

REPORTER

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The Navy Destroyer *Barry* shares a frozen Anacostia shoreline with the Nationals Park baseball stadium. With the cold temperatures, large sections of the Anacostia and Potomac are freezing over.

Trash Summit Notes Gains, Pushes Forward

"The idea is as simple as it is profound. By removing trash—the most obvious sign of our carelessness and neglect—we as a community begin to reclaim our Potomac River, and our communities. We will continue to work together toward our ambitious goal of a trash-free Potomac by 2013," said Maryland Congressman Chris Van Hollen, chairman of the Trash Free Potomac Watershed Initiative Advisory Council.

The initiative, led by the Alice Ferguson Foundation, is dedicated to eradicating trash from stream and river banks and bottoms throughout the watershed, and held its Fourth Annual Trash Summit on October 28. The initiative evolved from decades of annual trash cleanups that

have grown to a basin-wide event that engages thousands of volunteers, and seeks a permanent solution to the problem based on education, enforcement, regulation, legislation, and market-based approaches.

The event was attended by some 250 attendees, including students, citizens, representatives from watershed groups and nonprofit organizations, and local, state, and federal government officials. The signatures of 34 elected officials representing 14 different jurisdictions were added to the Potomac Watershed Trash Treaty at the event. The treaty notes that the basin's waters are impaired by trash, which is a major expense and largely preventable. Signatories pledge to work

Our mission is to enhance, protect, and conserve the water and associated land resources of the Potomac River and its tributaries through regional and interstate cooperation.

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together to focus efforts on supporting and implementing regional trash reduction and recycling strategies, increasing education and awareness of the trash problem, and reconvening annually to assess progress and move forward on the goal of a trash-free watershed. The treaty now has 139 elected officials as signatories, including the governors of Maryland, Pennsylvania, Virginia, West Virginia, the mayor of Washington, D.C., leaders from Congress, and county and municipal government leaders.

Attendees heard about several successful efforts on the legislative and regulatory fronts. District of Columbia Councilman Tommy Wells told the audience about the careful planning and hard work that resulted in passage of the Anacostia River Clean Up and Protection Act, which instituted a fee on plastic and paper bags used in grocery and other stores. The fee is aimed at encouraging use of re-usable bags to reduce the heavy numbers of disposable bags that make up a large amount of streamside litter.

Hamid Karimi, deputy director of the District's Department of the Environment and an ICPRB District commissioner, announced the jurisdiction's first "Trash Free Tributary." The Fort Dupont stream's stormwater catch basins were retrofitted, eliminating those inputs of trash. The small stream registered an early success that hopefully will carry to the next project, Hickey Run, which carries more than 12 percent of the District's trash load to the Anacostia River. The project will be done in 2010.

The trash-free initiative represents a unique attempt at attacking the trash problem comprehensively. The initiative rests on five core components: education, enforcement, regulation, legislation, and market-based approaches. These components were reviewed and updated in workshop sessions during the meeting with the following actions noted:

*Encouraging trash reduction with policies at all levels of government, including more "bag bills," enhanced recycling efforts, and take-back programs;

*Improving stormwater management technologies to capture and reduce trash;

*Increasing law enforcement, education of police officers and judicial officials, and creation of an environmental crimes court;

*Growing the Alice Ferguson Foundation Trash-Free Potomac Facility program aimed at helping businesses reduce waste;

*Implementation of the trash total maximum daily load plan and municipal stormwater plans in the Anacostia watershed, the first of its kind in the Eastern U.S.;

*Gearing up the Potomac River Outreach and Awareness Campaign for Trash for a



Cleanup volunteers with their collection at Children's Island in D.C. at last spring's cleanup.

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2010 education and outreach campaign.

The ICPRB will continue to participate in the initiative, including membership in committees, assistance in creating a volunteer trash reporting database, and assisting in promotion and logistics in the annual cleanup.

Several people were honored for their efforts in furthering the initiative's goals, including ICPRB *Potomac Basin Reporter* Editor Curtis Dalpra, who was cited for his work representing ICPRB over 21 years of cleanup efforts and on the initiative.

Ferguson Foundation Executive Director

Tracy Bowen was encouraged by the continuing participation and level of activity both at the summit and the program as a whole. "We are thrilled with the tangible trash free actions and accomplishments by many of our government leaders, businesses, communities, and citizens; we will focus key actions of individual responsibility needed by all citizens of the watershed that will take us to our audacious goal of a trash free watershed by 2013," she said.

