it money? Knowledge? Regulatory authority? Cultural values? That's what we need help on."

Yet another interviewee put it this way: "The most important thing we need to show, though, is dollars on the ground. We've got to show the resources, where they are going, and what we are getting for it, on a state-by-state basis." "Ultimately," as another interviewee put it, "responsibility for the Bay's health should be shared. We've got to figure out a way to be accountable to ourselves and transparent to others. We must demonstrate commitments, describe actions, and indicate whether or not actions are done."

Several interviewees pointed to **Tributary Strategies as being an existing information resource by which to promote accountability.** “After all,” said one interviewee, “the states took years and years to come up with them. By God, we ought to use them.” “All the states have them,” said another interviewee. “Down to the BMP’s [Best Management Practices] ... Chase the money, chase the BMPs, and get to the bottom of what’s happening in each state. If someone could do double-checking on this level and suggest improvements, that would be helpful. But it can’t be too academic – it should be an on-the-ground thing.” Yet another interviewee emphasized that “state programs that look equal on paper are not equal, and it would be nice if someone smart could ferret that out. We need a matrix: what are the differences, strengths, and weaknesses for all of the states. Do it for the non-point source arena, and then point out ways programs need to improve.” Another interviewee suggested that the accountability mechanism focus on a sub-set of Tributary Strategies, focusing on four or five practices on a river in a River Report Card. One interviewee did not think that comparing how states were doing on their Tributary Strategies would be helpful, because of the difference in funding between the states for Bay cleanup. Another interviewee thought looking at Tributary Strategies was important because “we need a reality check. I won’t name names, but some of these strategies say they have 100% BMPs in place. I just don’t believe it.”

Several interviewees felt that an accountability mechanism would be most successful if it **focused on a specific area.** Water quality was mentioned most often a specific area of focus, although one interviewee disagreed that it should be a focus. “Water quality is not a good benchmark, because we won’t see results for years. We need to look at BMP’s [Best Management Practices] installed and working with people.” Agriculture was also mentioned often, with several interviewees indicating that it would be helpful for the accountability mechanism to function in a way that supported the Bay-wide TMDL. Specifically, they felt that a mechanism that evaluated whether non-point sources were meeting the TMDL’s “reasonable assurances” standard would be helpful. The interviewees were almost evenly split on whether a Bay-wide TMDL was the right approach to increase accountability.

General Concerns

While the majority of interviewees agreed that greater accountability for the Program and its partners is needed, several interviewees also expressed concerns about what an accountability mechanism might bring to the Program.

- **Accountability as Distraction.** Given that the Program has been under such scrutiny for the lack of progress made in restoring the Bay, it probably is no surprise that several interviewees expressed the concern that an accountability mechanism could result in unproductive navel-gazing instead of cleanup action. “This is the most evaluated program in the United States” was a common refrain. “Let’s stop planning and start doing” was another. “While the I.G. and GAO reports were helpful,” said one interviewee, “They are gifts that keep on giving. A lot of time is spent simply dealing

with these reports.” “Whatever accountability turns out to be,” said one interviewee, “if the Program gets wrapped around the axle of more monitoring to prove there’s a problem, nothing will get done. A river report card would be ideal, but we could get all tied up in a Dashboards-like process.” Another interviewee expressed similar concerns. “We always fall victim to the latest planning tool, which is used to delay real action. Everyone stopped dead when the tributary strategies were done. Now energy is going to the Bay-wide TMDL. Next will be reasonable assurances. Meanwhile, there will be nothing but excuses and delay.”

