

An aerial photograph of a river delta, likely the Chesapeake Bay, showing a complex network of waterways branching out into a green, forested landscape. A rainbow is visible in the sky above the water. The image is split vertically: the left half shows the sky and rainbow, and the right half shows the land and water.

2008

MARYLAND
ATTORNEY GENERAL'S OFFICE

CHESAPEAKE BAY WATERSHED
ENVIRONMENTAL AUDIT

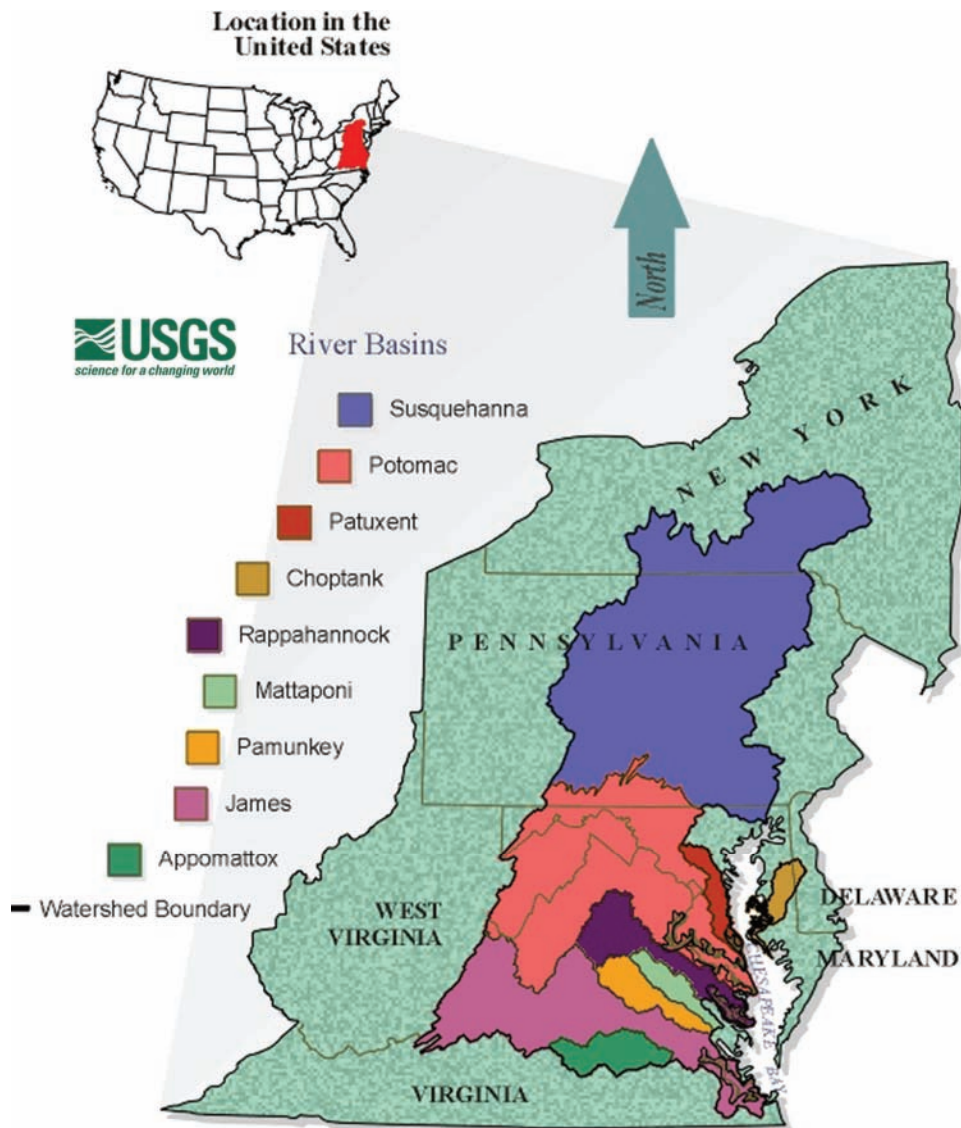
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This report is available on the web at
<http://www.oag.state.md.us/reports/2008EnvironmentalAudit.pdf>

INTRODUCTION

The Chesapeake Bay is North America's largest estuary. Supplied by water from the Atlantic Ocean and from some 150 rivers, streams, and creeks, the Bay contains more than 15 trillion gallons of water and has about 11,700 miles of shoreline.¹ The Chesapeake Bay watershed encompasses more than 64,000 square miles and includes parts of six states – New York, Pennsylvania, Delaware, Maryland, West Virginia and Virginia – and all of the District of Columbia.²



¹ <http://www.chesapeakebay.net/factsandfigures.aspx?menuitem=14582>.

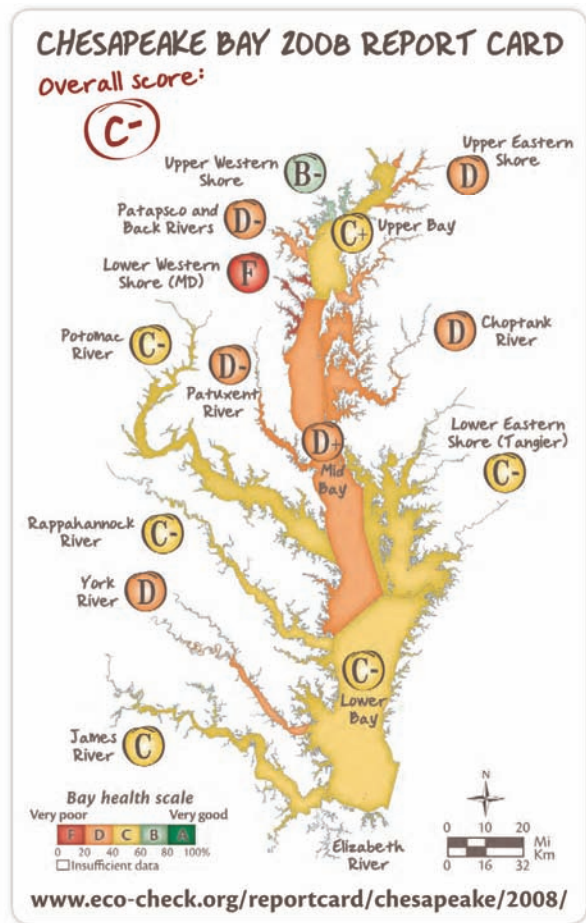
² A watershed is an area of land that drains to a particular river, lake, bay or other body of water. Watersheds are sometimes called "basins" or "drainage basins."

<http://www.chesapeakebay.net/watersheds.aspx?menuitem=14603>.

For centuries, the Bay was the most bountiful and productive bay on the continent, providing the perfect natural habitat for thousands of different species. When John Smith explored the region in 1607 and 1608, he described the Bay's incomparable beauty and marveled at an abundance of fish in greater numbers and variety than he and his men had ever seen.³ Today, however, the health of the Chesapeake Bay is poor, the result of hundreds of years of stress and pollution. Studies show that three of the biggest problems facing the health of the Bay are excess nitrogen, phosphorous and sediments.⁴

The University of Maryland Center for Environmental Science ("UMCES") annually releases an assessment of the health of the Chesapeake Bay habitat. The assessment measures a variety of indicators that are combined into a single index to grade each of the 15 bay regions. In the 2008 report card released on April 2, 2009, the bay regions received grades ranging from B- to F, with the Bay receiving an overall grade of C-.⁵ This is simply unacceptable, and we must act to save this great national treasure.

In order to identify problems at their source and formulate solutions that will benefit the Bay, the Office of the Attorney General ("OAG") has embarked on a river-by-river environmental audit. Communities and local activists know where problems exist, and the residents can offer practical and innovative solutions. This approach is at the heart of the Attorney General's environmental audits. Traveling into communities, river-by-river, the Attorney General will learn first-



³ <http://www.chesapeakebay.net/captainjohnsmith.aspx?menuitem=19591>.

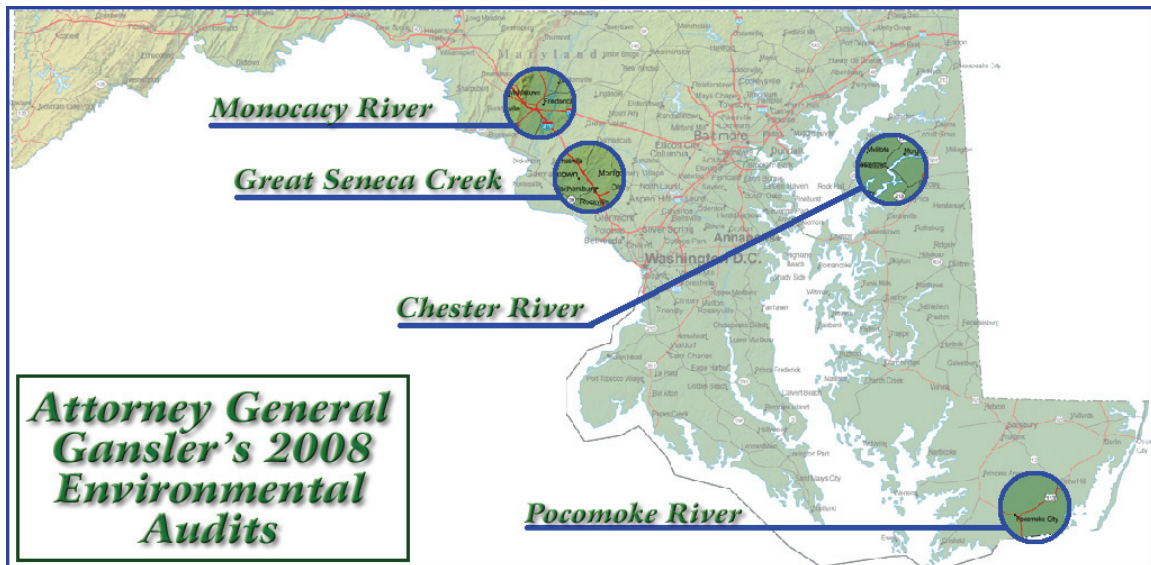
⁴ See <http://dnr.maryland.gov/bay/pdfs/LESbasinsum8505FINAL2007.pdf> (p. 1).

⁵ http://www.baystat.maryland.gov/current_health.html. The Bay received a C- in 2007 and a D+ in 2006.

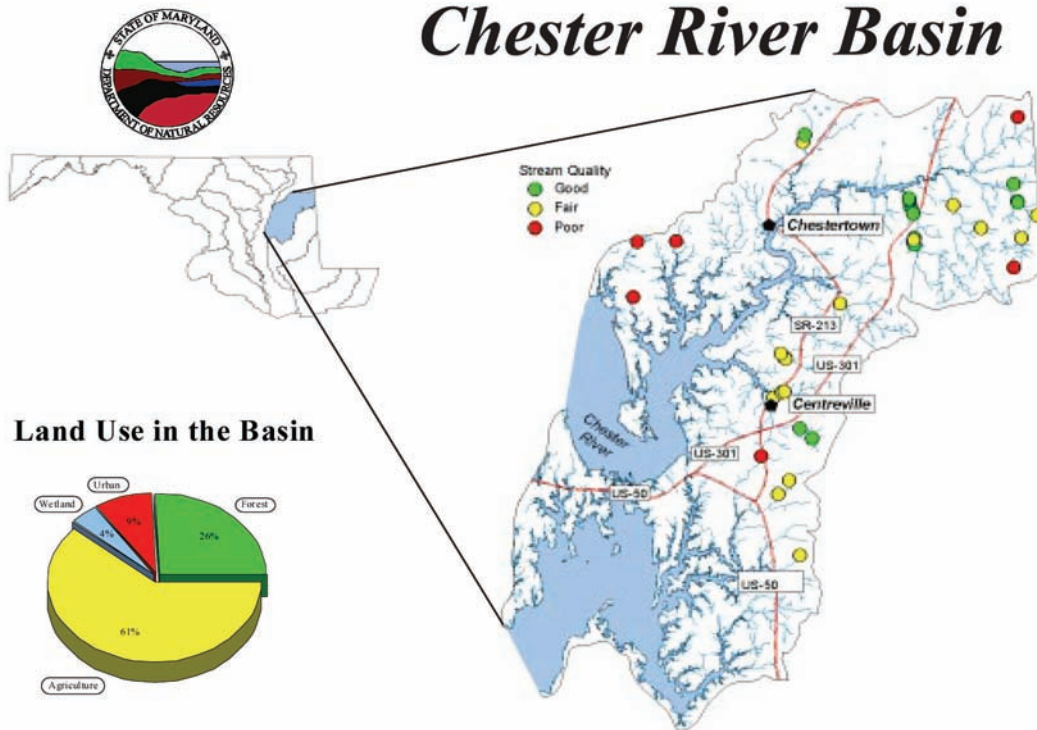
Report cards for 2007 and 2006 can be accessed at <http://www.eco-check.org/reportcard/chesapeake/2007/overview/> and <http://www.eco-check.org/reportcard/chesapeake/2006/overview/>, respectively. The Chesapeake Bay Program and the Chesapeake Bay Foundation also annually report on the health of the Bay. Their most recent reports, released in March and April, respectively, found that the Bay did not improve in 2008. See http://www.chesapeakebay.net/news_baybarometer08.aspx?menuitem=34917 and http://www.cbf.org/site/News2?abbr=SB_News_&page=NewsArticle&id=40691&security=2404&news_iv_ctrl=2345.

hand from those who know, use, and love the rivers. Each year, the OAG anticipates visiting four or more of the Bay's tributaries, meeting with citizens, environmental leaders and elected officials to learn about specific problems in each individual watershed, as well as pollution issues common throughout the greater Chesapeake Bay watershed.

This report contains the results of the Attorney General's 2008 environmental audits, which included the Chester River, the Pocomoke River, the Monocacy River, and Great Seneca Creek. In each watershed, he spent a full day meeting with local elected officials, environmental leaders, students, and citizens. The Attorney General traveled by boat and walked the shores of the waterways to learn about the watersheds, their problems, and ongoing restoration efforts, and to identify sources of pollution. River-by-river, the Attorney General's focus is on gathering information from those most intimately familiar with the river in order to help develop solutions and enhance enforcement of environmental laws to protect the rivers and the Chesapeake Bay. The Attorney General's ultimate goal is to improve the health of the Bay.



CHAPTER ONE: CHESTER RIVER



I. Background

The Chester River watershed is located in the Upper Eastern Shore, in Queen Anne's, Talbot and Kent counties in Maryland. A small portion reaches into Delaware. The basin includes the Chester, Corsica, Miles and Wye Rivers, and Southeast Creek. The region is mostly agricultural and forested, with several small towns throughout the area.⁶

The Chester River is 60 miles in length and is pipe-shaped, with its narrow stem in Delaware and its wide bowl opening into the Chesapeake Bay between Eastern Neck and Kent Island.⁷ The river can be divided into three sub-watersheds: the Upper Chester, the Middle Chester, and the Lower Chester. The Upper Chester River watershed covers 137 square miles in Queen Anne's and Kent counties,⁸ consisting of approximately 113,485 acres.⁹ It has 14 major tributaries: Chester Direct Kent, Chester Direct Queen Anne's, Miles Branch, Foreman Branch, Millington, Little Mill Pond, Cypress Branch, Andover Branch, Unicorn Branch Lower, Unicorn Branch Upper, Sudlersville, Barclay,

⁶<http://www.dnr.state.md.us/streams/pubs/chester.pdf>.

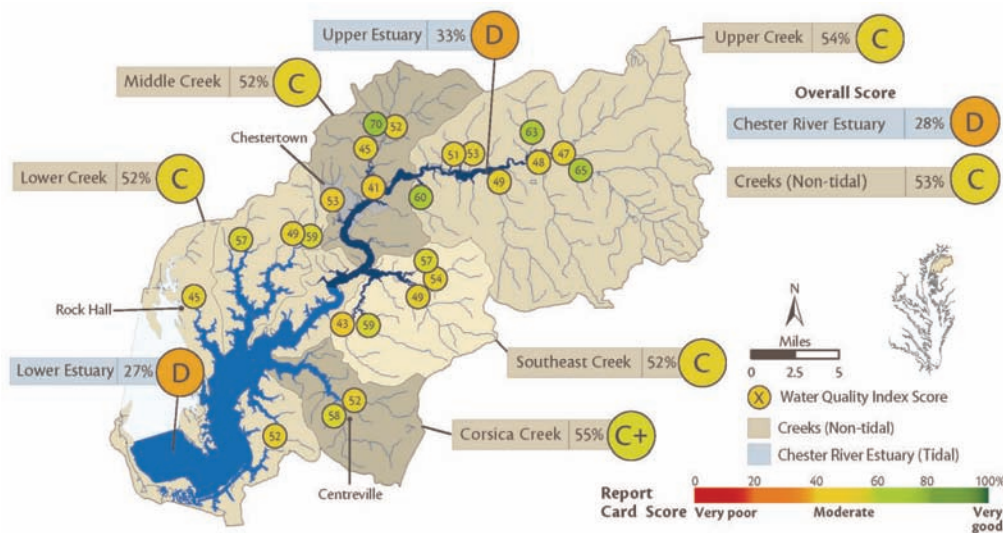
⁷http://www.chesterriverassociation.org/river_facts.html.

