



TESTIMONY OF ROBERT J. FISHER, P.L.S., P.E.  
PRESIDENT, R. J. FISHER & ASSOCIATES  
on behalf of the Pennsylvania Builders Association  
before the Senate Environmental Resources & Energy  
and Agriculture & Rural Affairs Committees  
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Good morning, Sen. White, Sen. Brubaker and all committee members. My name is Robert J. Fisher. I am president of R. J. Fisher & Associates, Inc. a New Cumberland-based engineering, planning and surveying firm. I serve as chairman of the Pennsylvania Builders Association's Chesapeake Bay Tributary Strategy Task Force, and I am also a member of the Pennsylvania Department of Environmental Protection's Chesapeake Bay Tributary Strategy Act 537 Plan Committee. I appreciate the opportunity today to present PBA's views on SB 1493—the Nutrient Credit Trading Program Act, introduced by Sen. Patricia Vance.

PBA and the other members of the “Pennsylvania Fair Share for Clean Water Coalition” have joined together because we all recognize the need to clean up the Chesapeake Bay in the most environmentally effective and economically efficient manner. To that end, the coalition has advocated three equally important policy goals that can be said to represent a “three-legged stool” supporting that common goal:

1. Providing funding for sewage treatment plant upgrades in order to reduce costs to sewage ratepayers and future homeowners, which have been estimated at more than \$1 billion. We thank the General Assembly and the governor for the passage of Acts 63 and 64 of 2008, which are an important step forward in addressing this area of need.
2. Providing funding for farm conservation and other agricultural programs, as well as to county conservation districts for technical assistance and other programs that help farmers install conservation practices that reduce nutrient and sediment pollution from their land. We have been encouraged by the attention that this issue has received to date in both houses of the General Assembly and look forward to working with members in the future to secure such funding.
3. Reforming the nutrient credit trading program designed by the Department in order to make it a viable option to channel scarce funds to the highest-value, lowest cost methods of nutrient reduction while at the same time providing a mechanism to allow future growth and development to take place.

While the issue of nutrient credit trading may be a relatively recent entrant to the legislative process, it has been the subject of intense debate and scrutiny for more than three years. During that time, PBA has worked diligently with many of the other organizations

represented at today's hearing, as well as with the Department, to improve the workability of the nutrient credit trading program, which was intended to be a major component of Pennsylvania's response to its obligations under the Chesapeake 2000 Agreement. Yet despite these efforts, we have to date been unable to obtain the changes that we believe are needed for the trading program to serve the purposes for which it was designed outside the legislative process. With the recent announcement by the Environmental Protection Agency that it has begun to develop a total maximum daily load (TMDL) for the Chesapeake Bay watershed—essentially a “pollution budget” for the Bay and its tributaries—it is more critical than ever that the functionality of the trading program be addressed.

As I have indicated, the intent of the trading program was to provide a lower-cost nutrient reduction alternative to sewage treatment plant capital upgrades, and it was largely predicated on farmers' voluntary establishment of conservation practices on their land to reduce nutrient runoff. Once such practices produce pollution reductions large enough to meet baseline and threshold requirements, credits—measured as pounds of reduction of a given pollutant—can be generated and sold to sewage treatment plants and others needing to reduce their nutrient discharges to the Bay.

The functioning of the nutrient credit trading program is particularly important to the housing industry since the Department's strategy made no allowance for new residential growth, meaning that every pound of nutrient discharge associated with new housing must be offset by corresponding reductions elsewhere in the affected portion of Pennsylvania. In short, for the housing industry, a functioning nutrient credit trading program is not merely an option for meeting its Chesapeake Bay nutrient reduction requirements—it is an absolute necessity.

However, due to flaws in the structure of the program that have created an unacceptable level of risk and uncertainty about the price and availability of credits, as well as a lack of funding to implement it, the nutrient credit trading program has not been viewed as a viable option by potential credit generators or users. Senate Bill 1493 contains two significant reforms that would address several of the most significant outstanding problems plaguing the nutrient credit trading program.

First of all, Senate Bill 1493 would require the Department to establish the nutrient credit trading program by regulations promulgated through the Environmental Quality Board, thus allowing the General Assembly and affected groups to have input into the design of the program through the regulatory process. It is important to note that the Department crafted and implemented its original Chesapeake Bay Tributary Strategy with very little public input. Many of you will recall that in 2005, both houses of the General Assembly passed resolutions directing the Department to engage the regulated community in a structured public participation process on the Tributary Strategy, in which PBA and other stakeholders participated, and which occurred while the program was being implemented. During that process, numerous recommendations were submitted to the Department by affected stakeholders in the hope of improving the overall strategy and the nutrient credit trading program, but very few meaningful recommendations were actually incorporated by the Department. By ensuring that the design of the trading program is ultimately the product of a true collaborative effort by the Department, affected stakeholders and the General Assembly, the likelihood that the program is perceived as viable and workable by all parties with an interest in its success is thereby increased.

The second major reform contained in Senate Bill 1493 is the addition of an independent “Nutrient Credit Trading Board” to the trading program. One of the main recommendations for improving the existing program generated through the public participation process was the creation of a “nutrient credit bank” as an enhancement to the Department’s existing trading program. The board created in Senate Bill 1493, consisting of stakeholders representing state agencies, the General Assembly, local government, and private sector organizations, would serve as the bank recommended by the program stakeholders.

As currently designed, the Department’s program relies heavily on the voluntary interaction of credit generators and credit purchasers, and very few trades have taken place to date. Potential credit purchasers—primarily sewage treatment plants and homebuilders—have expressed concerns about the future price and availability of credits, as they are required to meet nutrient limits for multi-year future periods. Sewage treatment plants in particular have expressed concern with issues related to state-imposed bidding restrictions for purchases over \$10,000, the requirement of a 10 percent “reserve” for credits generated at treatment plants, and limits on their control of achieving mandated reductions.

At the same time, the primary potential generators of credits—agricultural operations—have been hesitant to make the investments necessary to generate credits due to the lack of a market for those credits. A related (and no less serious) issue is the need for additional funding for county conservation district technical assistance programs, which help farmers get into a position where they can generate credits to trade. This situation has left the housing industry in the position of not knowing whether credits will be available in sufficient supply to meet its needs, or, even assuming that sufficient supply will exist, that credits once purchased will be accepted.

Adding a banking option to the trading program is intended to address several of the above enumerated roadblocks to its wider use. Potential credit generators who might be willing to use best management practices (BMPs) to reduce pollution by amounts large enough to generate credits, but have been hesitant to make the necessary investments without knowing that there are buyers for those credits, would be able to sell those credits to the bank and use the funds they receive to invest in additional BMPs, which can generate more credits to sell. Similarly, for potential credit buyers, who have to be certain that there will be a volume of credits available that fits their needs and that will be there for the duration of the need (which can be as long as 15 to 20 years), a bank could guarantee that credits will be available for as long as they are needed for a given project at a fixed, predictable cost.

In conclusion, I would reiterate that a viable nutrient credit trading program will focus resources on Pennsylvania’s largest source of Bay pollution, allow other affected sectors to do their part to reduce nutrient discharges in the most cost-effective manner, and allow for critically needed economic growth to take place in large portions of the state. We look forward to working with you to construct the two remaining legs of the “three-legged stool” of Chesapeake Bay reforms—funding for agricultural conservation practices and county conservation district programs, and reform of the nutrient credit trading program—so that its effectiveness can be maximized. I ask you to support Senate Bill 1493 as a vital component of this reform effort.

Thank you very much for your time this morning, and I look forward to answering your questions.