

# Chester RIVERKEEPER® Almanac



Protecting Families by Stopping Pollution

A publication of the Chester River Association  
WINTER 2010

## Riverkeepers *get tough with MDE*

The Chester Riverkeeper along with the state's other waterkeepers has asked the federal government to strip the Maryland Department of the Environment of its authority over pollution dischargers.



Tom Leigh

"The critical condition of the Chesapeake Bay and its tributaries calls for this aggressive action," notes Chester Riverkeeper Tom Leigh. "MDE has failed—and failed miserably."

In a petition filed in December with the U.S. Environmental Protection

Agency, Maryland's 12 waterkeepers and Waterkeeper Alliance asked the federal government to ban the state from any involvement in issuing Clean Water Act discharge permits.

Among other allegations, the 58-page petition says MDE has failed to:

- issue permits where they are required;
- inspect and monitor activities that are subject to regulation under the permits;
- act on violations of permits or other program requirements;
- seek penalties weighty enough to deter future violations or even to collect fines when they are imposed.

The petition makes several references to Velsicol Chemical Corp., a chronic Kent County polluter that signed a consent

decreed in 2008 agreeing to clean up contaminated soil and groundwater at its Worton plant. The company, now called Genovique, signed the decree without admitting wrongdoing. In the petition, the waterkeepers claim the chemical plant got an MDE permit even though the agency did not review the site's stormwater runoff as the law requires.

"Velsicol is the poster child for this de-delegation petition," Leigh said.

Several dozen discharge permits are issued or renewed in the Chester River watershed each year. Any enterprise that creates a point source discharge – whether it's a wastewater treatment plant, a car wash or a hospital – must have a permit. The permits are good for up to three years. At renewal, according to Leigh, the permit-holder is expected to demonstrate any science- or technology-based improvements that would

*Continued on page 2*

## CRA makes key hire

Chester River Association has hired Allison Duckworth as watershed coordinator, filling a crucial gap in the organization's reach.

Duckworth, 26, oversees the volunteer Chester Tester program, which involves interpreting water quality data from 25 testing sites in non-tidal waters. She will also assist Riverkeeper Tom Leigh with mainstem sampling and she'll have responsibility for the annual Chester River Report Card.

Duckworth succeeds Brent Walls, who served under all three of CRA's riverkeepers and now acts as the Upper Potomac Watershed Manager.

"My primary goal is to help get the Chester off of the EPA's list of impaired waterways," she said. "That means raising public awareness and outreach to get more people involved. I want to encourage the public to be active citizens."

Duckworth most recently worked for the Maryland Department of Natural Resources as a field biologist, taking water samples later tested for parameters such as dissolved oxygen, temperature and salinity. It's basically the same science that the Chester Testers follow.

*Continued on page 2*

# Riverkeepers

Continued from page 1

decrease loadings into waterways.

“Slowly, over time, the theory is that you’re going to decrease your loadings of whatever it is you are permitted to discharge: nitrogen, phosphorus, sediments,” he added. “It could be anything.”

MDE has overseen Clean Water Act discharge permits for 20 years. In a statement after the petition was filed, MDE Secretary Shari Wilson defended her department, saying it was understaffed and overburdened. At press time, EPA still had not commented on the filing. Last summer, however, EPA Administrator Lisa Jackson announced that the agency would strengthen federal oversight of delegated state programs under the Clean Water Act. She also said EPA was going to focus on improving transparency and increased enforcement performance.

“We hope she means what she said,” Leigh noted.

The petition, filed by the University of Maryland Environmental Law Clinic, is not unique. At least one dozen states – including California, Florida, Ohio and West Virginia – have filed de-delegation petitions in the past.

Notably, EPA has never taken over a state Clean Water Act program. Instead, the petitions have acted as triggers for EPA to audit the states’ programs and to seek accountability along with program improvements. EPA does have a legal obligation to ensure that the states are fully implementing the Clean

Water Act.

As Leigh frames it: “The state will claw, bite, scratch and scream because it doesn’t want to lose the federal funding it gets to manage the program. Yes, we’re asking for the EPA to withdraw the authority but that’s not necessarily the intent. Ideally, what you do is you compromise and you make major improvements in a program. We’re doing nothing more than asking MDE to function at a higher level more fitting of its responsibilities under the Clean Water Act.”

Waterkeepers in the petition do suggest remedies that could be used to solve some of the problems that plague the program. Among them:

- Update statutory penalties and adopt a chronic violator law.
- Charge permit fees that recoup the state’s actual costs of permitting and enforcement.
- Institute and apply mandatory minimum penalties.
- Create an ombudsman’s office.