⁸ The watershed also includes about 41 square miles in Delaware. See http://dnr.maryland.gov/watersheds/surf/proj/uches_char.html.

⁹ http://www.epa.gov/reg3wapd/tmdl/MD_TMDLs/Up&MidChesterRiver/Chester_River-Nutrients.pdf (p.5).

Red Branch Lower, and Red Branch Upper.¹⁰ The Middle Chester River watershed comprises about 37,400 acres in Queen Anne’s and Kent counties;¹¹ its major tributaries include Morgan Creek, Lower Morgan Creek, Radcliffe Creek, and Urieville Lake.¹² The Lower Chester River encompasses 39,460 acres in Queen Anne’s and Kent counties.¹³ The Corsica River is a major tributary of the Lower Chester.¹⁴

The Chester River is on the “impaired waters” list maintained by the Maryland Department of the Environment (“MDE”),¹⁵ and within Maryland’s Upper Eastern Shore, which received a D in the 2008 UMCES report card.¹⁶ In 2007, the Chester River Association (“CRA”) issued its first report card on the health of the Chester River ecosystem and its two major parts: the estuary or tidal regions, and the creeks or non-tidal regions. The water quality in the creeks was moderate and graded C, while the tidal water quality was poor and graded D. The best water quality was found at the Urieville monitoring station, located in the mid-reaches of Morgan Creek; the worst water quality was found at the mouth of Morgan Creek. Morgan Creek has the largest number of point source pollution discharge permits in the Chester River watershed, including two wastewater treatment facilities and two industrial dischargers that release some 620,000 gallons of wastewater into the Chester River each month.¹⁷



¹⁰ See http://dnrweb.dnr.state.md.us/download/bays/uches_char.pdf (Map 2).

¹¹ http://dnrweb.dnr.state.md.us/download/bays/mcr_char.pdf (p. v).

¹² *Id.* at Map 3.

¹³ <http://mddnr.chesapeakebay.net/wsprofiles/surf/prof/wsprof.cfm?watershed=02130505>.

¹⁴ http://www.chesterriverassociation.org/publications/Corsica_Project.pdf.

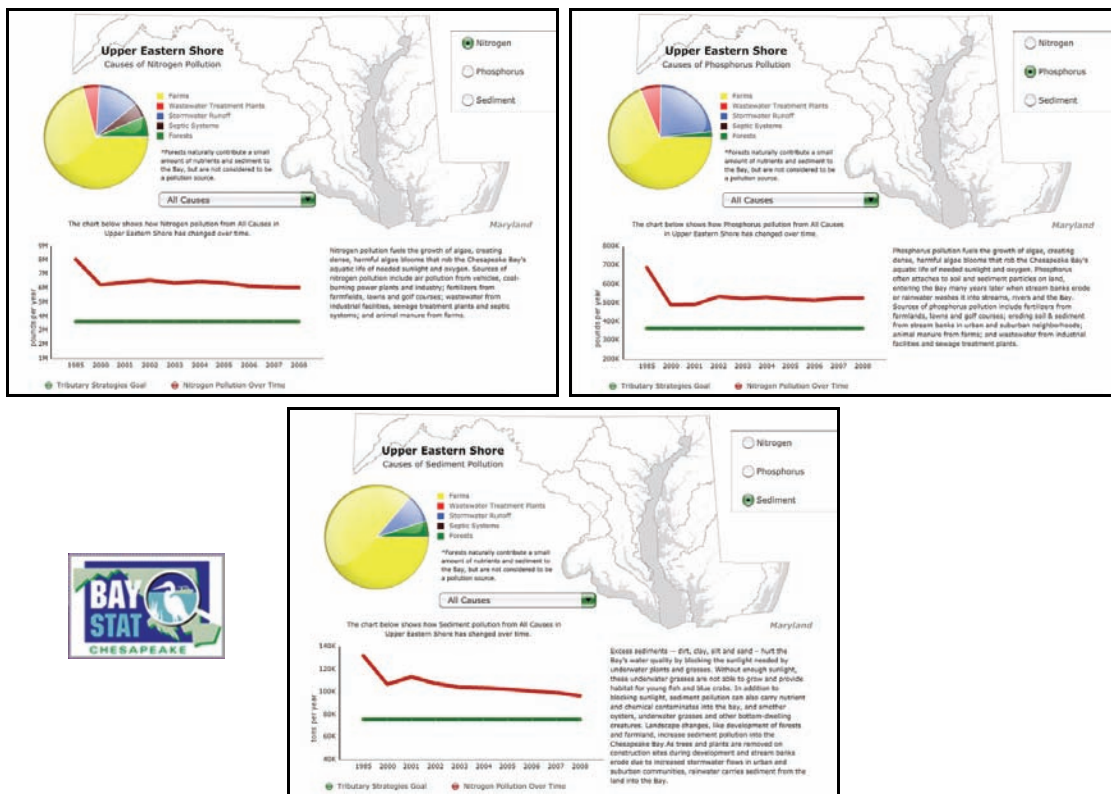
¹⁵ [http://www.mde.state.md.us/assets/document/2008_IR_Category_5_Waters\(1\).pdf](http://www.mde.state.md.us/assets/document/2008_IR_Category_5_Waters(1).pdf). The Clean Water Act, 33 U.S.C. §1251 et seq. (1972), requires states, territories and tribes to develop lists of impaired waters, that is, waters that are too polluted or otherwise degraded to meet the water quality standards set by the states, territories or tribes.

¹⁶ See <http://www.eco-check.org/reportcard/chesapeake/2008/>. The region received a D in 2007 and a D+ in 2006. See <http://www.eco-check.org/reportcard/chesapeake/2007/> and <http://www.eco-check.org/reportcard/chesapeake/2006/>, respectively.

¹⁷ http://www.chesterriverassociation.org/publications/2007_CRA_Report_Card.pdf.

The Chester River basin has been designated a priority area for water pollution control by the Maryland Department of Agriculture (“MDA”) as part of its Maryland Agricultural Water Quality Cost-Share Program.¹⁸ The program provides financial support to farmers for the implementation of best management practices that control and reduce agriculturally related pollution.¹⁹

In recent years, the watershed has also been affected by expansive development and an increase in residential and commercial land uses. Shoreline development and agricultural use both contribute to sediment and erosion problems.²⁰ The charts shown below depict the major pollution sources of nitrogen, phosphorus and sediment load in the Upper Eastern Shore, including agriculture, wastewater treatment plants, stormwater runoff, septic systems, and forests.²¹



¹⁸ See http://www.mda.state.md.us/pdf/macs_manual/5/3_priority_watersheds_target.pdf.

¹⁹ See http://www.mda.state.md.us/pdf/macs_manual/macs_manual_intro.pdf.

²⁰ Chester River Fact Sheet, Alliance for the Chesapeake Bay, <http://www.alliancechesbay.org/pubs/projects/deliverables-150-1-2003.pdf>.

²¹ <http://www.baystat.maryland.gov/sources.html>.

II. Active Enforcement Efforts and Pending Matters

Prior to conducting the Chester River watershed audit, the Attorney General thought it important to determine what was already being done in the region so that the Office would be better prepared to assess what additional actions might be required. To that end, the Office of the Attorney General identified a number of significant ongoing environmental enforcement efforts and matters pending in the Chester River watershed. These included:

Four Seasons at Kent Island. As planned by the developer, this senior residential community on Kent Island in Queen Anne's County would include 1,350 units, an assisted living facility, and related community and recreational uses. The developer's property lies between the towns of Chester and Stevensville, and borders three tidal water bodies—the Chester River, Macum Creek (a tributary of the Chester River), and Cox Creek. Construction of the project would include installing a bridge, water and sewer lines, and a marina within environmentally sensitive State wetlands, as well as building stormwater outfall structures in 18 different locations that would discharge surface water directly into State wetlands. Because the project would require construction and filling on State tidal wetlands, the developer was required to apply for a license from the Maryland Board of Public Works for that part of the project.

After conducting a hearing on the wetlands license application, the Board of Public Works denied the license on May 23, 2007. The developer filed a petition for judicial review of that denial in the Circuit Court for Queen Anne's County. The Office of the Attorney General represents the Board of Public Works in that appeal, which has not been decided as of April 2009.

Velsicol Chemical Corporation. Velsicol Chemical Corporation ("Velsicol") manufactures plasticizers and synthetic lubricants at a facility located in Chestertown, Kent County. For many years, chemical-laden process wastewater from the facility was discharged to a series of unlined ponds or impoundments on the property that emptied into a tributary of Morgan Creek, which flows to the Chester River and, eventually, the Chesapeake Bay. These wastewater disposal practices contaminated soil and groundwater beneath the facility with phthalates and other organic chemicals, including benzene and toluene. Wastewater treatment processes were later modernized, and Velsicol and its predecessors undertook some actions to monitor and remediate groundwater and soil contamination. By 2007, however, Velsicol had refused to implement adequate groundwater remediation.

In October 2007, the OAG and the Maryland Department of the Environment ("MDE") filed a complaint against Velsicol in the Circuit Court for Kent County alleging violations of the State's water pollution control and hazardous substance control laws, and seeking injunctive relief and civil penalties. The lawsuit was prompted by Velsicol's failure to complete the cleanup to applicable environmental standards, and was bolstered by information reported by the CRA suggesting that further investigation was needed to determine if contaminants had migrated off-site and into surface waters.

The CRA attempted, unsuccessfully, to intervene in the lawsuit. Subsequently, in March 2008, the association filed a complaint against Velsicol in the United States District Court for the District of Maryland under the Clean Water Act.²²

Wilson Private Wastewater Treatment Plant. This matter involves a determination by MDE to issue a discharge permit for a small wastewater treatment plant to serve the Wilson single residential property located on Bungay Creek in Kent County. The Wilson property is not served by public water or sewer and did not pass a soil percolation test that would allow the installation of an individual septic system to serve the property. Ordinarily, without a septic system, the property would not be eligible for development. However, in this case, the property owner had sufficient funds to construct a small wastewater treatment plant to serve the property and applied for a discharge permit for the plant. At the time, there was no basis under the applicable regulatory provisions to deny the permit, which would authorize the discharge of an average 450 gallons per day of treated domestic wastewater into Bungay Creek.

The decision to issue the permit was challenged by the CRA, the Chesapeake Bay Foundation, and seven individual property owners who are concerned that the permitting of these individual wastewater treatment plants would open the door to development of shoreline properties that could not otherwise be developed.

The administrative law judge who presided over the hearing issued a proposed decision affirming the issuance of the permit based on applicable law. The property owners and environmental groups appealed the proposed decision to MDE's final decision maker. That decision was pending in April 2008.

Chester River Landing. Chester River Landing is a residential waterfront project on the river in the heart of Chestertown. It has a private marina with boat slips that extend well into the water.²³ The developer obtained a license to construct the pier and to put stone revetment in some places along the shoreline and marsh creation in others. In some instances, the developer placed stone where marsh was required under the license. In addition, the pier was longer than the license allowed. MDE initiated an enforcement action that was ultimately settled, allowing the developer to retain the stone, but requiring him to pay a fine of \$8,000 and to create additional tidal marsh elsewhere along the shoreline.



Chester River Landing under construction, April 16, 2008

²² As discussed *infra* in Chapter Five: Updates and Follow-up, both lawsuits have since been resolved.

²³ See <http://www.chesterriverhomes.com/marina.cfm>.

III. Chester River Audit, April 16, 2008: What the Attorney General Learned

The Attorney General's Chester River watershed audit was conducted on April 16, 2008. Seven members of the OAG, including his special assistant for the environment, accompanied the Attorney General to Chestertown, Kent County, Maryland.

The Attorney General began the day meeting with elected officials from Kent and Queen Anne's counties, including state's attorneys, clerks of the court, registers of wills, and county commissioners, as well as town officials from Chestertown and Centerville.

Following that meeting, the Attorney General and staff took a boat trip on the Chester River in an oyster boat owned by the Echo Hill Outdoor School. Local riverkeepers and community members accompanied the group on the boat trip to point out sites of concern. During the afternoon, the Attorney General met separately with a small group of farmers and then environmental leaders from the Chester and Sasfras River Associations, Queen Anne's Conservation Association, Queen Anne's and Kent Soil Conservation Districts, Washington College Center for the Environment and Society, Echo Hill Outdoor School, and the Eastern Shore Land Conservancy and others. Finally, the Attorney General presided over a town hall meeting hosted by Washington College.



Attorney General Gansler is briefed by the Chester Riverkeeper on his boat tour of the Chester River.

During the course of the day, the Attorney General heard from these individuals and associations about a wide-ranging variety of environmental issues and concerns.

Transparency and Accountability. Various citizens and groups expressed great interest in the responsibilities and actions of MDE, MDA, and the Maryland Department of Natural Resources ("DNR"). Attendees at the meeting with elected officials as well as at the town hall meeting expressed the general view that there should be ready, helpful access to information about permitting and enforcement actions that would ensure greater agency accountability while promoting better understanding by the public. One specific complaint concerned the website maintained by MDE, which many felt was difficult to navigate and inadequate in providing information about permitting and enforcement actions.

Of particular interest was the accessibility of nutrient management plans (“NMPs”). Maryland’s Water Quality Improvement Act of 1998 requires virtually all Maryland farms to implement nutrient management plans to manage the application of animal waste and fertilizer to prevent pollution.²⁴ The Act also imposes other requirements intended to reduce harmful nutrient levels in the Bay and its tributaries. NMPs are submitted to MDA and the information contained in them is generally considered confidential.²⁵ The general consensus of those present was that increased access to NMPs and bringing the agricultural community into compliance with the Act should be a top State priority.²⁶

Increased Enforcement Efforts. The community expressed a general need for greater enforcement by MDE and MDA. Lack of personnel and resources available for enforcement was a recurring theme. In addition, there was a common concern that the penalties assessed by MDE are inadequate.

Agriculture. In addition to the discussion about nutrient management plans, other farm-related issues were raised, including the following:

- **Switch Grass or Corn.** After agricultural fields are harvested, high levels of nutrients may remain in the soil. Cover crops planted in the winter months are an effective means of absorbing nutrients, such as phosphorous and nitrogen, found in the manure that is often applied to fields as an organic fertilizer.²⁷ Without cover crops, unabsorbed nutrients from manure seep into groundwater or wash off into nearby rivers and streams, and ultimately, into the Bay. Currently, many farmers plant corn as a crop. Corn production may increase for use in making ethanol, a bio-fuel, as demand grows. However, corn is considered to be a “leaky crop” because of its inability to effectively absorb nitrogen.

The Chester River Association is concerned that nutrient run-off from corn will exacerbate the problem of excess nitrogen. Members of the environmental group claim that a 10 per cent increase in corn production will add five million more pounds of nitrogen to the Bay, effectively undoing any progress made over the past 10 years by wastewater treatment upgrades in the region. Accordingly, the CRA strongly advocates the planting of switch grass, which more readily absorbs the excess nutrients and can also be used to produce ethanol.

²⁴ Md. Code Ann., Agric. §§ 8-801 et seq. The Act requires all Maryland farmers grossing \$2,500 or more annually or raising 8,000 pounds or more of live animal weight to run their operations using a nutrient management plan that addresses both nitrogen and phosphorous inputs. See http://www.mda.state.md.us/resource_conservation/nutrient_management/index.php.

²⁵ The Act requires MDA to maintain a summary of each plan for 3 years “in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.” Md.Code Ann., Agric.§8-801.1(b)(2).

²⁶ Parenthetically, during the 2008 legislative session, the Attorney General supported a bill that would have provided transparency and accessibility of NMPs. Unfortunately, the bill was not assigned to a committee for a hearing. See <http://mlis.state.md.us/2008rs/bills/sb/sb0964f.pdf>.

²⁷ http://www.mda.state.md.us/resource_conservation/trib_strategies/cover_crops.php.

- **Out-of-State Pollution.** Many of those with whom the Attorney General met expressed frustration about pollution originating from out of state. In particular, they pointed to the practices of Pennsylvania hog farmers and the lack of enforcement against them, resulting in significant pollution in the Susquehanna River, which flows into Maryland and into the Chesapeake Bay.
- **Best Management Practices and Cost-Share Initiatives.** A number of citizens and farmers expressed an overall sentiment that the agricultural community is unfairly blamed for the Bay's poor water quality. Farmers talked about voluntary best management practices and cost-share initiatives being highly successful in reducing agricultural runoff. They also stated, however, that the federal government inadequately funds these programs, which inhibits their effectiveness.

Sewage Sludge Application. Sludge is a by-product of wastewater treatment. Each year, more than 700,000 tons of wet sewage sludge are generated in Maryland. MDE is the primary agency that regulates the utilization of sewage sludge. About 50 percent of Maryland's sludge is applied to agricultural land, a practice MDE promotes as a means of recycling nutrients, preserving landfill space, saving money, and helping reduce nutrient pollution in the Chesapeake Bay.²⁸

Chestertown residents shared several concerns about sewage sludge application. Chiefly, the community is opposed to MDE permitting sewage sludge from other counties to be utilized in Kent County. In addition, in their view, some of the sludge is too dangerous to be used as fertilizer; they cited as an example sludge from a different county containing too much copper and lead to be safely used. Finally, the counties and municipalities in the Chester River watershed would like to see more state and federal assistance in dealing with sewage sludge.