For more information on the initiative, as well as this spring's annual Potomac Cleanup, visit www.potomaccleanup.org.

Petition Seeks Changes in Maryland

An environmental organization has petitioned the U.S. Environmental Protection Agency (EPA), to withdraw Maryland's delegated authority to issue water pollution permits to dischargers, including sewer plants, industrial discharges, and some municipal stormwater systems. Failing that, the petition suggests how EPA and Maryland can work together to solve the problems.

The Waterkeepers Chesapeake of Maryland and the Waterkeeper Alliance, a resource group for waterkeepers worldwide, worked with the University of Maryland Law School's Environmental Law Clinic to file the petition "to better protect the Chesapeake Bay." The group, which includes the Anacostia and Potomac riverkeepers, filed the petition in December 2009, citing the failure of the state to manage the program according to federal rules. A press release announcing the petition also lists a series of solutions that EPA and the Maryland Department of the Environment (MDE), the delegated permitting agency in the state, can undertake to restore "an effective level of oversight." Potomac Riverkeeper Ed Merrifield noted that EPA has never taken back a program directly from a state.

Merrifield added that the petition is seeking changes in the way Maryland operates and enforces the federal Clean Water Act that set up the National Pollutant Discharge Elimination System (NPDES). The system regulates pollution by requiring

dischargers to acquire a permit from the jurisdiction specifying the types and amounts of pollution that can be legally released into a waterway.

The 58-page petition cites numerous problems with Maryland's program. "If you want to see proof of the failure of Maryland to enforce the Clean Water Act within its borders, look no further than the spiraling health of the Chesapeake Bay," said Michele Merkel, Waterkeepers Chesapeake regional coordinator. The MDE "has been unable to draft and approve robust NPDES permits and has failed to comprehensively enforce the program. By submitting this petition, we hope to encourage all parties to come together and find ways to improve the program and, ultimately, provide all Maryland citizens with cleaner, healthier waterways," she said.

The petition notes that the state has failed to issue permits to facilities that require them, fails to reissue permits in a timely manner, and cites EPA data that as of 2007, just more than 70 percent of major dischargers held current permits. The petition also claims that permits do not adequately take into account stormwater pollution prevention plans and total maximum daily load plans for watersheds. The petition notes that the state does not inspect dischargers adequately, and cites analysis by the *New York Times* that 40 percent of 832 facilities have not been inspected since 2005. The petition also notes lax enforcement of violations, which



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The petition seeks changes in how Maryland regulates dischargers that will better protect the river and its many uses.

could be private companies or municipal governments. The petition cites data Maryland supplied to the NPDES database noting that compliance assistance and enforcement actions dropped significantly between 2007 and 2008. It also accuses Maryland of not enforcing compliance measures that resulted from some previous violations. The state also is cited for having inadequate civil and criminal penalties for violations. These penalties are too small to act as a deterrent, the petition notes. Finally, the petition notes that inefficient record-keeping hampers public ability to obtain information, and that Maryland law restricts public involvement in the state's Clean Water Act program.

The petition describes the Maryland program as "in critical condition," and acknowledges that chronic lack of funds to administer the program is a major problem. Yet, the problem has continued on for many years. Funding problems were documented in 2002 in a study by the University of Maryland Environmental Law Clinic. Many of the same problems were highlighted again in a 2007 Maryland Transition Work Group on Environment and Natural Resources, the petition noted. Recommendations included increasing permit and filing fees to cover the cost of the program. The petition notes that those fees have not changed in the past seven years.

The MDE is currently reviewing the petition, noted Dawn Stoltzfus, the agency's communications director. In a written response to questions, Stoltzfus responded that an MDE review will assess the complaints to improve the program, and that MDE is focused on reducing the backlog of administratively extended permits (expired permits renewed as-is until they can be assessed).

"With regard to enforcement, while the number of inspections MDE is able to complete is lower than we would like, inspections are based on priority and for those sites with the highest potential for pollution," Stoltzfus wrote.

She generically responded to several claims in the petition that were based on *New York Times* research on EPA's massive database on permits, noting that the data system contains "problematic EPA data" that Maryland is working to fix. The ICPRB staff who use the data are familiar with how difficult it can be to draw assumptions from it, and how many of the violations listed have to do with reporting schedules and other paperwork that does not necessarily represent a threat to or a violation of water quality. And while there will always be problems, the agency is "working daily to regulate more than 110,000 entities to ensure compliance, protection of public health, and restoring water quality," Stoltzfus said in the response.

