

RIVERWATCH

The Official Newsletter of Potomac & Shenandoah **RIVERKEEPER®**



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EarthShare/CFC #87828



LOOKING AHEAD Emerging Threats in 2015

If you have been following the news headlines, then you have probably noticed that climate and energy policy along with other environmental issues are front and center among political tensions.

While our donor base is equally represented by both major political parties (a fact that makes us proud!), we did get nervous when we learned that the same political party responsible for over 300 anti-environmental pieces of legislation just gained control of the second chamber of Congress. Over the past several years, most "anti-clean water" legislation has been approved by The House, but fortunately has failed to reach the floor of the Senate. We fear this election may change things.

Has Congress lost sight of the importance of our environmental laws in the recovery of our Great Lakes, our Potomac River, and our countless other bodies of water?

We place this question front and center in our newsletter because we want our members to know we are planning our work for the next few years in the back-drop of a very anti-regulatory Congress. The days of focusing on enforcement or government reform are likely gone for a while.

In addition to our strategies to fend off "anti-river" or "dirty water" legislation, we will have our plate full managing the most substantial emerging threats in each of our regions.

In the Shenandoah, over-fertilization is the prime culprit in river degradation. We're talking about problems stemming from wide scale industrial animal production and deficient manure management planning, all of which can be traced back to the over-use or mismanagement of manure, and related uses of fertilizer, herbicides, and pesticides.

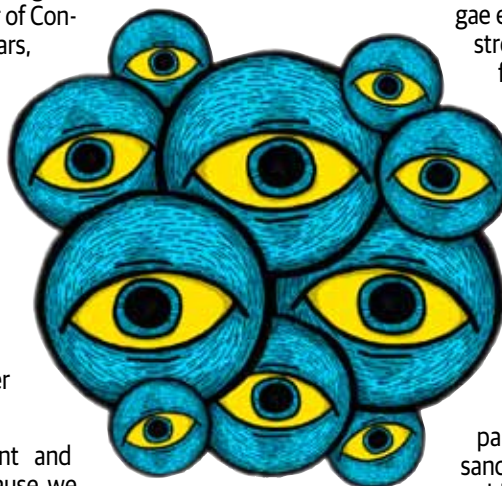
There is a clear link between over-fertilization and the river's algae bloom problems. Through scientific testing we have found that toxin producing algae species are growing in the most important recreational portions of the Shenandoah River.

We count ourselves lucky to have a flowing water system which, thus far, hasn't had toxicity issues for river users. But what about our fish? Not only do algae eliminate the habitat of vast stretches of river for our bugs, fish, and birds, but when it blooms it also impedes on the public's recreation and enjoyment.

And what has Virginia done about this? They have turned their back on us, on the river, and on its citizens. For five years now we have asked that the river be officially recognized as impaired due to excessive nuisance algae. Recognition of this problem triggers the requirement that the state develop a plan to address these problems.

We initiated our first legal action this past September which broke the gridlock at EPA over the issue of not making a decision regarding our request. Although EPA didn't grant us our request, they clearly stated that Virginia can no longer ignore the comments and evidence we are putting in front of them.

Nothing starts until the river is listed as impaired. Addressing the algae problems in turn will address many of the other issues our river faces like water discoloration, sediment pollution, and the effects of pesticides and herbicides.



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CONTINUE ON PG. 4

A LETTER FROM THE PRESIDENT

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Dear friends and members,

It's the end of the year and a good time to thank you for your deep commitment to our mission, and to give you a sneak peek into our thinking about next year. While I don't want to sound like a broken record, especially in my first year, how can I not thank our members and the foundations who support us? After all, it is you and your generosity that make our work possible. You give us the financial stability to plan and build programs, to foster community support, and to go after pollution and polluters every day. Our greatest hope and goal in return is that our organization represents the best place you can entrust your money to in order to protect the river you care about.



While you consider your support for next year, I thought it would be an appropriate time to tell you some of our plans. With re-organization behind us, and a solid new structure capable of supporting multiple Riverkeeper Branches, we are looking at how to use our current resources to put us in the best position for expansion. Hiring general counsel (not an immodest investment) was a risk that is paying off in huge dividends. Not only has our general counsel, Sarah Rispin, continued to forge relationships with our legal partners, she has also proven herself lethal as an advocate in our legal cases. Additionally, Sarah has freed the Shenandoah and Upper Potomac Riverkeepers from much of the work load associated with managing our aggressively paced legal docket. This has allowed for more time in the field and on the river - whether it be for patrols, investigation, or grassroots community work. We believe deeply that our model combines the ability to uproot real issues, help the community understand what we've discovered, and work with the party responsible, all while holding out the ability to go to court to solve the most entrenched problems.

The only drawback to a limited source of funding is that our General Counsel is also acting as the Potomac Riverkeeper. Our first priority next year is gathering the funds necessary to again support a full-time Riverkeeper and in turn to free General Counsel for working entirely on winning our environmental cases. This will be a sweet spot. Next, I don't think I'm letting the cat out of the bag by telling you that we have our eye on starting a Riverkeeper Branch in the Lower Potomac. If successful (and our members will have a lot to do with this), we will for the first time support local advocacy in full force all the way down to the Chesapeake Bay.