Stormwater Management, Sediment and Erosion Controls. Stormwater management, sediment and erosion controls are issues primarily related to construction sites. Citizens reported that after a heavy rainfall, there are large, visible plumes of sediment-laden water in the Chester River. Sediment control is a big problem, and the community complained that there was only one MDE inspector for Queen Anne's County. Finally, although the agency is responsive when contacted by the locality, the fines and penalties imposed for these violations are inadequate.

Zoning. A number of individuals questioned how Smart Growth and zoning decisions affect development and contribute to pollution. Participants also discussed the need to have a statewide approach and ability to enforce the Critical Area laws, under which the local governments devise and implement individual Critical Area programs.

²⁸ See *Sewage Sludge Utilization in Maryland Fact Sheet*, Maryland Department of the Environment (2003), <http://www.mde.maryland.gov/assets/document/factsheets/sewagesludge.pdf>.

Conowingo Dam. The Conowingo Dam is located in northeast Maryland on the Susquehanna River. The dam collects massive quantities of silt, sediment and debris that flow down the river. After a heavy rainfall and when the floodgates are opened, some of this debris and sediment flows over the dam and into the Chesapeake Bay and its tributaries. The Chester River watershed community described debris collecting on beaches and floating in the water, which poses serious hazards for boaters. They also expressed concern about the degraded state of the dam and suggested that the Army Corps of Engineers should provide more assistance.



Conowingo Dam releasing flood waters in February 2008

Chester River Landing. During the boat ride, the Attorney General saw this controversial project, which is in the heart of Chestertown and rests on the shoreline of the Chester River. As previously noted, the developer of the project disregarded soft-shore requirements of his permit and placed stone revetment in place of marsh creation. This project was cited as an example of the inadequacy of fines imposed by MDE. The community felt that the \$8,000 fine against the developer of the Chester River Landing was wholly insufficient and simply a “cost of doing business” that the developer was willing to absorb.²⁹

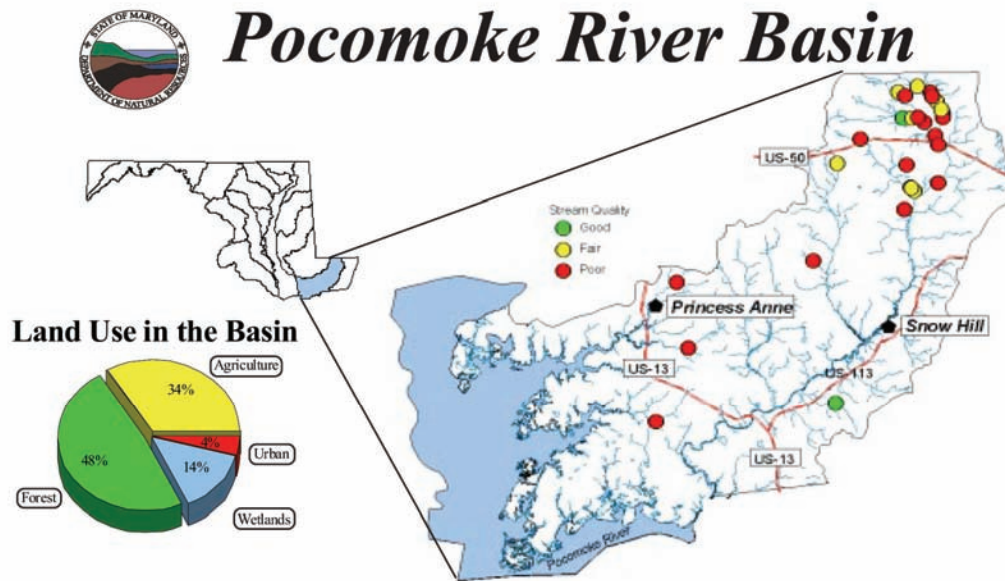
The Attorney General and the attendees discussed generally the 2008 changes to the Critical Area law that will, among other things, allow the Critical Area Commission to adopt regulations, enhance buffer and water quality protection, and strengthen enforcement provisions. In addition, marine contractors who perform shoreline erosion protection work are now subject to the jurisdiction of the Maryland Home Improvement Commission.³⁰

Wilson Private Wastewater Treatment Plant. Several residents inquired about the current status of the permit appeal by CRA and CBF. As noted, these groups and seven individuals have challenged the issuance of the permit out of concerns that the permitting of these individual private wastewater treatment plants would open the door to development of shoreline properties that could not otherwise be developed. They expressed frustration at MDE’s inability under the current law to deny a permit to build these private systems.

²⁹ The community also complained that the same developer applied for a permit to extend the pier at another marina several hundred feet into the deepest and swiftest part of the river. The Chester Riverkeeper and others were greatly concerned that such an extension would adversely affect the river’s ecosystems and cause severe environmental damage. The developer withdrew the permit application on January 9, 2007, according to information provided by MDE to the Office of the Attorney General in April 2009.

³⁰ The law, Ch. 119, 2008 Laws of Maryland, which the Attorney General strongly supported, took effect on July 1, 2008. The Chesapeake and Atlantic Coastal Bays Critical Area Protection Program is codified in the Natural Resources Article §§ 8-1801 et seq. of the Maryland Annotated Code.

CHAPTER TWO: POCOMOKE RIVER



I. Background

The Pocomoke River watershed is located in portions of Worcester, Somerset, and Wicomico counties in Maryland, as well as in portions of Sussex County, Delaware and Accomack County, Virginia. The basin includes the Pocomoke, Big Annemessex, and Manokin Rivers, and Nassawango and Dividing Creeks.³¹

The Pocomoke River is the easternmost tributary to the Chesapeake Bay. Stretching 73 miles in length, the river originates in the Great Cypress Swamp on the Maryland-Delaware border and flows through Maryland before emptying into the Pocomoke Sound at the Chesapeake Bay.³² One of nine rivers in Maryland designated as “Scenic and Wild,”³³ the Pocomoke and its related lands supply drinking water and support fishing, hunting, shipping, and other activities.³⁴ Nearly half of the land in the Pocomoke River watershed is forested, about a third is agricultural, and the remainder consists of wetlands.³⁵ There are several small towns throughout the region, including Princess Anne, Pocomoke City, Snow Hill, and Crisfield.³⁶

³¹ http://www.dnr.state.md.us/streams/pubs/ea99-5_pc.pdf (p. 5).

³² http://www.pocomokeriver.org/pocomoke_river.html.

³³ See Md. Code Ann., Nat.Res. §§ 8-401 et seq.

³⁴ http://www.pocomokeriver.org/pocomoke_river.html.

³⁵ <http://dnr.maryland.gov/streams/pubs/pocomoke.pdf>.

³⁶ http://www.dnr.state.md.us/streams/pubs/ea99-5_pc.pdf (p. 5).

The Pocomoke River is on the “impaired waters” list maintained by MDE.³⁷ Although UMCES does not issue a separate report card for the Pocomoke, it is located on Maryland’s Lower Eastern Shore, which received a C- in the 2008 UMCES report card.³⁸ In recent years, the watershed has experienced development pressures and an increase in residential land uses. Since land use in the Lower Eastern Shore basin is primarily agricultural, the largest portions of the nitrogen and phosphorus pollutants come from agricultural sources. The remaining contributions come from a combination of non-point and point sources.³⁹ The Pocomoke River basin has been designated a priority area for water pollution control by the Maryland Department of Agriculture as part of its Maryland Agricultural Water Quality Cost-Share Program.⁴⁰

The Pocomoke River was the location of the *Pfiesteria* outbreak that caused fish kills in 1997.⁴¹ In the aftermath of the outbreak, Governor Parris N. Glendening appointed the Citizens *Pfiesteria* Action Commission to study events surrounding the *Pfiesteria* outbreaks and to recommend policy actions. A key finding of the commission was a probable link between *Pfiesteria* populations and nutrient enrichment.⁴² The following year, the General Assembly passed the Water Quality Improvement Act of 1998.⁴³ Designed to protect the health of Maryland waterways, the Act contains a provision mandating the use of nutrient management plans by farmers to reduce both nitrogen and phosphorus inputs.

Growth related issues, wastewater treatment plants (WWTP), and agricultural practices and regulation are the primary problems identified in the Pocomoke River watershed. The charts shown on the next page depict the major pollution sources of nitrogen, phosphorus and sediment load on the Lower Eastern Shore, including agriculture, wastewater treatment plants, stormwater runoff, septic systems and forests.

³⁷ See [http://www.mde.state.md.us/assets/document/2008_IR_Category_5_Waters\(1\).pdf](http://www.mde.state.md.us/assets/document/2008_IR_Category_5_Waters(1).pdf).

³⁸ See <http://www.eco-check.org/reportcard/chesapeake/2008/>. The region received a D in 2007 and a C in 2006. See <http://www.eco-check.org/reportcard/chesapeake/2007/> and <http://www.eco-check.org/reportcard/chesapeake/2006/>, respectively.

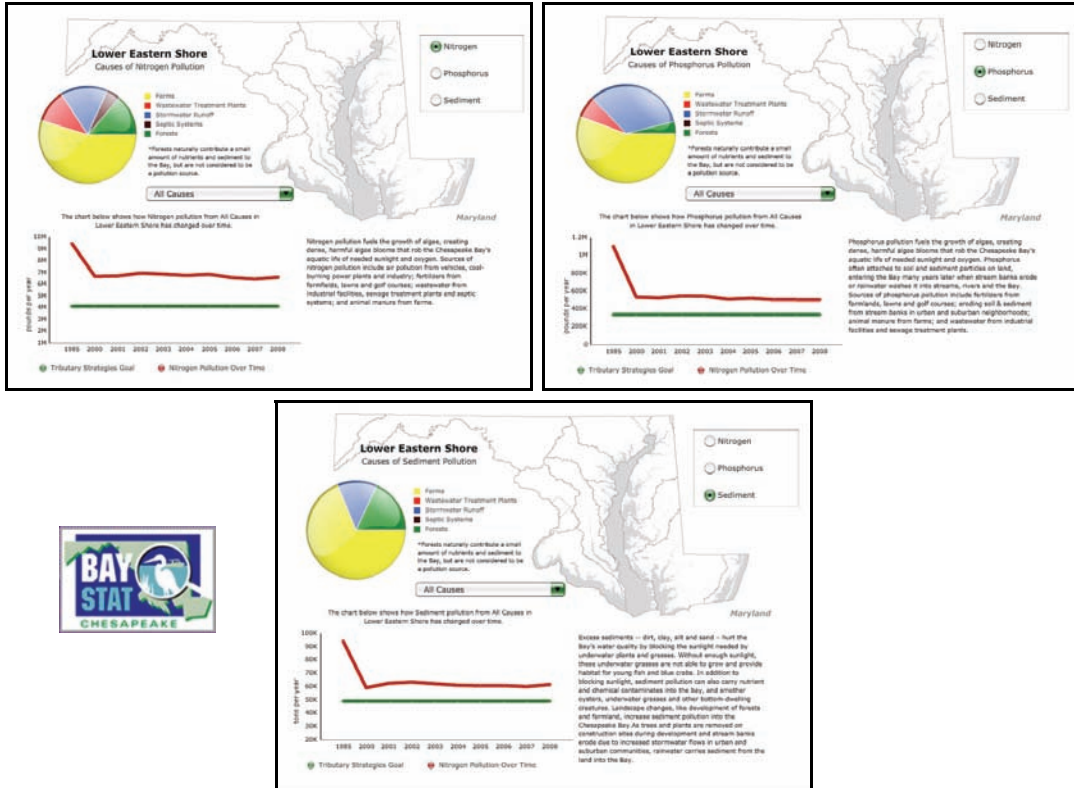
³⁹ Point source pollution comes from a single, definable location, such as a wastewater treatment plant or industrial discharge. By contrast, non-point source pollution cannot be attributed to a clearly identifiable, specific physical location, such as runoff from land and atmospheric deposition. See http://www.dnr.state.md.us/BAY/TRIBSTRAT/low_east/low_east_shore.html.

⁴⁰ See http://www.mda.state.md.us/pdf/macs_manual/5/3_priority_watersheds_target.pdf.

⁴¹ *Pfiesteria* is a potentially toxic estuarine microorganism. See <http://www.mde.state.md.us/assets/document/factsheets/pfiesteria.pdf>.

⁴² See http://dnr.maryland.gov/bay/cblife/algae/dino/pfiesteria/hughes_commission_report.pdf.

⁴³ See note 24, *supra*.



II. Active Enforcement Efforts and Pending Matters

Prior to visiting the Pocomoke River, the Office of the Attorney General identified the following active issues on the Lower Eastern Shore:

Bunting Critical Area Case. In 2001, property owner John Bunting constructed a hunting lodge on an island in the Pocomoke Sound without a permit required by law to build in the Critical Area buffer. The case was referred to the OAG from the Critical Area Commission (CAC) after the county was unsuccessful in its efforts to compel removal of the illegal structures. On May 14, 2008, the Office of the Attorney General filed suit against Bunting in Somerset County. At the time of the Attorney General's visit to the Pocomoke River, the lodge was still standing on the property.

Snow Hill's Summerfield Development and WWTP. In March 2006, the town of Snow Hill overwhelmingly approved by referendum the annexation of 934 acres of farmland for the proposed Summerfield development. Summerfield is planned as a 2,100-home residential community comprised of three neighborhoods with connections to the existing town of Snow Hill and to each other through a network of pedestrian trails and streets. Each neighborhood would have limited retail and office space.⁴⁴

⁴⁴ See www.summerfieldmd.com.

The developer of Summerfield included in his plans the construction of a new wastewater treatment plant to serve the residents of Summerfield and Snow Hill. Built in the 1960s, the existing 500,000 gallon-a-day plant does not meet modern environmental standards. The proposed system, which would handle approximately 667,000 gallons per day and take about two years to build, would be constructed on the same site, reuse some of the existing infrastructure, and remove most of the nutrients from the effluent before it is discharged into the Pocomoke River. Since the initial referendum, development plans have been scaled down and the project has been moving slowly.

Centex Homes / Riddle Farm Consent Decree. On June 11, 2008, four of the nation's largest homebuilders, including Centex Homes, reached a settlement with Maryland (represented by the OAG), the Department of Justice ("DOJ"), the Environmental Protection Agency ("EPA"), and six other states to resolve stormwater violations. Maryland's involvement began in 2004 when the State joined the EPA in pursuing an investigation of Centex Homes for stormwater violations at the Riddle Farm/Glen Riddle development in Berlin, located in the adjacent Coastal Bays watershed in Worcester County. As a result of the settlement, Maryland received a total of \$97,000 from the four builders, based on the number of active construction sites that each builder had in Maryland. The consent order mandates the companies to establish environmental management systems that will ensure consistent regional and national oversight of stormwater management through regular self-inspection, training of responsible employees, and record-keeping and reporting on compliance at active sites.⁴⁵

Eastern Correctional Institution Water Project. The Maryland Environmental Service ("MES") operates the water treatment system at Eastern Correctional Institution ("ECI") located in Somerset County, which draws from the Patapsco and Manokin aquifers. MES uses a reverse osmosis system to treat water from the aquifer. In 2006 and 2007, the treatment unit was not functioning properly, and MES withdrew less water from the Patapsco aquifer and more water from the Manokin than was permitted by MDE. At the same time, a sod farm in the area was also drawing a substantial quantity of water from the Manokin. In June and July of 2007, MDE began receiving information that a number of residential wells in the area were unable to draw sufficient water from the Manokin aquifer.

In August 2007, MDE, MES and the Department of Public Safety and Correctional Services ("DPSCS") entered into a consent order that obligated MES and DPSCS to make both short- and long-term improvements to the ECI water supply system, including a new water treatment plant and improvements to the ECI wastewater treatment plant.

The Somerset County Sanitary Commission wants to install two wells to draw from the Patapsco aquifer; it disagrees with MDE's requirement that the wells be equipped with a reverse osmosis treatment system due to the cost, and has threatened to file suit against MDE to remove that treatment requirement from the water appropriation

⁴⁵See

<http://yosemite.epa.gov/opa/admpress.nsf/dc57b08b5acd42bc852573c90044a9c4/c29e8692d8ac33b48525746500660507!OpenDocument>.

permit. The Commission also wants the University of Maryland Eastern Shore, which currently purchases water from the Sanitary Commission, to develop an alternative source of water at its own expense. This additional water capacity would allow more development in the Princess Anne area.

Agriculture. The Pocomoke River watershed is largely agricultural. The Maryland Department of Agriculture estimates there are 215 farms with nutrient management plans (NMPs) totaling just over 83,209 crop acres. Since 2006, 20 inspections to verify compliance with NMPs have yielded four enforcement warning letters.⁴⁶

III. The Pocomoke River Audit, June 25, 2008: What the Attorney General Learned

The Attorney General's audit of the Pocomoke River watershed was conducted on June 25, 2008. Ten members of the OAG, including the Attorney General's special assistant for the environment and his newly appointed principal counsel to the Maryland Department of the Environment, accompanied the Attorney General to Pocomoke City, Maryland.