Stoltzfus noted that all the states are dealing with these same problems. "MDE acknowledges that, like state agencies across the country, we face a resource shortage. Our 2007 Fiscal Study detailed the agency's growing monetary and structural deficit," Stoltzfus wrote. She added that despite the funding problems, MDE increased enforcement by 34 percent in Fiscal Year 2008, and secured two of the highest penalties ever collected for state environmental violations. The MDE has enacted the first-ever state controls on poultry litter and proposed one of the most aggressive municipal stormwater permits in the country.

"While the petition should generate a thorough review of our permit program as we understand is the case in 12 other states with similar pending petitions, the agency continues to focus on prioritizing available resources to those actions that will most effectively and efficiently protect public health and restore water quality in Maryland streams, rivers, lakes, and the bay," Stoltzfus wrote.

The petitioners proposed a number of actions to help MDE better respond to an overwhelming task. The petition envisions:

- *Enforcement of mandatory minimum penalties to both fund the program and provide a deterrent to violations;
- *A chronic violator law to deal with repeat violators;
- *Increased permitting and filing fees;
- *Electronically available permitting and enforcement information;
- *Creation of an ombudsman's office to assist citizen activity;
- *More EPA oversight of the program; and
- *Allowing greater citizen involvement in legal proceedings and pressing for better settlement terms with polluters.

Merrifield, who as Potomac Riverkeeper has both battled and worked with Maryland agencies and officials, said that the attitude

of the Obama administration and changes in the EPA and the Chesapeake Bay program made the petition timely. "There is a new sense of responsibility growing in the region. We wanted to encourage that attitude," he said. A press release announcing the petition quotes EPA Administrator Lisa Jackson: "Many of these state programs are 20, 30 years old, and we might even need to hit the reset button and say 'OK, we're going to hold you to a standard. If you're doing your job, great, but if not, we're going to be here going inside until you are. It's EPA's job to oversee. We often say we're partners, but we're also delegating our authority to a state, and of course, ultimately that means your ultimate answer would be to take it back," she said.



Watching the River

Flow of the Potomac River measured near Washington, D.C., by the U.S. Geological Survey showed levels climbing from well below average in October to near normal in December, according to provisional data that has not been reviewed.

In October, flow of the Potomac averaged about 2.9 billion gallons per day (bgd), about 30.8 percent less than the long-term average of about 4.2 bgd. Daily extremes for the month ranged from a low of about 1.2 bgd on October 13 to a high of about 9.2 bgd on October 29. Water taken from the river for water supply averaged about 300 million gallons per day (mgd).

Flows increased in November, when flow averaged about 4.7 bgd, about 10 percent less than the long-term average of about 5.2 bgd. Extremes ranged from a low of about 2.5 bgd on November 10. Storms brought river levels to a high for the month of about 7.1 bgd on November 24. About 400 mgd was taken from the river for drinking water.

The timing of events in the regional Chesapeake Bay cleanup may help the petitioners' cause as well. As part of the ongoing Chesapeake Bay TMDL process, EPA has put the bay states on notice that there will be consequences if water quality goals are not met. One of the "consequences" of continued under-performance could be increased scrutiny of the NPDES process, including an increase in federal oversight and objection to permits that do not adequately meet bay program goals.

Merrifield was quick to point out that the petition focused on Maryland should not be taken as an approval of the records of other states in the watershed. He noted that a coalition of environmental groups (not involving the Waterkeepers) had filed a similar petition against West Virginia in June. Merrifield noted that the Waterkeepers' decision to petition against Maryland came largely because of the amount of data that had previously been collected about the state, which has the most control over the Potomac River. The group "has no immediate intentions to file petitions against other Potomac jurisdictions, or to file any lawsuits on the issue," Merrifield said, "but we definitely want to see some follow-through on this issue. Ideally, what we want to see are changes that will allow us to withdraw the petition."

David Sternberg, an NPDES manager at EPA Region 3, which administers the mid-Atlantic area, said that the agency is evaluating the petition, but that there is no timetable for a formal response to the petitioners. The regulations governing petitions don't include a response timetable, he noted, and the EPA's response will be largely based on the technical aspects of the petition that need to be addressed.

The petition to rescind Maryland's permitting authority is one of about 11 pending nationally, stretching back to 2001. The EPA has yet to take back any of the programs from the states. The EPA, like state governments, is short of resources for taking on new programs. If EPA did take over the program from Maryland, what makes the petitioners think that a federal takeover would necessarily improve Maryland aquatic health?

