



MEMORANDUM

To: Principals' Staff Committee (PSC)
From: Shana Jones and Rena Steinzor, Center for Progressive Reform¹
Date: September 15, 2008
Re: An Accountability Mechanism for the Bay Program

The Chesapeake Bay Program and its state partners are considering reorganization plans to increase the effectiveness of Bay restoration efforts. Some of these plans are considering creating an “independent entity” or “accountability mechanism” that will monitor the Program’s performance. Working with an *ad hoc* committee of the PSC, the Center for Progressive Reform (CPR) helped establish a framework for the accountability mechanism and makes the following recommendations:

The accountability mechanism should consist of four separate phases.

1. Accountability Metrics	Any accountability mechanism must first establish criteria – “ accountability metrics ” – for judging the Program’s institutional progress. No more than 35 metrics are necessary. The metrics must reveal: who is responsible for an activity, what the activity will involve, when they will complete the activity, why the activity is important to restoration of the Bay, and, if applicable, why not —that is, why the partner was unable to achieve success. Because the Program has made enormous progress in defining ambient conditions, setting numerical goals for reducing pollution, and developing the “Dashboards” reports, these metrics can build upon this progress and should not take long to compile.
2. Data Gathering and Reporting	Once metrics are crafted, the Program must establish a mechanism for ensuring that (1) the data gathered and/or generated in response to the metric is of reasonable quality; (2) a report on progress in meeting Program goals is prepared; and (3) solutions are identified to any problems that arise. As explained further below, we recommend that the

¹ The Center for Reform (CPR) is a 501(c)(3) organization founded in 2002 to provide policy advice in the arena of efforts to protect public health, worker safety, and the environment to decision-makers at the federal, state, and local level. CPR is comprised of 53 tenured professors from universities across the country who are supported by a small staff of policy analysts. For more information, see www.progressivereform.org. Rena Steinzor is the President of CPR and a professor at the University of Maryland School of Law in Baltimore. Shana Jones is a graduate of the School of Law and a senior CPR policy analyst. Professor Steinzor and Ms. Jones were retained by John Griffin in his capacity as Chair of the PSC. Their work on this project is supported by the Keith Campbell Foundation.

	<p><u>Executive Council</u> appoint an independent, high-profile <u>Accountability Officer</u> with a sterling professional reputation to accomplish this task. Because it is likely that partners already report much of the data to EPA that will be utilized for the accountability metrics, EPA should assume the task of gathering metrics data in the first instance so that partners do not need to report twice. The Accountability Officer would then independently verify the quality and reliability of the data and analyze their implications for Bay restoration.</p>
<p>3. Problem Solving</p>	<p>Once problems are identified, recommendations for policy solutions must be made so that problems can be solved in a timely manner. Examples of possible policy solutions include redirecting funding, addressing information constraints, establishing new agreements, or requesting that Congress create stronger controls in the Clean Water Act. Agreements to execute these solutions should be considered by the <u>Executive Council</u> following advice from the <u>Principal Staff Committee (PSC)</u> and the <u>Accountability Officer</u>.</p>
<p>4. Public Awareness and Participation</p>	<p>Public awareness and participation will be a critical way to ensure local involvement and buy-in as well as ensure that the accountability mechanism is implemented successfully and in a timely manner. Throughout this process, an Accountability Coalition, led by a non-profit group, should convene public meetings throughout the Bay watershed to educate the public and generate media publicity about Bay accountability. The Accountability Coalition should also establish a blog, listserv, and/or interactive web forum to track the Program's progress.</p>

The accountability mechanism should be implemented to assess Program effectiveness independently of the process for establishing a Bay-wide TMDL.

Although the progress of the Bay-wide TMDL is likely to inform at least one accountability metric, and may, indeed, utilize “reasonable assurances” as a means to evaluate program and partner progress, we recommend that the accountability mechanism be implemented separately from development of the Bay-wide TMDL and begin as soon as possible.

Accountability metrics should be objective, and should apply to the Program and its partners equally and simultaneously.

The accountability mechanism must be implemented through a process that is perceived as devoid of politics and scrupulously fair and transparent by everyone involved, including members of the public. Applying metrics to partners simultaneously is essential for policymakers to understand how resources should be directed and what solutions are available.

Solutions for problems identified by the Accountability Mechanism could be technological, involve increased funding, or involve requests for legislative changes. They should be endorsed by the Executive Council and, if necessary, implemented through agreements among Council members.