Riprap shoreline seen on the boat tour

The day began with a meeting at the Discovery Center in downtown Pocomoke City with elected officials from Worcester and Somerset counties, including registers of wills, county commissioners, local sheriffs, and town officials from Pocomoke, Snow Hill and Crisfield.

Following the meeting with elected officials, the Attorney General and staff boarded the Bay Queen for a briefing and boat tour of

the Pocomoke River. In the afternoon, the Attorney General returned to the Discovery Center for a meeting with local environmental leaders from the Nature Conservancy, Delmarva Low Impact Tourism Experiences, the Lower Shore Land Trust, the University of Maryland Eastern Shore ("UMES"), representatives from the Worcester and Somerset counties Soil Conservation Districts, and others. After that meeting, the Attorney General traveled to Princess Anne and led a town hall meeting hosted by UMES.

To conclude the day, the Attorney General and staff toured a "poultry house of the future," located on the UMES campus. The project is a joint venture of UMES, the

⁴⁶ This information was provided to the Office of the Attorney General by the Maryland Department of Agriculture in June 2008.

U.S. Department of Agriculture, Maryland State agencies, and industry. Designed to retrofit existing chicken houses, the technology includes new flooring and a new ventilation system to provide a “litter-less” environment, and reduce moisture, ammonia and carbon dioxide emissions.

During the daylong visit, the Attorney General heard from these individuals, organizations and local residents about a variety of environmental issues on the Lower Eastern Shore. Agricultural practices and regulation, growth and development, and aging wastewater treatment plants were the primary environmental concerns identified by all participants throughout the day.

Nutrient Management Plans and Manure Storage. As of 2005, agriculture was the largest contributor of nitrogen, phosphorus, and sediment loads on the Lower Eastern Shore.⁴⁷ Poultry manure contains phosphorous and nitrogen, both of which are necessary components of fertilizer but are also two of the main causes of degradation to the Bay. As previously discussed, the Water Quality Improvement Act requires virtually all Maryland farmers to develop and file a nutrient management plan (“NMP”) to manage the application of nitrogen and phosphorous to their land. Throughout the day, specifically in the meeting with the environmental leaders and at the town hall meeting, participants expressed frustration over the privacy of nutrient management plans. Some stated that while they think most farmers are compliant, the plans should still be accessible to the public.

Many of the participants in the Pocomoke visit also raised concerns about the hazards of improperly storing poultry litter and agricultural runoff from farms. The NMPs do not require use of storage sheds for poultry litter, and it is sometimes stored outdoors. If manure is stored uncovered too close to a nearby body of water for more than a few days or on top of the ground with no barrier, there are serious risks of groundwater and surface water contamination.

Cover Crops. During the boat trip, it was suggested that farmers should be encouraged to grow cover crops, like wheat and barley. It was noted that if there were financial incentives for farmers to grow cover crops, more would participate. Offering small farmers additional incentives to preserve farmland was also mentioned as an option to help reduce agricultural runoff.

Growth and Development. Members of the Nature Conservancy observed that although the population on the Lower Eastern Shore has grown exponentially, the infrastructure has failed to keep up with the growth. An elected official noted that one potential option would be to designate growth areas and capitalize on existing infrastructure, citing as an example a new firehouse. Two years ago, the site was a blighted, aging mall. Embracing the concept of Smart Growth, the firehouse was located at the existing site instead of tearing up farmland to build a new station.

⁴⁷ <http://dnr.maryland.gov/bay/pdfs/LESbasinsum8505FINAL2007.pdf> (p. 5).

- **Wastewater Treatment Plants.** Outdated and severely aging sewer plants and systems cannot properly accommodate the current population, much less increased growth pressures. As a result, frequent sewer overflows contribute to water pollution and further degradation of the river. Many of the elected officials noted that counties lack the requisite funds to build new plants and recommended that the State reexamine the applicability of the Bay Restoration Fund and the “flush fee.”⁴⁸ A local elected official suggested that the focus should be on small municipalities and the financial burden of upgrading these systems.

In addition, there is a growing concern over the number of individual private wastewater treatment plants. According to some of the local elected officials and environmental leaders, MDE is not requiring owners of these systems to remove phosphorus from wastewater. There was also concern that these private systems encourage sprawl.

- **Snow Hill Wastewater Treatment Plant.** There are serious concerns about the plant’s location and the need to fix the antiquated system. An official from Snow Hill observed that the system is in a flood plain and that when there is flooding, pollution spills out into the area waterways. Plans for a new wastewater treatment plant have been significantly scaled down and the process has been moving slowly.

- **Living Shorelines.** During the boat trip, the Attorney General was shown hardened shorelines created by various forms of bulkheading and riprap. When the shoreline is hardened with rock or bulkheads, the natural habitat is disturbed and the natural ebb and flow of sediments is disrupted. The movement of these sediments is critical to maintaining stable shorelines and beaches and productive shallow water habitat.



Hardened shoreline witnessed on the river tour

The recent passage of two critical pieces of legislation will control future expansion of hardened shorelines. The Living Shoreline Protection Act of 2008 and the 2008 changes to the Critical Area Protection Program now require the use of soft living shorelines rather than hardened shorelines along Maryland waterways.⁴⁹

⁴⁸ Established in 2004 by the General Assembly, the Bay Restoration Fund is a dedicated source of funds, financed by wastewater treatment users, to upgrade the State’s wastewater treatment plants with enhanced nutrient removal technology. One source of funding comes from the so-called “flush fee” which is a \$2.50 monthly fee collected from each home served by a wastewater treatment plant. Commercial and industrial users also pay \$2.50 per EDU (equivalent dwelling unit). Septic users pay a \$30 annual fee that is used for septic system upgrades and cover crops. See <http://www.mde.state.md.us/Water/CBWRF/index.asp>.

⁴⁹ See Chapter 304, 2008 Laws of Maryland (HB 973) <http://mlis.state.md.us/2008rs/billfile/hb0973.htm> and Chapter 119, 2008 Laws of Maryland (HB 1253) <http://mlis.state.md.us/2008rs/billfile/hb1253.htm>.

Access to Information and Enforcement. Throughout the day, participants expressed a general view that access to information regarding NMPs, permits, and enforcement actions and proceedings is either not available online or difficult to retrieve from MDA and MDE websites. Citizens at the town hall meeting in particular noted that agency websites are often confusing and difficult to navigate. As a result, they are unable to locate permitting and enforcement information.

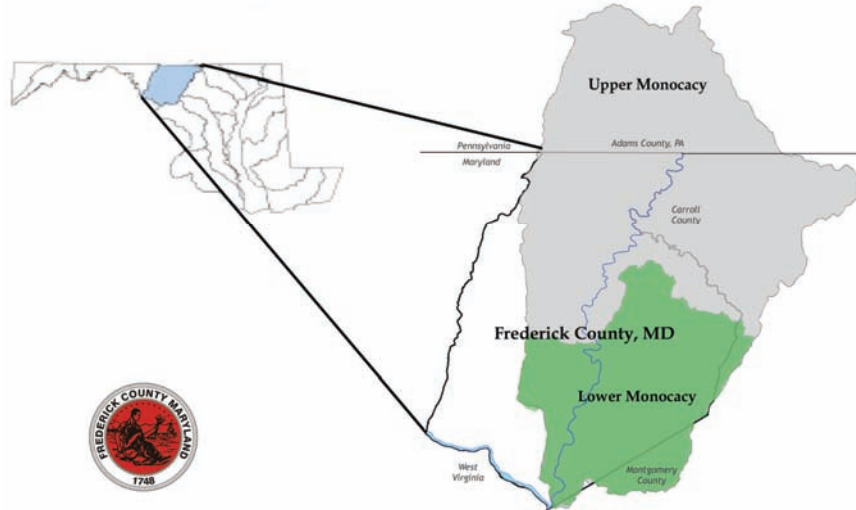
There was a general concern about the limited resources and the number of personnel at MDE and DNR. A local law enforcement official said there seems to be a shortage of DNR officers with enforcement authority. Several comments were made about the need to quickly identify and prosecute violators on the river. One suggestion was to focus on informing the public of potential polluters; informed citizens can be extremely helpful if they know what to look for and who to call when they see potential violations.

Out-of-State Pollution. A local state legislator expressed concern about the agreements that are in place with neighboring states to limit pollution into the Chesapeake Bay and the impression that the agreements are not implemented equally. His suggestion was that the OAG should take a closer look at the compacts.

Pfiesteria. Many participants noted that the 1997 *Pfiesteria* outbreak and the hysteria that followed devastated the local economy and tourism industry. Since that time, many of the local and statewide environmental organizations have come together to work cooperatively to address the issue of sprawl and over application of nutrients.

CHAPTER THREE: MONOCACY RIVER

Monocacy River Watershed



I. Background

The Monocacy River watershed is located in Frederick and Carroll counties in the Catoctin foothills of western Maryland, as well as within the far western area of Montgomery County.⁵⁰ It is part of the Middle Potomac River basin, which includes the Potomac River, the Upper and Lower Monocacy rivers, Double Pipe Creek and Catoctin Creek.⁵¹

The Monocacy River originates in Pennsylvania and flows 58 miles into Maryland, where it empties into the Potomac River.⁵² The Monocacy is the largest Maryland tributary to the Potomac River, which is one of the three largest tributaries entering the Chesapeake Bay. Seventy-five percent of the land included in the Monocacy River watershed is in Maryland.⁵³ Designated a “Scenic and Wild River,”⁵⁴ the Monocacy serves as a source of drinking water and supports a popular sport fishery. Roughly three-quarters of the land in the Monocacy watershed is agricultural, supporting 3,500 farms; the remaining land supports forests, the City of Frederick and growing residential areas.⁵⁵

⁵⁰ See Monocacy River Fact Sheet, Alliance for the Chesapeake Bay, <http://www.acb-online.org/pubs/projects/deliverables-150-4-2003.pdf> (p. 1).

⁵¹ See <http://dnr.maryland.gov/streams/pubs/middlepotomac.pdf>.

⁵² See Monocacy River Fact Sheet, Alliance for the Chesapeake Bay, <http://www.acb-online.org/pubs/projects/deliverables-150-4-2003.pdf> (p. 1).

⁵³ The rest of the land is in Pennsylvania. *Id.* at p. 2.

⁵⁴ See Md. Code Ann., Nat.Res. §§ 8-401 et seq.

⁵⁵ Monocacy River Fact Sheet, Alliance for the Chesapeake Bay, <http://www.acb-online.org/pubs/projects/deliverables-150-4-2003.pdf> (p. 2).

The Monocacy River Watershed can be divided into two sub-watersheds: the Lower Monocacy and the Upper Monocacy. The Lower Monocacy River watershed covers approximately 194,700 acres of land in three counties: Frederick, Carroll, and Montgomery. Eighty-seven percent of the watershed is encompassed within Frederick County. The Lower Monocacy River watershed has nine major tributaries: Upper Linganore Creek, Lower Linganore Creek, Ballenger Creek, Bennett Creek, Upper Bush Creek, Lower Bush Creek, Carroll Creek, Monocacy Direct, and Israel Creek. The Upper Monocacy River watershed includes about 126,107 acres in Frederick County. It has six major tributaries: Fishing Creek, Glade Creek, Hunting Creek, Owens Creek, Toms Creek and Tuscarora Creek.⁵⁶ Occasionally, the Monocacy is divided into a third watershed known as Double Pipe Creek.⁵⁷

The Monocacy River is on the “impaired waters” list maintained by MDE.⁵⁸ Although UMCES does not issue an independent report card for the Monocacy River, the Monocacy, as previously noted, is located in the Potomac River watershed, which received a C- on the 2008 UMCES report card.⁵⁹ The impaired water quality in the Monocacy River watershed is the combined result of agricultural runoff, inadequate forest buffers, inadequate or degraded sewer septic systems, outdated stormwater management, over application of fertilizers and pesticides for turf, and rapid urban growth. However, agricultural runoff, including nitrogen, phosphorous and sediment, is the primary source of pollutants in the Monocacy.⁶⁰

In 2005, as part of Maryland’s Clean Water Action Plan, the State ranked the Monocacy a “Priority Category 1 and Select Category 3 Watershed,”⁶¹ and Frederick County received a Federal grant to develop a Watershed Restoration Action Strategy (WRAS).⁶² In addition, MDA has designated the Monocacy River watershed a priority area for water pollution control as part of its Maryland Agricultural Water Quality Cost-Share Program.⁶³

The charts shown on the next page depict the major pollution sources of nitrogen, phosphorus and sediment load in the Middle Potomac, including agriculture, wastewater treatment plants, stormwater runoff, septic systems, and forests.

⁵⁶ http://www.watershed-alliance.com/mcwa_watershed.html#LowerMonocacy.

⁵⁷ http://dnr.maryland.gov/watersheds/surf/proj/umon_char.html.

⁵⁸ [http://www.mde.maryland.gov/assets/document/2008_IR_Category_5_Waters\(1\).pdf](http://www.mde.maryland.gov/assets/document/2008_IR_Category_5_Waters(1).pdf).

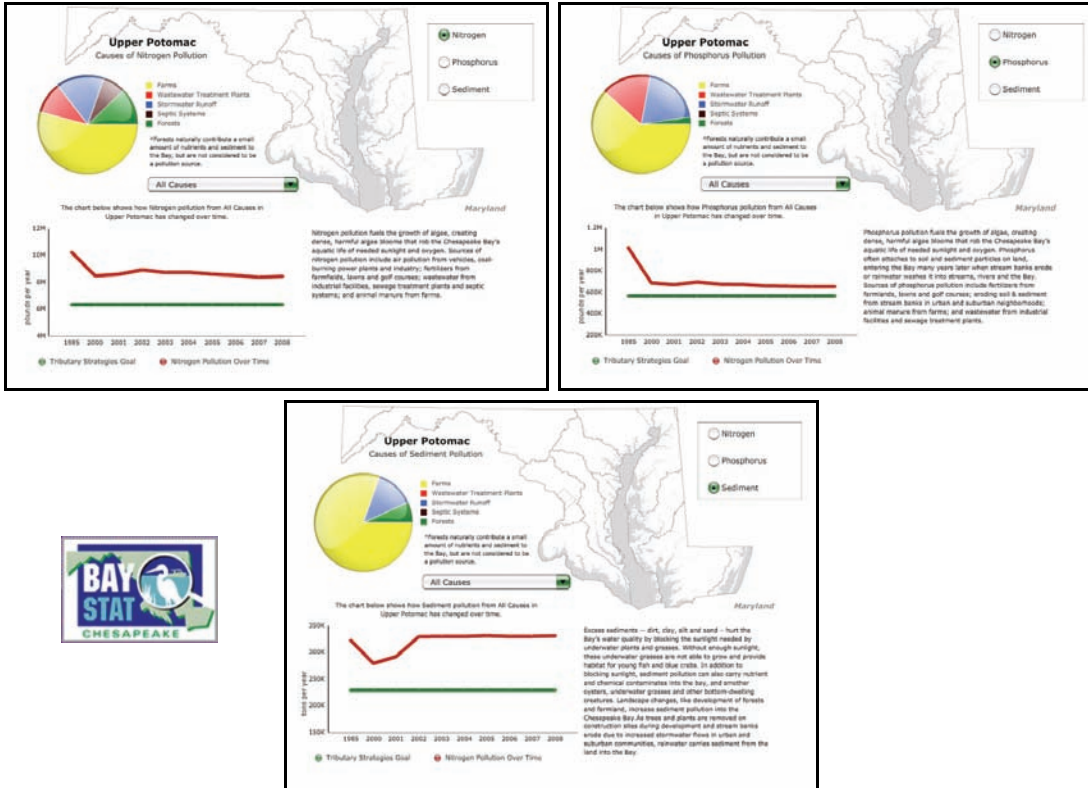
⁵⁹ See <http://www.eco-check.org/reportcard/chesapeake/2008/>. The region received a D+ in 2007 and 2006. See <http://www.eco-check.org/reportcard/chesapeake/2007/> and <http://www.eco-check.org/reportcard/chesapeake/2006/>, respectively.

⁶⁰ See http://dnrweb.dnr.state.md.us/download/bays/umon_strategy.pdf (p. 4).

⁶¹ http://dnr.maryland.gov/watersheds/surf/proj/umon_strategy.html.

⁶² Both MDE and DNR helped with the administration and development of the resulting report. See http://dnrweb.dnr.state.md.us/download/bays/umon_strategy.pdf.

⁶³ See http://www.mda.state.md.us/pdf/macs_manual/5/3_priority_watersheds_target.pdf. In 2006, MDA received grants from the Chesapeake Bay Targeted Watersheds Program to provide financial and technical support to projects that reduce excess nutrient pollution within specific tributaries of the Bay. MDA has identified the Monocacy as a priority “because of the high concentration of dairy and livestock farms in the area and the soil types and steep slopes which create the potential for leaching and run off of nutrients.” <http://www.mda.state.md.us/article.php?i=2776>.



