

Testimony

on behalf of the

**Virginia Cattlemen's Association &
National Cattlemen's Beef Association**

with regards to

**“Rulemakers Must Follow the Rules, Too: Oversight of Agency Compliance with the
Congressional Review Act”**

submitted to the

United States House of Representatives
Judiciary Committee
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Rep. Tom Marino, Chairman

submitted by

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**National Cattlemen's
Beef Association**

Good morning, my name is Jason Carter. I am from a multi-generational cattle, row crop and tobacco farm family in central Virginia and studied Animal Science at Virginia Tech. I am the Executive Director of the Virginia Cattlemen's Association, the Commonwealth's largest beef cattle association representing the state's largest use of private land in agricultural production among 24,000 producers and 1.6 million head of cattle. Prior to joining VCA, I was employed by Virginia Tech's Extension Service as an Animal Science Extension Agent based in Virginia's Shenandoah Valley. Currently, as Executive Director of the Virginia Cattlemen's Association, I serve on advisory boards related to nutrient management and water quality within the Virginia Department of Environmental Quality and the Department of Conservation and Recreation as well as a cross disciplinary stakeholder group invested in the progress of the Chesapeake Bay Program and Virginia's Watershed Implementation Program. Thank you, Subcommittee Chairman Marino and Ranking Member Cicilline for allowing me to testify today on the Chesapeake Bay TMDL Program.

American farmers and ranchers own and manage considerably more land than any other segment of agriculture— or any other industry for that matter. Cattle are grazed on approximately 666.4 million acres of the approximately two billion acres of the U.S. land mass. In addition, the acreage used to grow hay, feed grains, and food grains add millions more acres of land under cattlemen's stewardship and private ownership. Since our livelihood is made on the land, through the utilization of our natural resources, being good stewards of the land not only makes good environmental sense; it is fundamental for our industry to remain strong. We strive to maintain operations that are environmentally friendly, and we work closely with local and state regulators to implement practices that improve water quality for our farms and families.

When waters are assessed by the EPA to be impaired, Total Maximum Daily Loads, or TMDLs, are traditionally developed to determine the total amount of a pollutant that can be released into the waterbody while improving its overall quality. TMDLs allow states to effectively monitor the status of the impaired water and assess its condition, then develop and implement Best Management Practices to improve water quality over time. The effectiveness of TMDL programs depend entirely on each state's ability to effectively and efficiently monitor and assess waterbodies, then develop and implement Best Management Practices. TMDL programs,

including the Chesapeake Bay program, are necessary to ensure that America's water resources are around for future generations.

The EPA's Chesapeake Bay TMDL program is the largest of its kind, encompassing a 64,000 square-mile watershed. This program is unique because, in addition to setting watershed limits for nitrogen, phosphorus, and sediment, the EPA went a step further by establishing multi-phase Watershed Implementation Plans, or WIPs. By requiring WIPs, EPA's position in the regulatory process, in many aspects, supplanted the role of our state government.

While, in theory, the TMDL program should allow states autonomy to address impaired waterbodies, it has instead created a federally mandated program that threatens state authority. The lack of certainty in the TMDL program keeps state regulatory agencies on edge, because the EPA can change the standards with little notice. For example, the state of Virginia currently implements programs to comply with Phase II of the Watershed Implementation Program, which set specific goals for nitrogen, phosphorus, and sediment reduction. By EPA's scorecard, the state has met or exceeded these expectations by virtue of a multi-industry stakeholder collaborative approach to achieve overall water quality improvement through individual industry responsibility. However, despite our good scorecard, we don't know what is coming in the next phase of the Chesapeake Bay Watershed Implementation Plan, further creating uncertainty for our industry. The reward for exceeding EPA expectations is continued uncertainty. Without a clear and achievable path to the finish line, agricultural producers are again put in a predicament. Additionally, without knowing what are the Phase III goals, we could potentially lack the resources to meet those WIP demands.

Not only does the Chesapeake Bay TMDL, as currently implemented, present significant federalism issues, but in doing so becomes wholly inefficient. The state-specific design of TMDL programs allow state departments of environmental quality to tailor Best Management Practices so that they are as effective as possible. Applying the same standards to the six-state Chesapeake Bay region simply does not accomplish the goal as efficiently as possible. Instead, EPA goals for BMP implementation have been very expensive, and resource disparity among the six states is now showing signs of potentially increased burden for Bay Program responsibility in those states geographically surrounding the Bay.

For agriculture in Virginia, farmers are pushed to fence cattle out of streams, through 100% cost-share programs approved in 2014. This means that, because the fence-building is a best management program, the cost will be fully reimbursed with taxpayer dollars. While there are many cases in which these fences are the right way to go and contribute significantly to improving water quality as well as improving overall production management in cattle operations, there is tremendous pressure on the state and local regulatory agencies managing these public cost share dollars to fund projects with the most linear feet of stream exposure, as opposed to practically supporting effective cattle production and water quality improvement. This is unfair to both regulators and the agricultural community. Among the worst examples of taxpayer waste that I've witnessed was a taxpayer-funded fencing project valued in excess of \$100,000 that was designed to keep less than twelve cows out of a stream. Less than twelve cows – one hundred thousand dollars. How does that make sense? Especially in a time when our nation is trillions of dollars in debt and looking for ways to reduce costs. I would contend it doesn't make any sense; however, it's the product of a system where the threat of ambiguous oversight and unreasonable goal measureables are in play.

The Congressional Review Act, enacted to prevent agencies from overstepping their regulatory boundaries, provides Congress the chance to consider the effect of an agency action, and determine if it is truly within the agency's regulatory authority. This is a vital tool in maintaining our democratic system of checks and balances, but it was not used in the EPA's 2010 Chesapeake Bay TMDL determination. I am fairly confident that, had Congress had the chance to review this regulation with the CRA, it would have determined that the EPA's Chesapeake Bay TMDL Determination, along with its Watershed Implementation Plans, outstretch its regulatory authority.

The biggest point I'd like you to take away from this hearing is that putting the states in the driver seat for Chesapeake Bay improvement is vital to ensure its long-term success. A one-size fits all approach that accompanies top-down regulation simply does not work in the agricultural industry. Together we can sustain our country's natural resources and economic prosperity, while ensuring the viability of our way of life for future generations. I appreciate the opportunity to visit with you today. Thank you for your time, and I welcome any questions you may have.

Biography

Jason Carter is the Executive Director of the Virginia Cattlemen's Association (VCA), the Commonwealth's largest beef cattle association representing over 7000 producers. Prior to joining VCA, Jason was employed by Virginia Tech's Extension as an Animal Science Extension Agent based in Virginia's Shenandoah Valley. Jason worked extensively in the areas of livestock marketing and beef production systems evaluation in addition to conducting independent and cooperative research in the areas of forages, nutrition, reproduction and early weaning. Additionally he aided to lead the area 4-H and FFA livestock education, including assisting coaching of a nationally renowned livestock judging program. As Executive Director of the VCA, Carter serves on numerous advisory boards related to nutrient management and water quality within the Virginia Department of Environmental Quality and the Department of Conservation and Recreation as well as a cross disciplinary stakeholder group invested in the progress of the Chesapeake Bay Program and Virginia's Watershed Implementation Program. Carter was born into a multi-generational cattle, row crop, and tobacco farm in central Virginia and obtained degrees in Animal Science from Virginia Tech.