With the EPA’s stated intention to reinvigorate Clean Water Act oversight, Leigh said Maryland waterkeepers are hopeful that the petition will be acted upon favorably.

“The time is right for a fundamental shift in the way we allow our permitting to take place,” he said. “If not now, when?”

—Ellen Uzelac

---

## Key Hire

Continued from page 1

“This is one of the largest [water quality] monitoring programs in the world. Everyone uses data from DNR and that can have a huge impact on policy,” says Duckworth, who has a bachelor’s degree in geology from the College of Charleston in South Carolina.

Duckworth grew up outside Crumpton on 30 wooded acres adjacent to Red Lion Branch Creek. Her parents, Steve and Rose Seningen, operated a wholesale azalea nursery on the property when she was a girl. Duckworth says her early experience in the Chester River watershed created in her an affinity for waterways—something that for her goes beyond science.

“Water is the thread. It’s poetic; it’s fluid. It’s special to me. It’s calming; it’s invigorating,” she adds. “It’s life.”

After college, Duckworth worked for Florida’s Department of Environmental Protection, taking water samples from 100 sites from Key West to Key Largo. She and her now husband, Chris Duckworth, lived on and worked from a 23-foot Glander Cay for three years—taking shelter from hurricanes Katrina, Wilma and Rita in the mangroves of Marathon Key. Later, after completing the water quality monitoring necessary to create a Total Maximum Daily Load program for the Florida Keys, they spent several months sailing through the Bahamas and up the Eastern seaboard of the U.S.

The couple moved back to Maryland when Chris Duckworth was hired as a water quality field biologist by DNR. Today, he commutes to Annapolis while his wife helps tend to the watershed she grew up in. The job is part-time but could grow into a full-time position.

“I just have this deep seated passion about wanting to do something powerful in my life to serve others and to serve the environment,” she says. “This is definitely right place, right time.”



Allison Duckworth

# Legislative Update 2010

Chester River Association is pushing the Maryland General Assembly on four fronts this session but the centerpiece of its agenda involves passage of the state's environmental budget.

CRA is leading a multi-partner initiative that would dedicate \$286,000 in funding from the 2010 Chesapeake Bay Trust Fund to several projects in the Middle Chester watershed.

"The Middle Chester/Morgan Creek is essentially a miniaturized Chester River," according to Chester Riverkeeper Tom Leigh. "If we can implement some of these best practices there and see distinct and measurable effects, then it's highly probable that if we implement on a larger scale we will make needed improvements to water quality."

Two of the projects are agriculture-based. One involves planting 200 acres of switchgrass. The other is a precision farming pilot program that would use technology to decrease the application of nitrogen on fields while increasing yields for wheat.

The funding would also be used to extend outreach to homeowners in the Middle Chester who may have failing septic systems and could be eligible for state assistance. The final projects include the installation of wetland ponds on agricultural lands and the restoration of a phragmites-choked marsh and Radcliffe Creek, an urban stream.

CRA's 15 partners in the implementation of the program include Kent County, the town of Chestertown, Sassafras River Association, Upper Eastern Shore Tributary Team and Washington College's Center for Environment & Society.

The three other legislative priorities being advanced by CRA are:

- The elimination of a cap on state-subsidized cover crops, which imposes a limit of 750 acres per farmer. Many of the watershed's farmers farm multiple properties and the cap, imposed last year, has had a measurable impact, reducing the amount of cover crops in the ground. "It's a weird language thing—it's not per owner," says Leigh. "The intention was to spread the wealth. It looked good on paper but it didn't translate to the field."
- A law that would force zoning laws statewide to conform with county comprehensive plans. "Engaged citizen volunteers devote countless hours developing comprehensive plans," observes Leigh. "Ignoring a document like this, along with its binding provisions, excludes the public from participating in their self-governance and makes a mockery of the process."
- A law that would require all new construction statewide to have nitrogen removal, or BNR, technology. This was a priority in the 2009 legislature as well and CRA emerged with half a win: an act that required all new homes and failing septic systems in the Critical Area to upgrade their systems to BNR. "We've had a lot of pushback on this due to the economy and state budget. We're not likely to see progress statewide," acknowledged Leigh. "We're looking at it as a place-holder year to maintain funding and support for last year's bill."



U.S. Representative Frank Kratovil, center, told farmers at CRA's Third Annual Farmers' Breakfast that the twin priorities of protecting the Chester River watershed and protecting and promoting agriculture are not mutually exclusive.

"This room represents the best: engaged farmers and environmentalists. It should not be about blaming," he said at the event in February. "This demonstrates we are in this together. The goals of protecting the environment are not the opposite of protecting agriculture."