II. Active Enforcement Efforts and Pending Matters

Prior to conducting the Monocacy River watershed audit, the Office of the Attorney General identified a number of significant ongoing environmental enforcement efforts, restoration efforts and matters pending in the Monocacy River watershed. These included:

Tea Bow Dairy Farms, Inc. In January 2008, Tea Bow Dairy Farms, Inc. violated its permit by discharging 450,000 gallons of liquid and semi-solid manure into Glade Creek, a tributary of the Monocacy River that is used for recreational trout fishing and drinking water. The discharge occurred when a six-inch pipeline in its manure recycling system broke, sending cow excrement 2,000 feet through storm drains and into Glade Creek. The release resulted in a fish kill of 2,500 brown trout at the Fountain Rock Park fish hatchery three miles downstream from the farm. The Town of Walkersville had to shut down its public water supply due to the contamination, and several residents in the area complained of foul odors and black color in their water.

On July 9, 2008, the OAG and MDE filed a lawsuit alleging violations of water pollution control laws on two separate occasions in January 2008. The lawsuit seeks \$60,000 in penalties and \$4,150 in damages for the fish kill.

Lafarge – Frederick Quarry. Lafarge North America operates a limestone quarry and crushing operation in Frederick. Lafarge violated air quality requirements by failing to take reasonable precautions to prevent particulate matter and dust from becoming airborne at the quarry. On February 27, 2008, MDE and the OAG signed a consent order with Lafarge to address violations of air quality standards that requires payment of a \$20,000 penalty for the violations, as well as major improvements to the plant to reduce air pollution and dust emissions. Improvements required by the settlement include a major upgrade to the water suppression system for the crushers, upgraded dust suppression on the storage piles, and improvements to dust control on the plant roads. The order also requires the company to submit plans to MDE for overall plant dust control and to keep extensive records of the operation of all air pollution control equipment and procedures.⁶⁴

Coblentz Farm. On July 30, 2008, during a wastewater transfer operation at the Coblentz Farm in Frederick, a faulty hose split, resulting in the release of approximately 51,000 gallons of liquid manure into a tributary of Catoctin Creek. After the owner reported the unauthorized discharge, measures were taken to contain the spill, including earth dams to capture flow so that it could be pumped into adjacent fields. An inspection on August 1, 2008, revealed a number of small dead fish, as well as manure solids covering the stream bottom.

III. The Monocacy River Audit, September 23, 2008: What the Attorney General Learned



Attorney General Gansler at the Pinecliff Park boat launch

The Attorney General's Monocacy River watershed audit was conducted on September 23, 2008. The Attorney General's special assistant for the environment, principal counsel and deputy counsel to MDE accompanied him to Frederick, Maryland for the audit, as did six other members of the Office of the Attorney General.

The Attorney General began the audit by meeting with elected officials from Frederick County, including state legislators, county commissioners, the clerk of the court, a sheriff, and a number of mayors. After that meeting, the Attorney General visited an ongoing restoration site at the Carroll Creek restoration project, followed by a visit to the Monocacy River at Pinecliff Park. At each site, the Attorney General was briefed by officials involved in Monocacy River projects and heard about challenges facing the river.

Following the river briefing, the Attorney General met with environmental leaders from the Sierra Club, the New Forest Society, Trout Unlimited, the Audubon Society, Chesapeake Wildlife Heritage, Friends of Waterford, Canaan Valley Institute, Catoctin

⁶⁴ See <http://www.mde.maryland.gov/PressReleases/1086.html>.

Soil Conservation District, Sugarloaf Conservancy, Chesapeake Bay Foundation, Friends of Frederick, Hood College, and the Potomac Riverkeeper. Finally, the Attorney General held a town hall meeting hosted by Hood College to hear directly from community members.

During the course of the day, the Attorney General heard about a wide range of environmental issues and concerns, including those listed below.

Out-of-State Pollution. Elected officials expressed concern and frustration that local restoration efforts are undermined by pollution flowing from the Susquehanna River in Pennsylvania into the Bay. They asked about the force and effect of the Susquehanna River Basin Compact entered into by Pennsylvania, Maryland, New York, and the United States Secretary of the Interior, as well as the powers of the corresponding Commission.⁶⁵ A discussion ensued about the effects of Pennsylvania agriculture on the Susquehanna, Potomac, and other watersheds originating in Pennsylvania, including the Monocacy. The prevailing sentiments were that Pennsylvania is not abiding by the Compact, that its environmental department is not enforcing the state's regulations, and that Pennsylvania's regulations are far weaker than those found in Maryland. Those present expressed the view that all of those factors are undoing the efforts being undertaken in Maryland to save the Monocacy.

Wastewater Treatment Plants and Sanitary Sewer Operations. Elected officials and environmental leaders expressed infrastructure concerns regarding local wastewater treatment plants and sanitary sewer operations. In particular, they mentioned the increasing burdens on these systems and emphasized the lack of funding for upgrades. For example, although Frederick County has a capacity management plan, under the plan, the municipalities need to purchase updated computer modeling systems that set out the appropriate system allocations in a given storm event, and they do not have the funds to purchase those modeling systems. Officials also raised some concern about invasive plants and wild growth that interfere with inflow and filtration, as well as customer awareness of what not to dispose of down sinks and toilets (*e.g.*, cooking grease).

Intersex Fish. Some of the participants in the meeting of elected officials mentioned the prevalence of intersex fish in the Potomac watershed,⁶⁶ with one claiming that as many as 80 percent of the males are producing eggs. Some claimed that runoff from sewage sludge, a byproduct of wastewater treatment that is approved as fertilizer, may be disrupting the endocrine system of the fish and creating intersex fish. Another

⁶⁵ Signed in 1972, the Susquehanna River Basin Compact was intended to promote a comprehensive, coordinated plan by the signatory parties to conserve, manage, and control the water resources of the Susquehanna. The Susquehanna River Basin Commission, which consists of the governor or designee from each state and one member appointed by the President, was created upon enactment of the Compact. *See* http://www.srbc.net/about/srbc_compact.pdf.

⁶⁶ A study released by the U.S. Geological Society in February 2008 showed that a high incidence of male smallmouth bass with immature female eggs in their testes (a form of intersex) occurs in the Potomac watershed where farming is most intense and where human population density is highest. *See* <http://www.usgs.gov/newsroom/article.asp?ID=1870>.

participant suggested that prescription drugs that are flushed down the toilet, as well as certain personal care products, contain endocrine disrupters that contribute to the problem. Whatever the cause, the Federation of Fly Fishers named the Potomac River and its tributaries, including the Monocacy, as endangered fisheries.

Lawn Fertilizer. One local state legislator raised the problem of increased lawn fertilizer runoff with the growth of residential development. He indicated that he would be proposing legislation seeking the removal of phosphorous from lawn fertilizer, much like the successful legislation supported by the Attorney General to remove phosphates from dishwashing detergent.

Carroll Creek Restoration Project. Individuals from Hood College, the Chesapeake Bay Foundation and the Potomac Valley Fly Fisherman briefed the Attorney General at the Carroll Creek site and pointed out that three different tributaries to the Monocacy River come together at this 40-acre site, making it an ideal spot for wildlife and raising trout. However, over the years, sediment covered the habitat needed for the trout. The Carroll Creek restoration project began four years ago to restore this area, and the project has already accomplished the removal of a huge layer of silt. Native trees planted along the banks will buffer the stream from runoff pollution and reduce sediment flow to the waterway. The shade provided by the trees will also help control the water temperature that is essential for trout to flourish. Participants pointed out that the project still must address other stresses on the habitat, like golf course runoff and erosion. The Chesapeake Bay Foundation, Hood College, DNR and others are working collectively on the riparian buffer project along the creek just east of Ft. Dietrich.

Pinecliff Park. A Monocacy Scenic River Board member briefed the Attorney General on the board's upcoming report and identified three primary challenges to the River: agricultural runoff, impervious surface runoff, and a lack of setbacks and buffers.⁶⁷ It was suggested that the recently adopted countywide buffer ordinance would help with these issues, and participants would like the setbacks to apply to golf courses as well as residential developments.⁶⁸



Monocacy River at the Pinecliff Park boat launch

Mason-Dixon Golf Course and Residential Community. The concern around this proposed development, which straddles the Maryland-Pennsylvania line, involves issues of water appropriation and the process by which citizens are given an op-

⁶⁷ The final report was released in April 2009 and is available at <http://www.co.frederick.md.us/documents/Planning/Environmental%20Planning/MonocacyRiverFinalReport2009.PDF>.

⁶⁸ In August 2008, Frederick County passed an ordinance (No. 08-21-497) which requires developers to provide for setbacks of 100 feet, 150 feet on slopes of 15 to 25 per cent grade, and 175 feet on steep slopes of 25 per cent grade or higher when building along any waterway in the county.

portunity to express those concerns. There was also a concern about allowing forest mitigation to be implemented in Pennsylvania when this project resulted in the loss of trees in Maryland. On September 23, 2008, the day of the Attorney General's audit, the Secretary of DNR sent a letter to Frederick County stating that off-site re-forestation is permissible on contiguous property crossing the Maryland-Pennsylvania border provided that the mitigation occurs on property in the same watershed as the project and the applicant demonstrates that no reasonable onsite alternative exists.⁶⁹

Lake Party Dam. Participants at the river site described an individual who owns the land along the river and dams the river, creating a lake for a party.

Invasive Species. The Attorney General was briefed about several invasive plant and fish species. In particular, participants mentioned invasive plants such as *Didymo*⁷⁰ and Japanese hops,⁷¹ which smother everything in the water, including the invertebrates. The result is that fish are dying because they have nothing to eat. Those present also talked about rusty crayfish, which were originally introduced to the river as bait and have spread unbridled throughout the river.⁷² Some of the participants claimed that "whirling disease," which causes skeletal deformities, can be attributed to the rusty crayfish.⁷³

Penalties and Fines. The environmental leaders expressed a concern about the insufficiency of land use requirements and fines, as well as the lack of funding for inspectors.⁷⁴ For example, they said that fines for violating stormwater regulations are simply treated as a bearable cost of doing business by construction companies. They took issue with agricultural zoning regulations as well, pointing out that once a property is zoned to be agricultural, an owner can have three times as many cattle on the property, notwithstanding water access and lack of fencing (which explains, in their view, why cows can be found in, and polluting, water). One participant also added that some farms have put best management practices in place to address water degradation issues, but because compliance is voluntary, many farmers have no incentive to participate.

⁶⁹ This information was provided to the OAG by DNR.

⁷⁰ *Didymo* is a freshwater aquatic diatom that threatens streambeds by forming extensive mats. *See* <http://www.epa.gov/Region8/water/didymosphenia/>. *See also* <http://dnr.maryland.gov/mydnr/askanexpert/didymo.asp>.

⁷¹ Japanese hops is a rapidly growing, climbing annual vine. *See* <http://dnr.wi.gov/invasives/fact/japanhops.htm>.

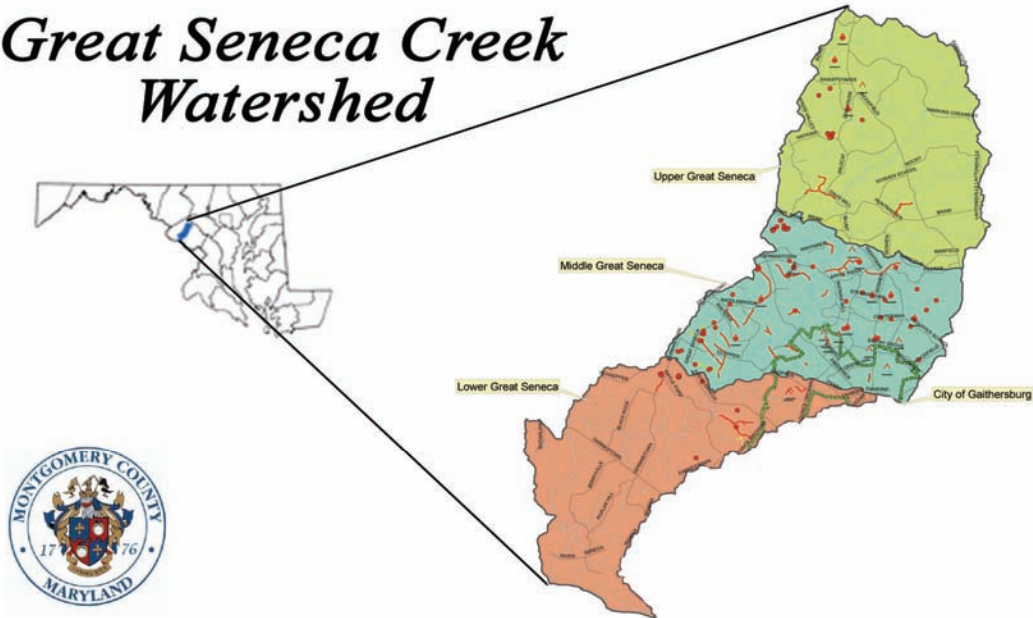
⁷² Rusty crayfish (also called crawfish) is an invasive species native to portions of the Ohio River watershed. It feeds upon fish eggs and can reduce the quality of habitat. <http://dnr.maryland.gov/invasives/RustyCrayfishBrochure.pdf>.

⁷³ Whirling disease, which affects only fish in the salmon and trout family, is caused by a parasite that can be introduced to fish by several sources, including insects and live bait. *See* http://dnr.maryland.gov/fisheries/pdfs/WD_brochure.pdf.

⁷⁴ One participant mentioned that although Frederick County once had four inspectors, it now has only two.

CHAPTER FOUR: GREAT SENECA CREEK

Great Seneca Creek Watershed



I. Background

Great Seneca Creek is the largest watershed located entirely within Montgomery County. The Great Seneca originates in the northwest portion of the county near Damascus, and flows in a southerly direction through Gaithersburg and Germantown, until it joins the Potomac River near the town of Seneca. Two large tributary systems, Little Seneca Creek and Dry Seneca, flow into Great Seneca. The headwaters of the watershed contain low-density residential development and agricultural areas. The middle portion of Great Seneca contains commercial and medium-density residential areas; moving downstream, the land use densities increase. The lower portion of the watershed contains low-density residential development, parklands, and agricultural land.⁷⁵

The Great Seneca Creek can be divided into three sub-watersheds: Upper Great Seneca Creek, Middle Great Seneca Creek, and Lower Great Seneca Creek. Upper Great Seneca has four major tributaries: Upper Great Seneca, Magruder Branch, Wildcat Branch, and Goshen Branch.⁷⁶ Middle Great Seneca has six major tributaries: Middle Great Seneca, Cabin Branch, Whetstone Run, Upper Whetstone Run, I-270 Tributary,

⁷⁵ <http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/csps/watersheds/csps/html/gsc.asp>.

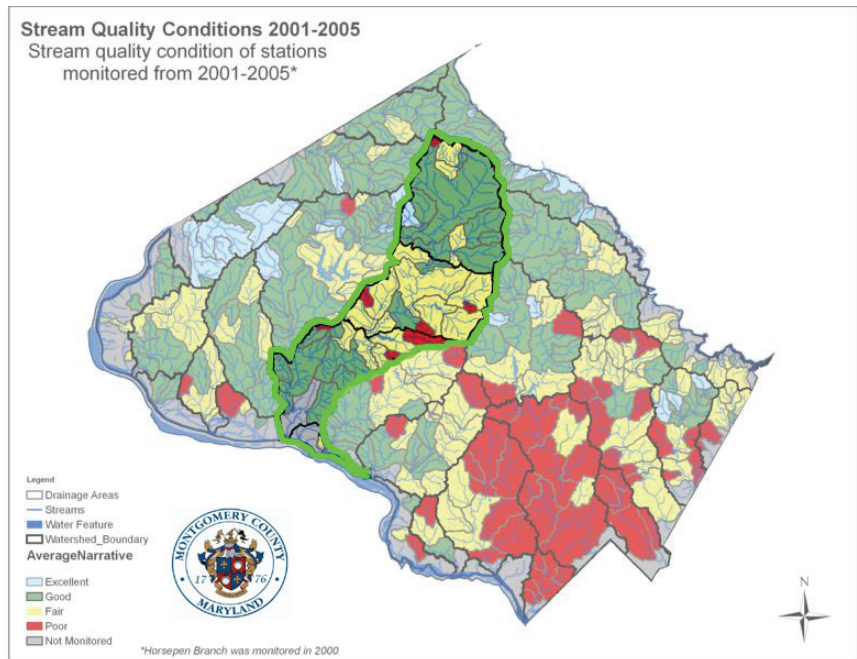
⁷⁶ See

<http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/csps/watersheds/csps/html/uppergsc.asp>.

and Gunners Branch.⁷⁷ Lower Seneca has five major tributaries: Upper Long Draught, Lower Long Draught/Quince Orchard, South Germantown, Lower Great Seneca, and Dawsonville Tributary.⁷⁸

Not individually graded by UMCES, Great Seneca Creek is in the Potomac River watershed, which received a C- on the 2008 UMCES report card.⁷⁹ In 2003, Montgomery County's Department of Environmental Protection issued an updated Comprehensive Stream Protection Strategy ("CSPS"),⁸⁰ which provided an overall assessment of county stream conditions, rating stream conditions in the county's sub-watersheds as being in excellent, good, fair, or poor condition based on a number of biological indicators. Overall, Upper and Lower Seneca Creek were rated good, and Middle Seneca Creek was fair.⁸¹

The CSPS concluded that stream erosion and sedimentation were sources of the greatest impact on stream conditions. Inadequately controlled stormwater runoff from commercial and residential development, as well as a severe drought in 1999, significantly altered stream flows and increased erosion.⁸²



⁷⁷ See

<http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/csps/watersheds/csps/html/midgsc.asp>.