Because each phase of the accountability mechanism is different, we recommend a “hybrid” organizational strategy:

PHASE ONE: Accountability Metrics
<p>Recommended Strategy:</p> <ul style="list-style-type: none">• PSC directs <u>EPA</u> to draft an initial set of accountability metrics;• <u>EPA</u> consults with <u>Scientific and Technical Advisory Committee (STAC)</u> in developing its draft metrics;• <u>EPA</u> submits the draft metrics for review and comments to the the <u>Local Government Advisory Committee (LGAC)</u> and <u>Citizens Advisory Committee (CAC)</u>;• <u>EPA</u> finalizes draft metrics. <p>Projected timeframe: six months, to be repeated biennially thereafter</p> <p><i>Alternatively, the PSC could appoint an independent panel of experts to either draft or help the EPA develop the metrics. We do not recommend this approach because it could cause delay in launching the process. Its advantages are that it would involve experts not yet active in Bay restoration and could elevate the profile of the Accountability Mechanism.</i></p>

PHASE TWO: Data Gathering and Reporting
<p>Recommended Strategy:</p> <ul style="list-style-type: none">• The <u>Executive Council</u> conducts a search and selection process for an independent <u>Accountability Officer</u> who would be responsible for gathering and auditing the data needed to evaluate the partners’ progress under the final accountability metrics. This individual should report directly to the <u>Executive Council</u>.• The <u>Accountability Officer</u> obtains the necessary resources to gather and/or request data, audit data, report on progress, and develop solutions to problems. We recommend that the Accountability Officer be given authority to hire staff who work directly under his or her supervision. <i>When needed, the Accountability Officer could hire private sector contractors to support these efforts.</i> To conserve resources, other pre-existing audit programs could be consolidated under the Accountability Officer’s supervision. <p>Projected timeframe: six months</p> <ul style="list-style-type: none">• The <u>Accountability Officer</u> compiles his report and submits it for review and comment to <u>STAC, CAC, LGAC</u> (<i>or, alternatively, a specially appointed Independent Committee</i>) and to the <u>PSC</u>. Based on these comments, the <u>Accountability Officer</u> revises his report.

- The **Accountability Officer** submits a final report to the **PSC** and **Executive Council** identifying priorities and corrective actions.

Projected timeframe: 18 months, to be repeated annually thereafter

Alternatively, the Accountability Officer could report to the PSC, which would have authority to approve or reject his or her findings. The PSC has similar authority over most other aspects of the Bay Program at this time. We did not recommend this option because it could undermine the perception that the Accountability Officer is truly independent, and because the highest level of support for this process will give it the greatest chance of success.

PHASE THREE: Problem Solving

Recommended Strategy:

- At the direction of the **Executive Council**, the **Accountability Officer** should recommend policy solutions and ensure that problems are solved, if necessary through the execution of agreements among members of the Executive Council. Such solutions could include recommendations for legislative changes or commitments to seek additional funding for program activities.

Projected timeframe: annually but, depending on the metric, progress may take longer.

PHASE FOUR: Public Awareness and Participation

Recommended Strategy:

- An independent **Accountability Coalition** consisting of non-profit groups with an interest in Bay restoration should be created to convene public meetings throughout the Bay watershed, track Program progress using a blog, listserv and/or other interactive web forum, educate the public, and generate media publicity about Bay accountability.
- In order to promote the Coalition's independence, the **Executive Council** and **PSC** should acknowledge and support the efforts, but it should not appoint members to the coalition or direct its efforts.
- The **Accountability Officer** should cooperate with the Coalition and participate in public forums as reasonably necessary.

Projected timeframe: ongoing

PROS AND CONS OF ORGANIZATIONAL ALTERNATIVES

ORGANIZATIONAL ALTERNATIVES	Pros	Cons
State Partners and other members of the PSC	<ul style="list-style-type: none"> • Members know the problems well and have significant institutional expertise • Long-established relationships can make working together easier 	<ul style="list-style-type: none"> • Perceived to lack independence • Potential conflict because will have much at stake in responding to metrics and implementing solutions • Long-established relationships can make working together more difficult
EPA	<ul style="list-style-type: none"> • Knows the problems well and has significant institutional expertise • Perceived as a “higher authority” by partners in some circumstances 	<ul style="list-style-type: none"> • Perceived to lack independence because its leadership of the Program will be subject to evaluation • Potential conflict because will have much at stake in responding to metrics and implementing solutions
Private-sector coalition of “communicators” to be led by a non-profit organization	<ul style="list-style-type: none"> • Could be perceived as independent • Could bring fresh energy and perspective to Program evaluation 	<ul style="list-style-type: none"> • Funding uncertain • Lack of authority to gather information • Lack of expertise • Lines of responsibility unclear • Perception of lack of independence, if dominated by environmentalists or industry groups
A third-party auditor (private sector contractor)	<ul style="list-style-type: none"> • Could be perceived as independent • Could bring fresh energy and perspective to Program evaluation • Could serve as neutral arbiter among partners 	<ul style="list-style-type: none"> • Expensive • Lack of authority to gather information • Potential loss of partner buy-in and participation <p><i>Note: Should third-party expertise be needed, CPR believes that the Accountability Officer sited within the Program should have the discretion to make that judgment.</i></p>

<p>Independent Accountability Officer with Own Staff</p>	<ul style="list-style-type: none">• Could be perceived as independent• Could bring fresh energy and perspective to Program evaluation• Could accumulate institutional knowledge of accountability metrics, data quality control, reporting, and solutions• Could serve as neutral arbiter among partners• Less expensive than contractor	<ul style="list-style-type: none">• Credibility rides on integrity and performance of a single individual
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