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ENVIRONMENT

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Our Bay: Bay cleanup needs consequences

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This week's take:

By RENA STEINZOR, For Capital Gazette

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One of the core principles of law enforcement is that crime shouldn't pay. Quite the contrary, in fact: The consequences associated with breaking the law ought to be sufficient to deter violations.

That same principle should apply when it comes to deterring pollution in Maryland's most precious national resource, the Chesapeake Bay. Those who pollute the bay illegally ought to pay the price.

Unfortunately, that's not how we do business in Maryland. Neither Maryland law nor explicit Maryland Department of the Environment policy requires polluters who violate the law to surrender any windfall that results from their law-breaking.

As a result, polluters can rationally approach the decision of whether or not to stay within legal standards protecting the bay as if it were a simple business decision: Will the profit exceed the fine? Too often, the answer is yes.

Not recovering the profits "earned" through violations is just one of many ways that we've failed to apply accountability to the task of restoring the health of the Chesapeake.

The effort to restore water quality in the bay is more than a quarter century old. We've had some success, mostly in slowing further deterioration.

But in that time, governor after governor has joined in non-binding, interstate negotiations with the other bay states and agreed to impose limits on pollution.

Speeches have been made about the bay's importance to the region's economy and identity, and photo ops held on an annual basis. Then, with maddening consistency, deadlines are missed, funds are not appropriated for enforcement, and pollution reduction targets go unmet.

For years, the Environmental Protection Agency essentially punted on the problem, leaving it to the states to devise and enforce their own plans. That approach fell flat on its face. So, to its credit, the Obama Administration has begun holding the states' feet to the fire.

Maryland is rightly regarded as the state that has the most at stake in protecting the bay, but even Maryland has left some pretty big opportunities for clean-up and accountability on the table.

First, polluting should not be profitable. The policy of not insisting on full recovery of polluters' economic gains from breaking the law is one example.

But more should be on the to-do list, more even than the flush tax now under consideration in the legislature.

For example, under Maryland law, MDE is authorized to charge polluters a fee to cover the costs of developing, administering, and monitoring permits that allow specific polluters to emit certain amounts of pollution. But these fees fall far short of what is needed to support both permit-writing and enforcement against lawbreakers.

Because the fees don't reflect the actual costs, MDE has a chronic resource shortfall, which has led to a backlog of permit applications, and too few on-site inspections to ensure compliance. Rather than cutting back on the environmental policing so necessary

to restoring the bay, these fees should be raised as soon as possible.

Next, Maryland should stop giving municipal water treatment facilities a free pass. Such facilities pay for permits in Pennsylvania and Virginia, but Maryland charges not a penny. The facilities contribute nearly 28 percent of the nitrogen and more than 20 percent of the phosphorus discharged into the bay — the two nutrients most responsible for the decline in the bay's health.

Finally, agriculture needs to be held accountable at all levels, particularly industrial-sized animal operations. Agriculture is a big source of bay pollution, contributing nearly 44 percent of the total nitrogen and phosphorus, and nearly 65 percent of total sediment.

Some estimates suggest that half of the nitrogen and phosphorus comes from animal manure, particularly from areas with many concentrated animal feeding operations (CAFOs), including massive chicken farms.

Often these operations are owned by individual farmers, working on contract with large companies that dictate practically every significant aspect of the operation. Under the Clean Water Act, pollution permits apply to "owners or operators," but so far, MDE has declined to assert in its regulations that such companies are "operators." That reform is overdue.

MDE should clarify that such "vertical integrators" are "operators" for the purpose of CAFO permits. Large poultry companies should be required to shoulder the responsibility of dealing with the chicken manure produced by their contract farmers.

The time for inaction has passed, and the hope harbored by some that the federal government will invest billions of dollars more into clean-up is a pipe dream. If we're going to clean up the bay, we need to pull together as a state and a region, shoulder the costs, and get the job done.

Our children will thank us for preserving their jobs, the region's natural beauty, and indeed the key to its very identity.

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