⁷⁸ See

<http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/csps/watersheds/csps/html/lgsc.asp>.

⁷⁹ See <http://www.eco-check.org/reportcard/chesapeake/2008/>. The region received a D+ in 2007 and 2006. See note 59, *supra*.

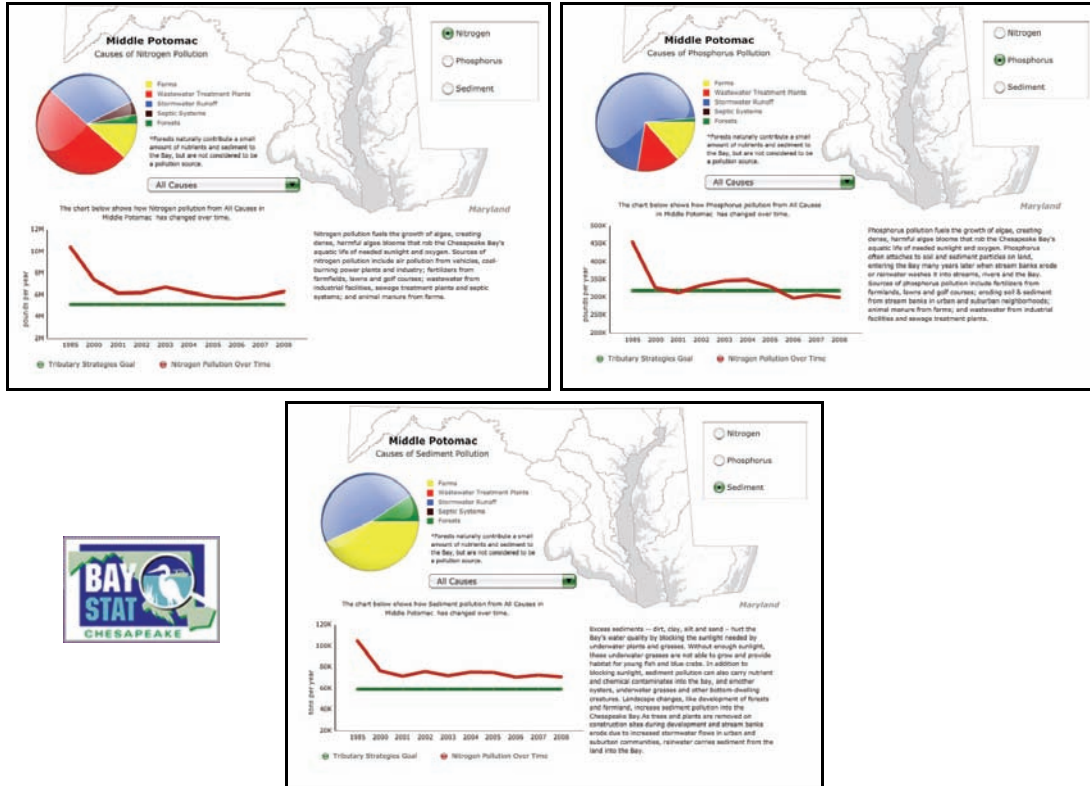
⁸⁰ The county's first CSPS was issued in 1998. See

<http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/CSPS/home.asp>.

⁸¹ <http://www.montgomerycountymd.gov/content/dep/Publications/pdf/CSPS2003.pdf>. The CSPS is updated about every five years; the 2003 update is the most recent. In addition, a Watershed Restoration Partnership comprised of Montgomery County Department of Environmental Protection, U.S. Army Corps of Engineers, Maryland-National Capital Park and Planning Commission, and the City of Gaithersburg, is conducting a watershed study of the Great Seneca Creek and Muddy Branch Watersheds to evaluate stream conditions, identify problems, and propose restoration projects. That study is to be completed in 2010. See <http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/restoration/Watersheds/SenecaAndMuddyBranch.asp>.

⁸² See <http://www.montgomerycountymd.gov/content/dep/Publications/pdf/CSPS2003.pdf>.

The charts shown below depict the major pollution sources of nitrogen, phosphorus and sediment load in the Upper Potomac region (which includes Great Seneca Creek), including agriculture, wastewater treatment plants, stormwater runoff, septic systems, and forests.



II. Active Enforcement Efforts and Pending Matters

Prior to conducting the audit, the Office of the Attorney General identified the following significant active matters in the Great Seneca Creek watershed:

National Capital Skeet & Trap Club. For more than five decades, the National Capital Skeet & Trap Club operated a skeet and trap facility in Montgomery County on property presently owned by the State as part of Seneca Creek Park. The State purchased the land and facilities in the 1970s and subsequently leased it to the club. During the many years of operation of the club, tons of spent lead shot pellets were deposited over about 10 acres of the park and floodplain of Great Seneca Creek.

In 2003, the Potomac Riverkeeper gave notice of intent to bring suit against the State and the club for violations of the Clean Water Act⁸³ and the Resource Conservation

⁸³ 33 U.S.C. §§1251 et seq.

and Recovery Act⁸⁴ stemming from the presence of spent lead shot within Seneca Creek Park. The Secretary of DNR then directed the club to cease all sporting activities at the facility. Thereafter, in 2004, DNR and the club employed an environmental toxicologist to conduct an environmental risk assessment, which demonstrated that there were elevated levels of lead within the soils of more than seven acres of the floodplain that were potentially hazardous to wildlife.

The Potomac Riverkeeper filed suit in February 2005. In September 2006, the State, represented by the Office of the Attorney General, and the Riverkeeper reached a settlement that called for removal of lead at the site. DNR contracted with a heavy metal remediation firm, which completed the lead removal project in early 2008, at a cost to the State of almost one million dollars. In November 2008, the parties resolved the remaining dispute in the lawsuit when DNR agreed to conduct additional lead soil and lead surface water tests at the site.

Intercounty Connector. The Intercounty Connector (“ICC”) has been planned and studied for over 50 years, with extensive involvement by the Montgomery County and Prince George's County communities.⁸⁵ When completed, the ICC will be an 18-mile, controlled access, tolled highway that will link the I-270 and I-95/US 1 corridors.⁸⁶

The ICC is not located within and will not affect the Great Seneca Creek watershed. Nevertheless, under a voluntary environmental stewardship initiative being implemented by the State Highway Administration, there are several compensatory mitigation projects within the watershed. The projects, which are mostly located on Maryland-National Capital Park and Planning Commission property, include establishing approximately 50 acres of wetlands, restoration of 1.5 miles of streams, and planting approximately 230 acres of trees.⁸⁷

⁸⁴ 42 U.S.C. §§6901 et seq.

⁸⁵ The controversial project was challenged in court by several environmental groups which filed two lawsuits against federal agencies to invalidate approval of the ICC. The suits alleged violations of a variety of federal statutes, including the Clean Air Act [42 U.S.C. §§ 7401 et seq.] and the Clean Water Act [33 U.S.C. §§ 1251 et seq.]. The State of Maryland, represented by the Office of the Attorney General, intervened in the federal lawsuits to defend federal approval of the ICC. In November 2007, Judge Alexander Williams Jr. of the United States District Court for the District of Maryland upheld the decision of the federal authorities to approve the ICC. One of the lawsuits, filed by Environmental Defense and the Sierra Club, was appealed. The appeal was ultimately dismissed after the parties settled the case.

⁸⁶ See <http://www.iccproject.com/icc-background.php>.

⁸⁷ The Environmental Mitigation Manager of the ICC project, provided State Highway Administration this information to the OAG. See also <http://www.iccproject.com/environmental-programs.php>.

Stormwater Management. In September 2008, MDE issued Montgomery County a draft Municipal Separate Storm Sewer System (MS4) permit to control polluted stormwater runoff.⁸⁸ Major new requirements of the permit include:

- restoration of an additional 20 percent of the county's impervious surfaces (on top of 10 percent previously restored, for a total of 30 percent restored by 2013);
- development and implementation of strategies to achieve a trash-free Anacostia River as part of the county's commitment to the goal of a trash-free Potomac River by 2013; and
- establishment of pollution limits, also known as Total Maximum Daily Loads (TMDLs), necessary to meet water quality standards for federally listed impaired waters.

MDE held a public hearing to accept formal testimony on November 19, 2008, and accepted written comments through December 2, 2008. Those comments were under consideration at the time of the Attorney General's audit.

III. The Great Seneca Creek Audit, December 11, 2008: What the Attorney General Learned

The Great Seneca Creek audit was conducted on December 11, 2008. Seven members of his staff, including his special assistant for the environment and the counsel and deputy counsel for MDE, accompanied the Attorney General to Gaithersburg, Montgomery County.

The Attorney General met first with elected officials from Montgomery County, including members of the legislative delegation, council members, the state's attorney, the sheriff, and clerk of court, as well as officials from several municipalities. He then met with the Potomac Riverkeeper to discuss the skeet club litigation and wastewater treatment plant issues.



Attorney General Gansler is briefed by the Potomac Riverkeeper.

⁸⁸ MS4 permits are part of the National Pollutant Discharge Elimination System (NPDES) established under the Clean Water Act of 1972, which prohibits discharge of pollutants into waters of the United States without a permit. MDE is responsible for issuing all NPDES permits in Maryland. Montgomery County's first MS4 permit was issued in 1996. See <http://www.montgomerycountymd.gov/deptmpl.asp?url=/content/dep/NPDES/home.asp>.

In the afternoon, the Attorney General toured Great Seneca Creek Elementary School in Germantown, which is the first public school in Maryland to earn LEED (Leadership in Energy and Environmental Design) certification by the U.S. Green Building Council.⁸⁹ From the school, the Attorney General viewed a portion of Great Seneca Creek that flows behind the school. At the conclusion of the tour, the Attorney General met with a group of fourth and fifth grade students to hear their environmental questions and concerns.



The principal of Great Seneca Creek Elementary School shows Attorney General Gansler where Great Seneca Creek flows behind the school.

Following the school tour, the Attorney General returned to Gaithersburg to meet with a group of environmental leaders from the Montgomery County Soil Conservation District, Seneca Creek Watershed Partners, Seneca Valley Trout Unlimited, Audubon Naturalist Society, and the Izaak Walton Chapter. Finally, the Attorney General conducted a town hall meeting to hear from the general public.

These individuals and associations advised the Attorney General about a number of environmental concerns, including:

National Capital Skeet & Trap Club. The Potomac Riverkeeper discussed the ongoing litigation concerning the spent lead shot at the National Capital Skeet and Trap Club. Although DNR has remediated much of the problem, lead remains at the site. In particular, the Riverkeeper cited the need for long-term monitoring to ensure that removal is completed.

Stormwater Management, Sediment and Erosion Controls. Stormwater runoff is a major problem in the Great Seneca Creek watershed. Although community members expressed general support for Montgomery County's MS4 permit to control stormwater, they articulated a concern that it lacks numeric limitations for pollutants. This deficiency, in their view, results in an inadequate standard for pollution prevention. This concern was raised in the public comment process, and participants advised that they might challenge the final permit if it did not require numeric limits.

With regard to construction sites, one participant observed that best management practices have proven inadequate to control sediment runoff. He suggested that instead

⁸⁹See <http://www.montgomeryschoolsmd.org/schools/greatsenecacreekes/>.

of limiting sediment runoff, construction sites should be required to prevent it from leaving the site altogether.

Poolesville. The Town of Poolesville is located in the northwestern portion of Montgomery County, in the middle of the county's Agricultural Reserve.⁹⁰ The Attorney General heard several concerns about Poolesville during the audit that related primarily to growth. Increased population and development have led to increased water demands and expansion of wastewater treatment plants.⁹¹

In addition, attendees raised a concern about hazards to public health posed by uranium, radium and radon detected in the town's well water.⁹² They reported unusual occurrences of cancer, citing a residential street where 17 women had been stricken with the disease.⁹³

Finally, a town official from Poolesville questioned whether the county could prohibit landowners in the Agricultural Reserve from using sand mounds. Sand-mound septic systems are on-site disposal systems that are elevated above the ground and contain drainage material that allows land that would not otherwise percolate to do so. In addition to being unsightly, these alternatives to traditional septic systems allow development in the Agricultural Reserve that would otherwise not be possible.⁹⁴

Agriculture. Animal waste is a source of pollution in the watershed, which is exacerbated by livestock that wade and defecate into streams that flow through farmland. Several people complained that farmers were not properly fencing off their land to prevent animal contact with water. In addition, the setback requirements that determine how close crops can be planted to streams were seen as inadequate to prevent runoff from agricultural fertilizers.

⁹⁰See <http://www.ruralmontgomery.org/AgGuide/>. Montgomery County's Agricultural Reserve, also called the Rural Density Transfer (RDT) zone, encompasses about 93,000 acres of farmland. There are zoning restrictions within the RDT to limit growth and preserve agricultural and rural areas. See http://www.preservethereserve.org/pages/tdr_program.pdf.

⁹¹ See <http://www.ci.poolesville.md.us/water%20supply%20cap.pdf> and [http://www.ci.poolesville.md.us/capacity\[3\].pdf](http://www.ci.poolesville.md.us/capacity[3].pdf).

⁹² MDE annually tests the well water in Poolesville and provides the results to the town, which publishes them on its website. See <http://www.ci.poolesville.md.us/Poolesville.htm>.

⁹³The Maryland Department of Health and Mental Hygiene and the Montgomery County Department of Health and Human Services are currently investigating the occurrence of cancer in Poolesville. See http://www.ci.poolesville.md.us/PoolesvilleCancerConcerns_Questions_Answers.pdf.

⁹⁴ In 2006, the Montgomery County Attorney issued an opinion that State law, which permits the systems, preempted a local law that would ban on-site sand-mound septic systems. See <http://www.montgomerycountymd.gov/content/counyat/Opinions/march06-sandmounds-m-floreen-bill38-05statepreemption.pdf>. In January 2007, the Montgomery County Ad Hoc Agricultural Policy Working Group issued a report recommending restrictions on the number of sand mounds within a particular parcel of land. See http://www.montgomerycountymd.gov/content/council/pdf/doc/aggroup_finalreport.pdf (pp. 7-9).

Farmers who were present said that most farmers are generally amenable to fencing livestock, despite the expense and the difficulty fences pose to moving farm equipment. The farmers advocated voluntary initiatives for the agricultural community, rather than additional regulations that cut into an already small profit margin.

Lawn Fertilizer. Community members cited the need for a cultural change in the preference for green lawns. Much of Great Seneca Creek runs behind residential areas, and the chemicals and nutrients running off the residential lawns are a critical component of the water's impairment. It was suggested that legislation to reduce phosphorous levels in commercial lawn fertilizer would alleviate some of this pollution.

Accountability, Enforcement and Deterrence. As with other audits, members of the community expressed a common concern that the regulatory agencies should increase enforcement efforts and be subject to greater accountability. Several individuals also said that the penalties and fines imposed are too low to serve as a deterrent and lead to a system of pollution based on the "cost of doing business." In addition, enforcement efforts could be enhanced by legislation expanding the standing of environmental groups and citizens to bring cases against polluters.



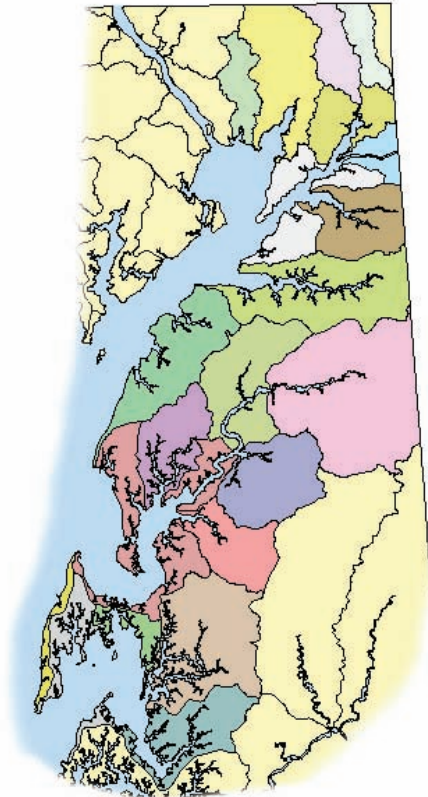
Attorney General Gansler and his team hear from local environmental officials and the public at a town hall meeting in Gaithersburg.

CHAPTER FIVE: UPDATES AND FOLLOW-UP

The Attorney General is pleased to report the following updates and actions taken since the 2008 audits began on April 16, 2008.⁹⁵

I. Chester River

Upper Eastern Shore Tributary Basin



Velsicol. On July 8, 2008, the Attorney General and MDE settled the lawsuit against Velsicol. The consent decree requires Velsicol to investigate and clean up contaminated soil and groundwater at the facility, to maintain and make improvements to its current wastewater treatment system, and to pay \$200,000 into the Maryland Clean Water Fund. In addition, the decree directs Velsicol to perform enhanced monitoring of its process wastewater and stormwater discharges, and to evaluate and take steps to reduce phosphorous in its wastewater.⁹⁶

Pursuant to the July 2008 decree, the company has discontinued the practice of drying wastewater sludge in unlined drying beds onsite. It has also submitted a plan for treatment plant upgrades and a plan for characterizing the nature and extent of contamination at the site. MDE has commented on and is reviewing revisions to the draft characterization plan. Once approved, that plan will be used as a basis for further site assessment, which in

turn will be used to develop and implement appropriate remedial actions to address the contamination. The consent decree establishes time frames for completing remediation based on the timing of MDE's approval of the proposed remedial action plan.