- **Accountability No Magic Bullet.** Several interviewees expressed a concern that an accountability mechanism will create unrealistic expectations. “People at the Program are doing their jobs,” one interviewee said, “They don’t regulate, though, and they can’t make a state do anything. The Clean Water Act isn’t enough either. The states could go beyond the Clean Water Act if they really wanted to, but they don’t.” “Unless the states have more resources,” said one interviewee, “we’re not going to make significantly greater improvements. An accountability mechanism won’t change that.” Similarly, at least one interviewee worried that Program participants believed that an accountability mechanism would satisfy Congress and GAO. “I don’t think that intense scrutiny is going to go away,” said this interviewee, “We have folks who don’t really understand that the GAO does not see the STAC [Scientific and Technical Advisory Committee] as independent, even though it is very good, and are unlikely to conclude that an accountability mechanism we formulate is sufficiently independent either.”
- **Accountability Needs Partner Buy-In.** More than one interviewee expressed the concern that the accountability mechanism would cause more work for the Program, but would be ignored by the Partners. “We are going to have to embrace it and use it,” said one interviewee, “if it is going to work at all.” Another interviewee explained that the Program and the Partners were going to have to move from a voluntary to a compliance process: “we know what we need to do, but no one wants to take the painful steps to do it. But we can become more compliance-oriented if we want to.” Yet another interviewee felt that making the states pay for the accountability mechanism would be essential to creating buy-in and ensuring that it would not be ignored.
- **Accountability by Committee.** Several interviewees worry about “accountability by committee,” observing that the Program’s culture of doing everything by committee slows down the process and is frustrating. The fear that an accountability mechanism would create more bureaucracy was a common concern. “We don’t want a bureaucracy build,” said one interviewee, “but that doesn’t mean a functional response wouldn’t be an office or someone with an Inspector General-type responsibility.”
- **Accountability Causes Divisiveness.** Many interviewees identified the Program’s cooperative structure as being a strength, and a few interviewees noted that an accountability mechanism would increase divisiveness. Some of these interviewees

worried about increased divisiveness, pointing specifically to the current discussions surrounding the development of a Bay-wide TMDL. Others, however, seemed more comfortable with a lack of consensus.

The Need for Independence

Interviewees overwhelmingly agreed that an accountability mechanism for the Program should be independent. Generally, interviewees agreed that independence was greatly needed in the first stage of evaluation, namely with respect to who or what would be evaluated. Interviewees were divided on the need for independence for the information gathering and reporting stage, with some interviewees pushing for a stronger “auditing” and quality control role than others. While independence was desired, many interviewees also worried that it would come at the expense of time and knowledge. “It takes a certain amount of history to understand what has happened and what is happening with the Bay,” was a common refrain.

Who determined what would be evaluated (the accountability metrics) was a concern for some of the interviewees. For example, one interviewee was particularly worried that it would be the Program and the PSC. “It is very disconcerting to hear that the Program or PSC will be deciding what should be evaluated. We need complete independence on that....This needs to be an outside group completely. It needs to be out of the hands of the operatives.” “We achieve independence,” another interviewee said, “by picking someone out of the Program. Somebody without an agenda, who is capable of understanding the issues and challenges, and evaluating them in an objective way. We need somebody at times to tell us we’re being too ambitious.”

Interviewees expressed less concern about the independence of the person or group gathering information, noting that there were capable people in the Program and on state staffs that could assemble needed information. Some interviewees, however, saw the information gathering phases as more of an “auditing” role, which needed greater independence because the quality of the information gathered needed to be verified.

The Bay’s Most Prominent Champions

When asked who might be the Bay’s most prominent champions, interviewees emphasized that the Program, its Partners, and Bay advocacy groups were filled with committed and talented people, but could not point to a specific individual with high-level political clout as being a strong champion for the Bay. Almost all of the interviewees found the question provocative.

“We don’t have them,” said one interviewee. “We have great champions who take on targeted initiatives, but there is no one right now who has made cleaning up the Bay one of their top three political agendas.” “The only way to get buy-in is to have support at this level,” said one interviewee, “and that’s a tough and interesting question.” “A lot of people are trying,” said another interviewee, “but the problems are so much more difficult now. And early

It takes a certain amount of history to understand what has happened and what is happening with the Bay.

champions came along when the problem was new and pretty much ignored, so they stood out.” “There are people who have dedicated their entire careers to saving the Bay, but some of the questions that were raised 35 years ago about regulating non-point source pollution when the Clean Water Act was passed still remain. No one at the federal level exists to fix this problem, at least not right now.”