"If they took over the program to correct the problem, then that would be positive movement," Merrifield said. "But what we are looking for is not a management turnover, unless that is the best route to fixing the many problems with the Maryland program. We are happy to work with any agency or organization to improve the shortfalls that are keeping the state from attaining its water quality goals," Merrifield said.

A full copy of the petition can be found at www.potomacriverkeeper.org.

Emerging Contaminants Highlighted in Report

Chemicals found in Potomac basin waters (and, to a lesser degree, finished drinking water) may be the cause of the intersex condition found primarily in the smallmouth bass, and the effects of the broad array of chemicals found on humans are unknown, according to the nonprofit Potomac Conservancy's annual State of the Nation's River Report. While no causal link between the Shenandoah fish kills, the intersex phenomenon, and the chemical compounds has been found, the contaminants have received much research attention.

The 2009 report, "Emerging Contaminants in the Potomac River," examines recent research on a class of chemicals known as endocrine disruptor compounds (EDCs), which mimic and can interfere with the actions of animal and human hormones involved in developmental and reproductive functions. The intersex condition found in smallmouth bass in the Shenandoah and Potomac river systems are primarily male fish with under-developed eggs in their testes. Studies by the U.S. Geological Survey and other agencies identified high levels of intersex in portions of the river systems, particularly in and around urbanized or heavily farmed areas. The substances are ubiquitous, contained in birth control pills, shampoo, suntan lotion, product fragrances, fire retardants, pesticides, and other products. Animal feedlots or poultry operations may use hormones or other chemicals in feed. The substances enter waterways as storm water runoff from agricultural or urban/suburban lands, or enter the sewage system and are not completely removed by wastewater treatment plants. The report notes that more than 1,000 new compounds are introduced each year. These conditions are not unique to the Potomac, and have occurred throughout the nation.

Awareness of the types and levels of contaminants has grown steadily during this decade. Endocrine disruptor compounds are a focus of the Potomac River Basin Drinking Water Source Protection Partnership (DWSPP), a cooperative partnership of basin drinking water managers and utilities formed to address contamination that could adversely affect the water supply. The group has focused on a number of fronts to reduce introduction of the contaminants into waterways, worked with the U.S. Environmental Protection Agency on the issue, and is monitoring and promoting expanded research into the chemicals and their long-term impacts (see September/October 2009 *Reporter*).

While knowledge about the types and



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Some drugs, personal care products, pesticides, and other products that contain EDCs enter waterways and could be stressing fish.

concentrations of these contaminants is growing, the conservancy report notes that the long-term effects of these compounds—and how they may act in combination with one another—are poorly understood. The report notes that many of these compounds are unregulated, and no maximum safe levels have been defined. Some other compounds for which standards exist should be revisited in light of new research. The numbers of new compounds entering the marketplace in a variety of products is a major concern. "Despite the breadth of regulatory rules and number of involved agencies, few meaningful steps have been taken toward controlling the compounds," the report notes. "Congress charged EPA with determining what chemicals act as endocrine disruptors nearly 15 years ago—not to regulate them, simply to identify them—and EPA only began screening the first EDC this year," the report stated, adding that no water quality standards or pollution prevention rules have yet been instituted to keep the compounds out of the environment.

While the report notes that area water supplies are all safe by federal standards, it questions whether the standards themselves are up-to-date and using the latest information available. The Potomac Conservancy wants Congress to require modern testing of compounds, as well as updating the regulatory framework to deal with this growing class of pollutants.

The Potomac Conservancy has set a number of goals for addressing the threat of EDCs. The first line of defense is to keep the compounds out of the environment. The group is seeking federal action on three fronts.

To decrease exposure to the compounds, introduction of new compounds should be limited, and that drug take-back programs should be expanded. Funding should be increased for research on health effects,

federal testing and evaluation of compounds, and wastewater treatment that will more effectively remove the compounds. Control of the substances should be enhanced through strengthening regulations and passing more stringent stormwater regulations that will capture contaminated flows.

The U.S. Environmental Protection Agency (EPA), with help from water utilities and other groups, are moving forward to assess and address endocrine disruptors and other emerging contaminants. The DWSPP member water supply utilities worked closely with EPA and other groups in 2009 on a number of projects.