The Chester River Association has recently raised additional concerns over the company's compliance with the consent decree. The Office of the Attorney General and MDE are continuing to work with CRA to ensure enforcement of the decree.

⁹⁵ As is evident, a number of issues that surfaced during the 2008 audits were not limited to a particular watershed but had more general application. Those issues are discussed *infra* in Section V, entitled Miscellaneous.

⁹⁶ On July 21, 2008, in light of the consent decree that addressed many of the issues in its citizen suit against Velsicol, the Chester River Association moved to dismiss its suit. The court granted that motion on September 10, 2008.

The consent decree also requires the company, now known as Genovique Specialties Corporation, to develop a website and make available to the public the progress of implementation by posting all reports and work plans within 10 days of their submission to MDE.⁹⁷ In addition, in response to what was said about MDE’s website during the audit, the Office of the Attorney General worked with MDE to provide a link on its website to make it more accessible to the public.⁹⁸

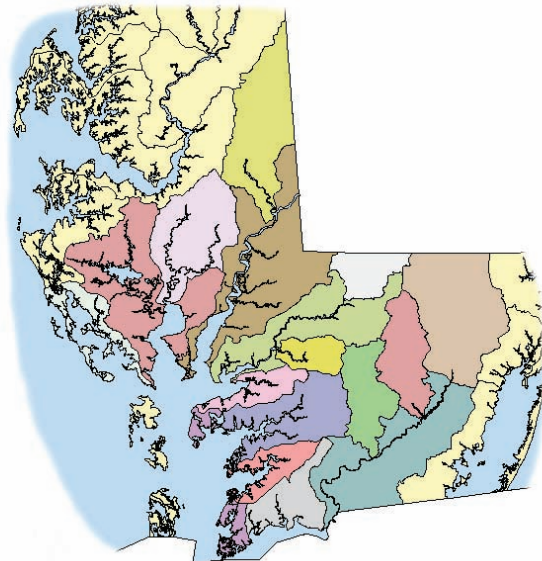
Wilson Private Wastewater Treatment Plant. As previously described, the Chester River Association, the Chesapeake Bay Foundation, and seven individuals challenged MDE’s decision to issue a permit for this private wastewater treatment plant. After an administrative law judge affirmed that decision, the plaintiffs appealed to MDE’s final decision maker. On June 26, 2008, MDE issued its final decision, again upholding the determination to issue a permit. That decision was appealed to the Circuit Court for Kent County; on March 20, 2009, the court affirmed MDE’s issuance of the permit.

At the time the permit was issued, the current law provided no legitimate basis for MDE to deny a permit to install a private wastewater treatment facility. During the 2009 legislative session, the General Assembly passed the Private Wastewater Treatment Act of 2009⁹⁹ that would prohibit private wastewater treatment plants for individual homes. The Attorney General strongly supported that legislation. As of October 1, 2009, private wastewater systems serving one residence that discharge directly to surface waters will be prohibited in Maryland. This prohibition will prevent development of waterfront property if not approved for septic or served by public sewer systems, and, ultimately, reduce pollution and benefit the health of the Bay.

Lower Eastern Shore Tributary Basin

II. Pocomoke River

Bunting Critical Area Case. As noted, the Office of the Attorney General filed suit against John Bunting on May 14, 2008, for constructing a hunting lodge on an island in the Pocomoke Sound, in violation of the Critical Area law that restricts construction in the buffer. This case is scheduled to go to trial in Circuit Court in Somerset County in the summer of 2009.



⁹⁷ The information posted by Velsicol pursuant to the consent decree can be accessed at <http://www.chestertown-cd.net>.

⁹⁸ See <http://www.mde.state.md.us/> (“Velsicol Consent Decree” under “Also of Interest”).

⁹⁹ See SB 721 (<http://mlis.state.md.us/2009rs/bills/sb/sb0721f.pdf>) and HB 1105 (<http://mlis.state.md.us/2009rs/billfile/hb1105.htm>).

The OAG also pursued a civil enforcement case in District Court in Somerset County arising out of Mr. Bunting's individual violations. After a trial on January 26, 2009, the judge found Bunting "not guilty" of the civil infractions, despite his admissions that he had built the cabin without permits and had not complied with conditions imposed by the County. The OAG is pursuing an appeal of this matter.

Inspections and Enforcement. On June 18, 2008, after a nine-month vacancy, MDA appointed an inspector assigned to the Lower Eastern Shore. The position had been vacant since August 28, 2007. MDA currently estimates that there are 237 farm operations (totaling 60,750 acres) with nutrient management plans in the Pocomoke River watershed. Since 2006, 33 inspections have yielded seven enforcement actions; two farms are in compliance and five are being pursued with further enforcement.¹⁰⁰

Snow Hill Wastewater Treatment Plant. The Town of Snow Hill is moving forward to upgrade and replace the existing wastewater treatment plant. Several options are under consideration, including a plant with a capacity similar to the existing 500,000 gallon-per-day plant and a larger, 667,000 gallon-per-day plant. A third option under consideration is building the plant in phases to allow for future growth if and when the Summerfield development project moves forward.¹⁰¹

Eastern Correctional Institution Water Project. In August 2008, MDE Secretary Shari Wilson, the Somerset County Commissioners, Somerset County Sanitary Commission, MES, the Town of Princess Anne, University of Maryland Eastern Shore, and the Eastern Correctional Institution came together attempting to reach a common understanding of the facts concerning present water use, existing water capacity, future water needs, and expectations of when, where, and how much development was likely to occur in the area.

Notwithstanding these ongoing efforts, the Somerset County Sanitary Commission sued MDE Secretary Wilson in the Circuit Court for Somerset County on October 16, 2008, to compel the issuance of a water appropriation permit to the Sanitary Commission without requiring treatment to reduce natural levels of fluoride, which would require construction of a reverse osmosis treatment facility. The OAG represents MDE in this case, which is ongoing as of April 2009.

MES is moving forward with the design of a new water system for ECI that utilizes reverse osmosis treatment. After the Sanitary Commission voted not to request federal stimulus funding for a reverse osmosis treatment facility, MDE and MES submitted an application for funding for a joint use project that was approved. The Sanitary Commission is currently considering whether to accept a grant award of approximately \$6 million for a joint use water treatment plant that would utilize reverse osmosis technology.¹⁰²

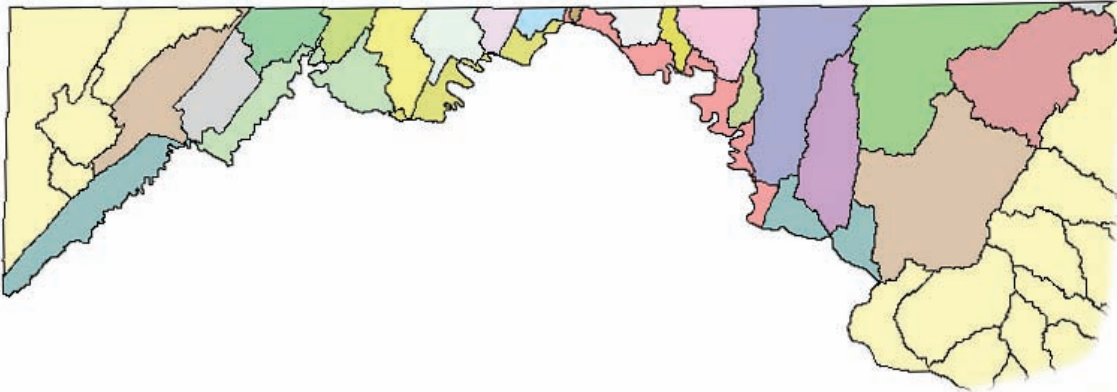
¹⁰⁰ This information was provided to the Office of the Attorney General by the Maryland Department of Agriculture in April 2009.

¹⁰¹ The Town and local residents are considering the options as reported on April 9, 2009. *See* Snow Hill Weighs Wastewater Choices. <http://www.delmarvanow.com/apps/pbcs.dll/article?AID=2009904090346>.

¹⁰² The Maryland Environmental Service provided this information to the Office of the Attorney General in April 2009.

III. Monocacy River

Upper Potomac River Tributary Basin



Tea Bow Dairy Farm, Inc. Since the audit, MDE reports that some improvements have been made to the facility that failed, causing the manure spill. The Department is waiting to receive an engineering report identifying any additional modifications to the system that might be necessary to ensure the system is sufficiently protective of human health and the environment. The enforcement action filed by the OAG and MDE is scheduled to go to trial in October 2009.

Coblentz Farm. The investigation of this matter has now been completed. The OAG intends to bring an enforcement action for the unauthorized discharge and for natural resource damages (approximately 8,000 fish valued at almost \$5,000).

Essroc Cement Corporation. Essroc Cement Corporation operates a cement manufacturing plant in Buckeystown, in Frederick County. In April 2008, MDE and Essroc entered into a consent decree arising out of violations of Essroc's air quality operating permit and of federal air toxics requirements, including failure to perform monitoring and record keeping, and violation of parameters set to limit dioxin emissions from the cement kiln. The agreement provided for a \$100,000 penalty and requirements to address and correct the violations.

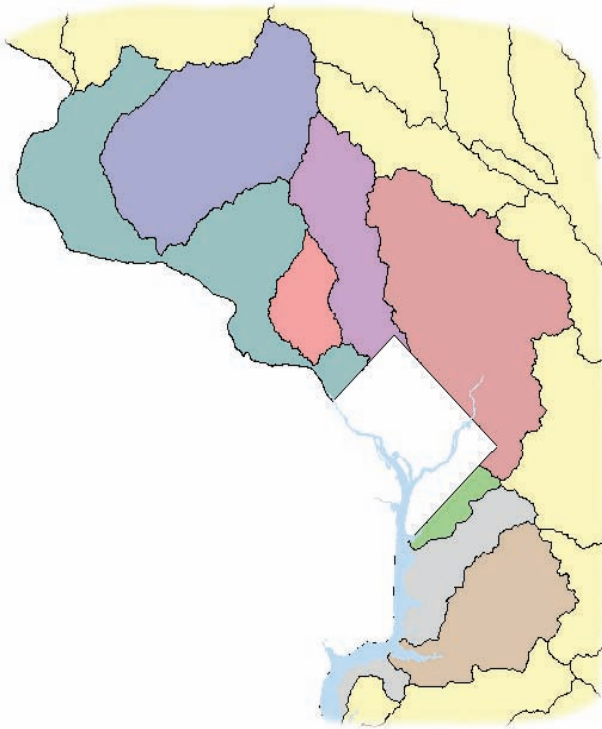
Thereafter, Essroc violated the consent decree by failing to file an employee notification plan in accordance with the decree's required schedule, giving rise to stipulated penalties. On April 10, 2009, the OAG, MDE and Essroc signed a settlement agreement for the violations that included a combined penalty of \$340,000, including the penalty amount provided in the decree and an additional penalty for violations of the decree. Although the site is still used as a distribution center and for some mining operations, the kilns at the plant have been shut down permanently.

Lake Party Dam. After hearing about this dam during the audit, the OAG referred the matter to MDE for investigation. MDE determined that a low level stone dam had been constructed across the Monocacy River adjacent to the property. On occasion, the elderly landowner had used his tractor to move stones that had been washed away

back into place to repair the dam. On March 11, 2009, MDE issued a letter informing the property owner that Maryland law prohibits construction on the Monocacy River or floodplain without a valid Maryland waterway permit. Any future activity would require such a permit and be subject to enforcement action for violations.

IV. Great Seneca Creek

Middle Potomac River Tributary Basin



National Capital Skeet & Trap Club. On January 29, 2009, the Department of Natural Resources, represented by the Office of the Attorney General, reached a final settlement with Potomac Riverkeeper. In addition to the cleanup efforts previously described, DNR agreed to monitor the water quality within the affected area of Seneca Creek State Park for a period of 10 years.¹⁰³

Stormwater Management. On February 25, 2009, MDE issued its final determination for Montgomery County's MS4 permit.¹⁰⁴ On March 18, 2009, several environmental groups, including Potomac Riverkeeper, requested a contested case hearing to challenge the final permit. The final permit cannot be issued until the challenge is resolved.

V. Miscellaneous

Agriculture. The Attorney General has continued to work on farm-related pollution issues, particularly with respect to poultry operations. These include the following:

- **CAFO Regulations and General Permit.** In 2008, MDE proposed new regulations and a general discharge permit for Concentrated Animal Feeding Operations ("CAFOs") in Maryland. The new regulations and permit would require large poultry operations to implement controls necessary to properly manage poultry litter and minimize nutrient runoff into the Chesapeake Bay.¹⁰⁵

¹⁰³ See <http://dnr.maryland.gov/dnrnews/pressrelease2009/012909a.html>.

¹⁰⁴ See <http://www.mde.state.md.us/PressReleases/1172.html>.

¹⁰⁵ See <http://www.mde.state.md.us/Permits/WaterManagementPermits/cafo.asp>.

While the Attorney General commended these regulatory efforts, he was concerned that they did not go far enough. Accordingly, in December 2008, he submitted comments to MDE raising his concerns, including reliance on NMPs for medium and smaller operations; allowing storage of uncovered manure for extended periods of time in close proximity to surface and ground water; and elimination of some permit fees.

The regulations and general permit are now on hold pending a challenge by environmentalists.

With the Maryland permit on hold, poultry farmers responded to a February 2009 deadline under the federal CAFO rules. Pursuant to the EPA's interpretation of the provisions of the Clean Water Act requiring NPDES permits if operations discharge or propose to discharge into waters of the United States, more than 400 poultry farms have recently applied to MDE for permits as CAFOs. This number is over four times greater than that expected under the Maryland permit, thus providing greater transparency, accessibility and enforceability for poultry operations.

- **Poultry Manure Management.** During the 2008 legislative session, the Attorney General successfully promoted and supported legislation that makes poultry litter-to-energy a so-called "Tier 1" renewable energy source.¹⁰⁶ Currently, energy suppliers are required to purchase 2.01 percent of their energy from Tier 1 sources. The percentage increases yearly, and by 2022, the required percentage of energy purchased from Tier 1 renewable energy sources will be 20 percent.¹⁰⁷ Moving poultry litter-to-energy into Tier 1 provides a greater financial incentive for companies to purchase the energy and to invest in this energy technology.

Since that time, the Attorney General has continued to work with interested stakeholders to advance this very important energy project that would have the added environmental benefit of providing an alternative use for roughly half of the 1.2 billion pounds of chicken manure reported to be produced annually, thereby reducing nutrient runoff to the Chesapeake Bay.

- **Arsenic in Chicken Feed.** As Co-Chair of the Environment and Energy Committee of the National Association of Attorneys General ("NAAG"), the Attorney General has worked with attorneys general from other states to urge the Federal Drug Administration ("FDA") to ban arsenic in chicken feed. The poultry industry has been using the feed additive roxarsone since the FDA approved it in 1944.¹⁰⁸ The arsenic additive promotes the growth of blood vessels in chicken, making the meat appear pinker and more attractive. It also does the same in human cells, fueling a growth process known as angiogenesis, a critical first step in

¹⁰⁶ See Md. Code Ann., Pub. Util. Cos. §7-701(1)(9)(2008).

¹⁰⁷ See Md. Code Ann., Pub. Util. Cos. §7-703(b)(2008).

¹⁰⁸ Nachman, Keeve et al. Comparison of arsenic content in palletized poultry house waste..., *Chemosphere* (2007), doi:10.1016/j.chemosphere.2007.10.009.

many human diseases, including cancer.¹⁰⁹ The arsenic additive also presents health risks to farmers who work with the chemical or fertilizers.¹¹⁰ Approximately 1.2 billion pounds of chicken manure are reportedly generated each year in Maryland, posing the risk of significant runoff of arsenic into soils and waterways.¹¹¹

In 1999, recognizing the serious health risks posed by the arsenic additive, the European Union banned its use in chicken feed.¹¹² To date, the FDA has failed to act, and this dangerous practice continues in the United States.¹¹³ Working through the Environment and Energy Committee of NAAG, Maryland has enlisted 30 other states to join in the effort to secure the ban of arsenic in chicken feed.

Nutrient Management Plans. In February 2008, the Waterkeeper Alliance (“Waterkeeper”) filed a complaint against MDA in the Circuit Court for Anne Arundel County seeking summaries of nutrient management plans for Maryland farming operations under the Maryland Public Information Act.¹¹⁴ After the suit was filed, the OAG and MDA reached an agreement with Waterkeeper providing for disclosure of the information as permitted by current law. In essence, MDA agreed that it would release unredacted NMP information older than three years and redacted NMP information less than three years old.