Maryland Governor Martin O’Malley and Virginia Governor Tim Kaine were the individuals most often mentioned as potential or “emerging” strong champions for the Bay. “Governor Kaine has done fantastic things with sewage treatment and land conservation,” said one interviewee. “Governor O’Malley has been very supportive,” said another. Former U.S. Senator Paul Sarbanes was the most mentioned prominent champion of the Program on the federal level. Several interviewees expressed bitterness about what they perceived as a lack of federal commitment. “We recently found \$85 billion for an insurance company,” said one interviewee, “But somehow \$100 million isn’t available for the Bay.” “The reality is that you need a champion that is well known in all the states,” said one interviewee, “and that hasn’t happened.”

Conclusion

The great majority of interviewees strongly supported increasing accountability for the Bay Program. Although opinions differed about how this might be achieved at times, there is little doubt that the interviewees overwhelmingly desired to see progress and felt like more pressure was needed to promote on-the-ground action. The interviewees also wanted a mechanism that would reveal underlying problems and provide solutions. There was a strong sense that while the accountability mechanism must be tough, it should also promote proactive and affirmative change.

End Notes

¹ See, e.g., GOVERNMENT ACCOUNTABILITY OFFICE, CHESAPEAKE BAY PROGRAM: IMPROVED STRATEGIES ARE NEEDED TO BETTER ASSESS, REPORT, AND MANAGE RESTORATION PROGRESS, (2005), available at <http://searching.gao.gov/query.html?charset=iso-8859-1&q=&rf=2&qf=&GAO-06-96> (last visited Nov. 10, 2008); ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF INSPECTOR GENERAL, DESPITE PROGRESS, EPA NEEDS TO IMPROVE OVERSIGHT OF WASTEWATER UPGRADES IN THE CHESAPEAKE BAY WATERSHED (2008), available at <http://www.epa.gov/oig/reports/2008/20080108-08-P-0049.pdf> (last visited Nov. 10, 2008); ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF INSPECTOR GENERAL, EPA NEEDS TO BETTER REPORT CHESAPEAKE BAY CHALLENGES (2008), available at <http://www.epa.gov/oig/reports/2008/20080714-08-P-0199.pdf> (last visited Nov. 10, 2008).

² 33 U.S.C. § 1318. See also William Andreen and Shana Jones, Center for Progressive Reform, *The Clean Water Act: A Blueprint for Reform* for an explanation of TMDLs and how they could be strengthened, available at http://www.progressivereform.org/articles/CW_Blueprint_802.pdf (last visited Nov. 10, 2008).

About the Authors



Rena Steinzor is the Jacob A. France Research Professor of Law at the University of Maryland School of Law, with a secondary appointment at the University of Maryland Medical School Department of Epidemiology and Preventive Medicine. Among the courses she teaches are risk assessment, critical issues in law and science, and a survey of environmental law. Professor Steinzor received her B.A. from the University of Wisconsin and her J.D. from Columbia Law School. She joined the faculty in 1994 from the Washington, D.C. law firm of Spiegel and McDiarmid. From 1983 to 1987, Steinzor was staff counsel to the U.S. House of Representatives' Energy and Commerce Committee's subcommittee with primary jurisdiction over the nation's laws regulating hazardous substances. She is the President and a Director of the Center for Progressive Reform.



Shana Campbell Jones, J.D., is a Policy Analyst at the Center for Progressive Reform, providing research, drafting, and coordination to CPR's "Achieving the New Progressive Agenda" and "Government Accountability" issue groups. Prior to joining CPR, Ms. Jones worked as an associate attorney in the Norfolk office of McGuire Woods, LLP, previously clerking for the U.S. District Court, Eastern District of Virginia and the Maryland Court of Appeals. Ms. Jones also has experience as a telecommunications consultant and in nonprofit administration.

To see more of CPR's work or to contribute,
visit CPR's website at www.progressivereform.org.

104 Colony Crossing
Edgewater, MD 21037

202-289-4026 (phone)
202-289-4402 (fax)



RETURN UNDELIVERABLES TO:

CENTER FOR PROGRESSIVE REFORM
104 Colony Crossing
Edgewater, MD 21037