The DWSPP membership participated in discussions with EPA to establish a safe medicine disposal project in Frederick County, Md., and provided comments to the Drug Enforcement Administration about

disposal of controlled drugs. The group is tracking state and federal efforts and has provided testimony at local government and congressional hearings. Group members also are participating in sampling programs of both source water and finished drinking water to assess the types and amounts of a range of emerging contaminants.

The DWSPP will continue to increase knowledge about the contaminants through research projects, continued sampling and other efforts, track and encourage federal efforts toward greater protection of source waters, and regulation of substances.

For more information about the report, visit the Potomac Conservancy's website, www.potomac.org. The Drinking Water Source Protection Partnership has further information about emerging contaminants and other water supply protection issues at www.potomacdwspp.org.

Bill Would Provide for Study of Endocrine Compounds

Recent revelations about the presence of small amounts of contaminants known as endocrine disrupting compounds (EDCs), in the Potomac river and in streams nationally need to be addressed urgently and quickly, according to Va. Congressman Jim Moran, who has introduced a bill to boost research and action (see related *Reporter* story).

The compounds, which mimic endocrine hormones that regulate development, metabolism, growth, and reproduction, are found in a variety of personal care, laundry, pesticide, and industrial products. Many of them are unregulated.

Moran, who pays close attention to Potomac issues, noted the intersex condition in smallmouth bass in the watershed that has been linked to EDCs found in rivers and streams. "These fish are the proverbial 'canaries in the coal mine' a symptom of a larger sickness in our environment. The implications for humans are real and deeply troubling," Moran said. He is concerned that the long-term effects of EDCs remain unknown, and that current federal efforts to protect human health are inadequate. He noted that only the first phase of testing of a handful of the hundreds of known compounds is underway after more than a decade's time.

The Endocrine Disruption Prevention Act of 2009 [HR 4190] would authorize a new research program at the National Institute of Environmental Health Sciences to identify EDCs and establish an independent scientific panel to guide research and prioritize chemicals for testing. The panel determination of even minimal concern about a compound would compel federal regulatory agencies to propose control steps within six months.



Congressman Jim Moran (Va.), on the river with Shenandoah Riverkeeper Jeff Kelble.

The bill, if passed, "will improve existing government efforts so we can finally get the kind of timely, accurate, practical data we need to protect public health. Under this bill, science, not politics and bureaucracy, will set the stage for regulatory action," Moran said.

The bill is currently in committee.

More Paperwork Required to Wet a Line

For 2010, Anglers fishing the Chesapeake Bay and its tidal tributaries will need to register with the federal government, as well as acquire a state fishing license. The process is as painless as registering online or by telephone, is free this year, and will help keep fish stocks healthy.

The National Oceanographic and Atmospheric Administration's (NOAA) National Saltwater Angler Survey registry will help to replace an earlier tool used to assess fish stocks and set harvest limits

on coastal fisheries. The earlier program was much criticized by both anglers and the National Research Council, which in 2006 recommended a new system for providing fishery census data. The new registry will be used to contact saltwater sport anglers and get more meaningful catch data.

Some people are exempt from registering, including anglers under 16 years of age, anglers fishing from a charter or head boat, those who hold a highly migratory species permit, or are commercial or subsistence anglers.

Next year, a fee for registering will be required.

State legislatures will need to take prompt action this year to make it easier for anglers to comply with the federal law in the future.

Maryland will be incorporating the requirement into a modified bay or new saltwater license for 2011, which must be approved by the legislature. The Virginia Marine Resources Commission has prepared a paper with options that is now being reviewed by the Virginia legislature. Generally, the states may need to modify existing fishing regulations or exemptions so that the federal registry includes all

saltwater and Chesapeake Bay anglers.

In the meantime, anglers must register for 2010 by calling 1-888-674-7411, or online at www.countmyfish.noaa.org.

How Are We Doing?

The ICPRB is a busy place, and staff wear many hats. From basic water quality, fisheries, water resources, and Chesapeake Bay restoration efforts and the education and outreach efforts that support them, it can sometimes be hard to see outside the box. That's where you come in. Please visit our website, www.potomacriver.org, and take a few minutes to respond to our online survey. Your responses will help ICPRB fulfill its mission to protect and preserve the water and related resources of the Potomac basin. Our results will be better for your input. Thanks!

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Jennifer D. Willoughby

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E-Mail: info@icprb.org

Internet: <http://www.potomacriver.org>

Joseph K. Hoffman, Executive Director

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Interstate Commission on the Potomac River Basin
51 Monroe St., Suite PE-08
Rockville, MD 20850

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