Kratovil said policymakers have historically focused on agriculture as a leading contributor to the impairment of waterways. Calling farmers an "easy target," the congressman from Maryland's First District said farmers have been treated "unfairly."

Moreover, he said: "You should be treated fairly, differently. It's not just the economy and culture but national security. Agriculture serves a benefit others do not. In our policies, we need to make sure we make that distinction."

CRA's 1,300 members include 135 watershed farmers. Kratovil – pictured with CRA president Michael Moore, left, and conservation planner Virgil Turner, right – said he concurs with CRA that healthy farmers are key to a healthy Chester River.

## Parting Thoughts *Continued from page 4*

seats on county boards to the Governor, we all need to not only vote, but to participate actively in the political process. Additionally, we need to remind those we elect that they are there because we want them to act on our behalf when tough decisions need to be made. If they choose not to, they do so with the risk that they may not return to their chair after the next election cycle. Perhaps we should develop a "Rate My Lawmaker" program that would suggest a sink or swim option to elected officials. Alternatively, we could "Adopt a Lawmaker" and showcase their accomplishments on environmental issues.

Chester River Association has once again hired a lobbyist to advance our agenda in this year's legislative session in Annapolis. I will be participating actively in this year's session by providing testimony in support of environmental laws as well as working with other groups to promote Chester River-friendly policy. With the recent hire of a watershed coordinator, we are staffed to handle the monitoring program and production of the Chester River's annual report card. We also remain vigilant against polluters large and small in the Chester River watershed and are not afraid to wield the stick when the carrot fails to achieve desired results. "Fight for the Bay" is largely inside baseball for Bay activists. I hope, and I suspect that Ernst hopes, that it will provide a dose of chlorophyll to our Light Green colleagues.

- Tom Leigh, Chester **RIVERKEEPER**®

The Chester River Association and its Chester **RIVERKEEPER**® program are members of Waterkeeper Alliance, Inc.

## *Parting Thoughts* Think Green, DARK Green

Howard Ernst, the author of “Chesapeake Bay Blues,” has written a new book, “Fight for the Bay: Why a Dark Green Environmental Awakening is Needed to Save the Chesapeake Bay,” and it should have an impact on the way people think about how we go about saving our rivers and the Bay.

“Chesapeake Bay Blues,” published in 2003, first articulated for a large audience the now familiar propositions that: We know what the problems are; we know what the solutions are yet we lack the political will to implement them. Its publication shook up the Bay restoration establishment by asserting that some groups had failed in their mission because they had failed to engage in the kind of aggressive advocacy that would make a difference such as lobbying, participating in the electoral process and using litigation.

In this sequel to his first book, Ernst makes a detailed case that the Light Green movement, which focuses largely on restoration work and “feel good” projects but shies away from confrontation, has resulted in a political “dead zone” in which politicians talk about saving the Bay but take little effective action. He argues that a Dark Green movement, aggressive and uncompromising, is needed if the Bay is to be saved. This is the philosophy of all 16 Riverkeepers in the Chesapeake watershed.

The difference between the Light Greens and the Dark Greens is that the Light Greens have bought into the proposition promoted by polluters and complicit government officials that limits on pollution must be voluntary and negotiated between the government, polluters and other stakeholder groups. Our Dark Green Riverkeepers, on the other hand, insist that citizens have a right to effective enforcement of the Clean Water Act and that the requirements of the law cannot be negotiated away for the simple purpose of reaching consensus.

In a recent meeting with Ernst, local Riverkeepers discussed tactics and ideas to hold politicians’ feet to the fire. Here is what I walked away with: From local

*Continued on page 3*



## Contact us:

410-810-7556

Executive Director, Bob Parks  
[bparks@chesterriverassociation.org](mailto:bparks@chesterriverassociation.org)

Chester **RIVERKEEPER**<sup>®</sup>, Tom Leigh  
[riverkeeper@chesterriverassociation.org](mailto:riverkeeper@chesterriverassociation.org)

Office Manager, Bobbi Marshall  
[bmarshall@chesterriverassociation.org](mailto:bmarshall@chesterriverassociation.org)

Watershed Coordinator, Allison Duckworth  
[aduckworth@chesterriverassociation.org](mailto:aduckworth@chesterriverassociation.org)

Conservation Planner, Virgil Turner

Conservation Planner, Paul Spies  
[pspies@chesterriverassociation.org](mailto:pspies@chesterriverassociation.org)

Septic Specialist, Jennifer Hicks  
[jhicks@chesterriverassociation.org](mailto:jhicks@chesterriverassociation.org)

Office Assistant, Ron Melcer  
[rmelcer@chesterriverassociation.org](mailto:rmelcer@chesterriverassociation.org)