After Waterkeeper and MDA had reached the agreement, the Maryland Farm Bureau and three unidentified farmers filed an action for declaratory judgment and relief against MDA, seeking to prevent in perpetuity the disclosure of NMP information. The Office of the Attorney General represented MDA in that lawsuit as well, defending the disclosure agreement.

On February 10, 2009, the court granted MDA’s motion for summary judgment, adopting the position advanced by the OAG, which outlined that MDA must redact older NMPs and related documents only to the extent necessary to prevent the requester from making a connection between a particular farmer and an NMP document that is less than three years old. Although the Attorney General continues to support complete transparency and

¹⁰⁹Partha Basu, et al., *Angiogenic Potential of 3-Nitro-4-Hydroxy Benzene Arsenic Acid (Roxarsone)*, 116 *Envtl. Health Perspectives* (Number 4) 520, 520-523 (2008).

¹¹⁰John F. Stolz, et al., *Biotransformation of 3-Nitro-4-hydroxybenzene Arsonic Acid (Roxarsone) and Release of Inorganic Arsenic by Clostridium Species*, 41 *Envtl. Science & Technology* (Number 3) 818 (2007).

¹¹¹Every chicken produces between 1.46 and 2.67 kg of waste in its life span. J. Ronald Miner, et al., *Managing Livestock Waste to Preserve Environmental Quality* (Iowa State University Press, 2000); R.R. Sharpe, et al., *Ammonia Volatilization from Surface-applied Poultry Litter Under Conservation Tillage Management Practices*, 33 *J. Environ. Qual.* 1183, 1183-1188 (2004). In 2007 Maryland produced approximately 294,800,000 broilers. Delmarva Poultry Industry, Inc.—Facts About Maryland’s Broiler Chicken Industry, <http://www.dpichicken.org/download/factsmd2007.doc>.

¹¹²Jay P. Graham, et al., *Growth Promoting Antibiotics in Food Animal Production: An Economic Analysis*, 122 *Public Health Reports* 79, 80 (2007).

¹¹³*Id.*

¹¹⁴Md. Code Ann., State Gov’t §§ 10-611 et seq.

access to nutrient management plans, he considers the outcome of this case to be an important step toward that end.¹¹⁵

Out-of-State Pollution. As previously described, concerns arose during the audits about pollution originating from out of state that ultimately reaches the Chesapeake Bay. The Office of the Attorney General is involved in important litigation related to this issue.

- **PPG Industries, Inc.** PPG Industries Inc. operates a chlorine manufacturing facility in Natrium, West Virginia, that annually emits large amounts of airborne mercury, some of which ends up in Maryland where it accumulates in western lakes and waterways.¹¹⁶ In operation since 1957, the plant is one of only four of 119 chlorine production facilities that continue to use an obsolete mercury-based production process. The Attorney General has advised PPG that he will file suit to enjoin the company from continuing to emit mercury unless the company agrees to do so by a date certain.
- **Pennsylvania and West Virginia Tributary Strategy Cases.** In 2008, a number of Pennsylvania municipalities challenged nutrient limits in their NPDES permits¹¹⁷ based on Pennsylvania's Tributary Strategy. The lawsuit claims that the limits were not codified under state law. Pennsylvania, however, maintains that the limits in the Tributary Strategy were based on Maryland's water quality standards for the Chesapeake Bay and enforceable in NPDES permits issued by Pennsylvania's Department of Environmental Protection. On August 5, 2008, the OAG, representing MDE, filed an amicus curiae brief supporting the position advanced by the Commonwealth of Pennsylvania.¹¹⁸

In similar litigation, several West Virginia municipalities have challenged the nutrient load limits in their NPDES permits for wastewater treatment plants on the grounds that the loads are based on West Virginia's Tributary Strategy and West Virginia Potomac River Tributary Strategy Implementation Plan and not adopted standards under West Virginia law. West Virginia maintains that the limits imposed by West Virginia were based on Maryland's water quality standards for the Chesapeake Bay and enforceable under federal law in NPDES permits issued by West Virginia Department of Environmental Protection. On November 7, 2008, the OAG, representing MDE, filed an amicus curiae brief supporting the position advanced by West Virginia.

¹¹⁵ During the 2009 legislative session, SB 623 and HB 1248, a bill that would have further restricted public access to NMPs, was withdrawn prior to a hearing. See <http://mlis.state.md.us/2009rs/billfile/sb0623.htm> and <http://mlis.state.md.us/2009rs/billfile/hb1248.htm>.

¹¹⁶ Mercury is a hazardous neurotoxin that accumulates in the environment and particularly aquatic wildlife. According to the EPA, mercury exposure has substantial adverse impacts on public health and the environment. See, e.g., <http://www.epa.gov/mercury/reportover.htm>.

¹¹⁷ See note 88, *supra*.

¹¹⁸ Amicus curiae is Latin for "friend of the court" and refers to a person or lawyer who is not a party to a case but has an interest in the outcome and raises an issue or provides information to the court that might not be raised or provided by the parties.

- **Exxon Shipping Company.** In early 2008, the Attorney General filed a U.S. Supreme Court amicus brief, which 33 states elected to join, in *Exxon Shipping Co. v. Baker*.¹¹⁹ The Attorney General argued that the Court should abandon maritime law’s lenient and outmoded standard for corporate punitive damages, and apply the same legal standard to misconduct on the water as applies on land. The brief pointed out “the States’ strong interest in deterring misconduct that could result in massive toxic spills, with potentially catastrophic effects to our coastlines, lakes, and rivers, and the economies that depend on those waters.”

The Supreme Court decided the case on June 15, 2008. Although the amount of punitive damages awarded (an issue that the Attorney General did not brief) was less than the plaintiffs sought, the Court adopted the heightened legal standard advocated in Maryland’s brief. In light of *Exxon Shipping*, corporations will be held accountable for their ship captains’ reckless misconduct and take stronger measures to prevent environmental harm when their vessels pass through the Chesapeake Bay and other waters throughout the country.

- **AEP settlement funds - Marylanders Plant Trees.** In October 2007, MDE and the OAG, the United States, seven other states and 13 citizen groups reached an unprecedented settlement agreement with American Electric Power (“AEP”) arising out of Clean Air Act violations committed by AEP in 16 out-of-state coal-fired power plants. The settlement included a \$15 million penalty, the highest ever paid by a utility company. AEP also committed \$60 million to perform or finance environmental mitigation projects to address the impacts of past emission. Three million dollars are specifically earmarked for projects that will address pollution in the Chesapeake Bay.

Under the settlement, the Attorney General has the authority to determine how to allocate Maryland’s share of the environmental mitigation funds, which are received annually in \$240,000 payments. This year, on April 1, 2009, the Attorney General designated the Marylanders Plant Trees Program to receive \$480,000 from the mitigation funds. Under this



Attorney General Gansler joins state officials, students, and faculty to launch the Marylanders Plant Trees coupon program.

¹¹⁹ This case arose out of the 1989 massive oil spill from the Exxon *Valdez* in the Prince William Sound in Alaska.

program, native trees will be planted statewide, with the goal of planting 1 million trees by 2011.¹²⁰ The \$480,000 from the AEP settlement will fund 24,000 trees, which will protect water quality, clean the air, and provide wildlife habitat.¹²¹

Access to Information. The MDE website has a new look.¹²² In addition, in order to provide better access to information, notice of certain permit applications will be available online and available upon request electronically. This improved access is the result of recent legislation, which requires MDE to electronically post notice of certain permit applications on their website, effective October 1, 2009.¹²³ The Attorney General supported this important measure to make information accessible to communities and individuals concerned about environmental impacts of projects on and in their community.¹²⁴

Citizen Suits and Standing. Since taking office, the Attorney General has repeatedly heard about the inadequacy of State standing laws and the inability of environmental and citizen groups to file suits and to intervene in enforcement cases in State courts. Those same concerns were raised during the 2008 audits. In the summer of 2008, the Attorney General met with members of his Environmental Advisory Council and asked them to draft appropriate legislation that would address these issues.¹²⁵ Their efforts led to the introduction of the Community Environmental Protection Act of 2009,¹²⁶ which would have provided standing consistent with the federal standard and allowed aggrieved citizens and associations to file lawsuits and to intervene in State courts to enforce environmental laws. Although the Act did not pass, the General Assembly passed compromise legislation that provides individuals and associations with greater standing,¹²⁷ consistent with federal standards, to challenge environmental permits, State wetlands licenses, and Critical Area variances.¹²⁸

¹²⁰ See <http://www.trees.maryland.gov/>.

¹²¹ Through the program, participating citizens can obtain a \$25 discount coupon toward the purchase of a \$50 tree; the State pays \$20, which will be funded from the settlement money, and participating vendors absorb the remaining \$5 cost.

¹²² See <http://www.mde.state.md.us/>.

¹²³ See SB 47 (<http://mlis.state.md.us/2009rs/billfile/sb0047.htm>) and HB 1078 (<http://mlis.state.md.us/2009rs/billfile/hb1078.htm>).

¹²⁴ During each session of the Maryland General Assembly, the Attorney General and his staff support many pieces of legislation dealing with a wide-ranging number of significant issues. This support includes providing assistance in bill-drafting, working with legislative sponsors, providing oral and written testimony and letters of support, and meeting and speaking with legislators and stakeholders.

¹²⁵ In October 2007, the Attorney General established the Attorney General's Environmental Advisory Council, which is comprised of environmental advocates, attorneys, and experts. See <http://www.oag.state.md.us/Press/2007/100307.htm>. The Council's purpose is to assist the Attorney General in identifying priority environmental issues and to help guide the Office's environmental policy and enforcement efforts. Since its inception, the Council has worked on several important issues, including how to build stronger relationships with the environmental community and how to maximize available resources to achieve the greatest impact.

¹²⁶ See SB 824 (<http://mlis.state.md.us/2009rs/bills/sb/sb0824f.pdf>) and HB 1053 (<http://mlis.state.md.us/2009rs/bills/hb/hb1053f.pdf>).

¹²⁷ Standing is a legal term that defines who can be a party in legal proceedings.

¹²⁸ See HB1569 (<http://mlis.state.md.us/2009rs/billfile/hb1569.htm>) and SB1065 (<http://mlis.state.md.us/2009rs/billfile/sb1065.htm>), effective January 1, 2010.

Previously, only persons or groups “directly aggrieved” by environmental permitting or licensing decisions (which often means only persons who live next to the activity under permit) were able to weigh in on such decisions. With the passage of this important legislation, members of the public, community groups, and non-profit organizations who have demonstrated a legitimate interest in an environmental issue can contribute their time and resources to assist in the protection of Maryland’s environment and natural resources.

Penalties and Fees. As previously described, the Attorney General heard during the audit from many members of the community who feel that the penalties and fines assessed by MDE are inadequate to deter violations.

Recently, in conjunction with developing standard operating procedures for identifying and referring enforcement matters to the OAG, MDE has been working with the OAG to develop procedures to evaluate penalty amounts. In particular, the OAG is developing penalty matrices and worksheets for use by MDE in evaluating cases to help generate recommended penalty amounts that are consistent across the agency and that reflect an overall increase in penalties sought.

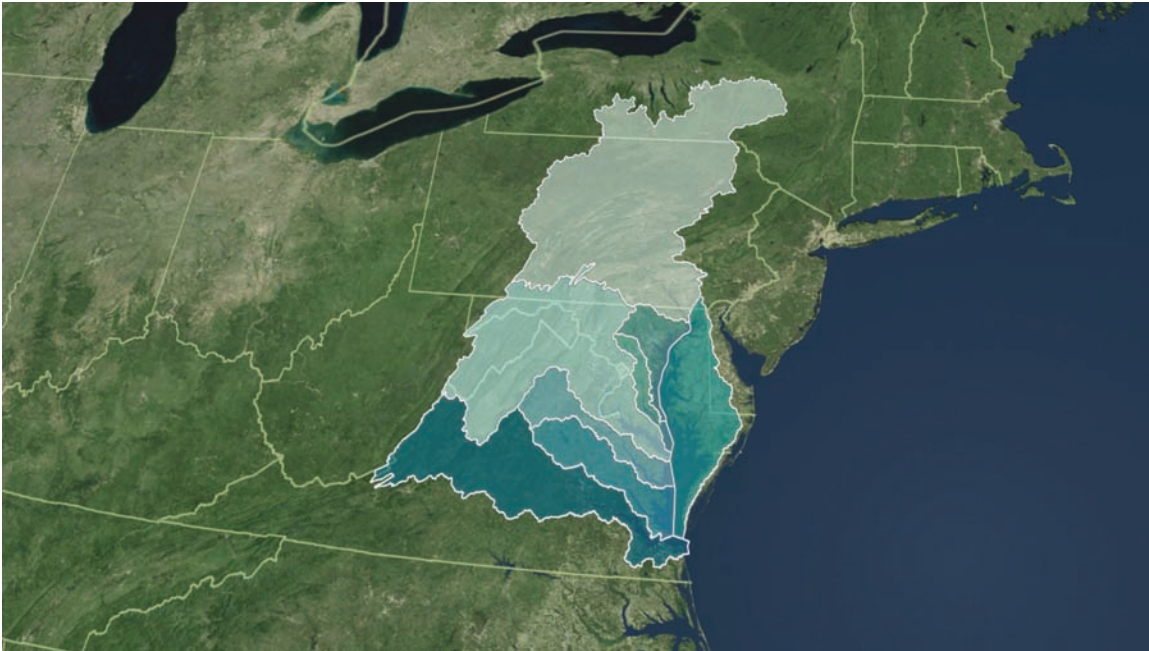
Septics. Nitrogen pollution from septic systems was a concern raised by several individuals during the audit. The Chesapeake Bay Nitrogen Reduction Act of 2009 passed during the legislative session.¹²⁹ The Attorney General supported this bill which requires all new and replacement septic systems installed in the Critical Area to use nitrogen removal technology. This important measure will reduce nitrogen input to the State’s waters.

Lawn Fertilizer. During the 2009 legislative session, the Attorney General successfully supported the Chesapeake Bay Phosphorous Reduction Act of 2009.¹³⁰ The legislation significantly lowers the permissible phosphorous levels in fertilizer distributed and sold for use on established lawns and grass as of April 1, 2011, and adds appropriate labeling requirements for lawn fertilizer.

¹²⁹ See <http://mlis.state.md.us/2009rs/bills/sb/sb0554t.pdf>, effective October 1, 2009.

¹³⁰ See SB 553 (<http://mlis.state.md.us/2009rs/bills/sb/sb0553t.pdf>) and HB 609 (<http://mlis.state.md.us/2009rs/billfile/hb0609.htm>).

Prescription Drug Disposal. In response to concerns raised about water pollution from the improper disposal of prescription drugs, the Attorney General supported House Bill 83 during the 2009 legislative session. The bill would have required pharmacies to display posters produced by the SMARxT Disposal Campaign containing information about the proper storage and disposal of prescription drugs.¹³¹ Unfortunately, the legislation was withdrawn after it received an unfavorable committee report.¹³²



NASA Space Shuttle Flyover of Chesapeake Bay and Watershed Region

¹³¹The SMAR_xT Disposal Campaign is designed to raise awareness about the potential environmental impact from the improper disposal of medications and to provide proactive guidance through proper disposal alternatives. See <http://www.smarxtdisposal.net/>.

¹³² See <http://mlis.state.md.us/2009rs/billfile/hb0083.htm>.

CONCLUSION

During the 2008 environmental audits, the Attorney General met with elected officials, environmental leaders and community members from the Chester River, Pocomoke River, Monocacy River, and Great Seneca Creek watersheds. At each watershed audit, the Attorney General learned about environmental matters specific to that location, ranging from a recent treatment plant overflow to a stalled enforcement action. More often, however, the audits revealed recurring concerns common among the watersheds. These issues included pollution related to agriculture and growth, primarily from animal waste, fertilizer, stormwater, erosion, sediment and wastewater treatment; lack of agency transparency and accessibility of information; insufficient agency resources to investigate and prosecute polluters; and the inadequacy of penalties and fines to deter polluters.

As this information was gathered from each watershed, the Attorney General referred a number of matters to appropriate regulatory agencies; initiated and concluded enforcement actions and lawsuits; worked with State agencies to achieve greater transparency and access to information; and successfully supported significant legislation that ultimately will benefit the Chesapeake Bay, including bills that enhance the ability of citizens and associational groups to challenge environmental permits, wetlands licenses and Critical Area variances, prohibit the proliferation of individual private wastewater treatment plants, lower the phosphorous content in lawn fertilizer and reduce nitrogen pollution from septic systems in the Critical Area.

Although the Attorney General is acutely aware that much remains to be done to save the Bay, these environmental audits provide critical information from watershed communities that enable the Office of the Attorney General to identify and target individuals and corporations that pollute, as well as to determine where legislation can make a difference. Through the audits the Attorney General has established relationships in the watershed that provide eyes and ears to help identify environmental problems and pollution. Communication continues long after the day spent at each river as new issues and problems arise, and what has been learned will inform future audits and enhance their effectiveness.

This report is available on the web at
<http://www.oag.state.md.us/reports/2008EnvironmentalAudit.pdf>



Chester River, April 16, 2008



Pocomoke River, June 25, 2008



Monocacy River, September 23, 2008



Great Seneca Creek, December 11, 2008



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