Onwards and upwards,

Jeff Kelble
President & Shenandoah Riverkeeper

STAFF

JEFF KELBLE

President & Shenandoah Riverkeeper

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Office Administrator

BRENT WALLS

Upper Potomac Riverkeeper

BRENDAN YOUNG

Algae Research Specialist

Another strong year for workplace giving

Federal and Military employees can take advantage of one of the most effective and efficient ways to support the important work of Potomac Riverkeeper, Inc. by donating through the Combined Federal Campaign (CFC). We want to thank all who have already made a contribution, and extend our gratitude to EarthShare and the CFC for supporting the admirable missions behind each organization which was selected to participate in this year's annual giving opportunity. There is still time to join the effort to protect and preserve the public's right to clean water by designating your CFC gift to #87828 when you make your pledge. Just a small amount each pay period can make a world of difference to improve water quality across DC, Maryland, Virginia, West Virginia, and Pennsylvania.

For more information about EarthShare and the CFC, please visit: www.earthshare.org/cfc.html



A STORM'S A COMIN'

Rain, Industry, and the Upper Potomac



Credit: Gavid Bowry
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In our Summer 2014 edition of River Watch, we wrote about the threats posed by stormwater in the Potomac Watershed and our efforts to strengthen stormwater general permits throughout the region. In the Upper Potomac, the pollution caused by industrial stormwater is a particularly major concern. Many believe that because the Upper Potomac watershed is very rural,

stormwater pollution is less of a concern than in areas of the watershed with more urban development. This is simply not the case.

Together, we are driving for better industrial stormwater permits throughout the watershed and recently we legally challenged the Maryland Industrial Stormwater Permit in court.

Our position is that the Maryland Industrial Stormwater Permit lacks important monitoring requirements, and fails to allow the public to review the safeguards each facility must implement to prevent polluted stormwater from entering the water. We have challenged this permit in order to fix these deficiencies and make sure the general permit adequately protects water from stormwater pollution.

A stronger Maryland Industrial Stormwater Permit will work to ensure that industrial operations in the Upper Potomac act responsibly and do not allow pollutants to enter our river.

Even though the Upper Potomac lacks the most iconic form of industrial development—large factories with billowing towers—industrial stormwater is a major threat to water quality in this area. This is because industrial stormwater encompasses stormwater run-off from facilities such as shale quarries, paper mills, coal mines, natural gas fracking sites, and pipelines.

The stormwater that runs off these industrial operations pose serious threats to our bodies of water. Stormwater picks up any chemicals and metals that accumulate on the property of the facilities, and then brings these pollutants directly into the river. The only regulations aimed at preventing this pollution are found in each state's industrial stormwater general permit.

The West Virginia chemical spill in January 2014 from an above-ground storage tank into the Elk River highlights the need for states to implement stronger industrial stormwater general permits. At the time of the spill, the only regulation that required the facility to have safeguards in place to protect the Elk River was the stormwater permit.

This disaster demonstrated that industrial stormwater general permits often are the only reason facilities are required to implement measures to protect nearby bodies of water. For this reason, and because of the harmful pollution carried by industrial stormwater, strong stormwater permits are essential to protecting the rivers and streams in the Upper Potomac and throughout the watershed. ■

ACHIEVE CLEAN
 2015



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POLITICIANS DRINK OUR WATER BUT WILL THEY PROTECT IT?

What the Midterm Elections Mean for Water

In January, the effects of the November 4 election will begin to be felt in our region. While some of the Potomac watershed states remain relatively unaffected, river advocates should brace themselves for attacks on protections for clean water coming out of Annapolis and Capitol Hill.

In his campaign, Maryland governor elect Larry Hogan pushed the idea that Maryland residents are being overtaxed. His poster child for absurd taxes? The so-called "rain tax," which Hogan promised he would repeal if he won. (O'Malley was

"Fasten your seatbelt, it's going to be a bumpy ride."

so tax-happy, Hogan's campaign ads said, he even "taxed the rain.") The problem is, Maryland isn't taxing the rain—it simply mandated in 2012 legislation that the ten counties with the biggest run-off problems in the state come up with a system of collecting fees to pay to remediate stormwater runoff, which they must do under the federal Clean Water Act.

As we've discussed on these pages before (see RiverWatch Summer 2014, "Stormwater Poses Major Threats to Water"), stormwater runoff carries huge helpings of pollution to the Potomac and Chesapeake every time it rains. It is essential that Maryland's urban and suburban counties, with their miles and miles of imper-

vious surfaces, find a way to pay to curb this pollution. Already, Frederick County is balking at paying the bill for the pollution consequences of two decades of unfettered suburban development. The 2012 mandate is a common-sense, flexible way to make sure counties like Frederick set



aside the money to clean up runoff pollution. If Hogan does take aim at the "rain tax," the Potomac and the Chesapeake will suffer for it.

The stakes are even higher in Washington. This year, EPA is finalizing a rule on the extent of its jurisdiction under the Clean Water Act—detailing, at the behest of the Supreme Court, what exactly comprise the "waters of the United States" governed by the Act.

Although EPA's proposed rule is hardly

controversial—in fact, many environmentalists think it is too conservative—the business and agri-business lobbies have seized the rulemaking as an opportunity to raise alarmist claims that EPA is making an unprecedented "power grab."

This year, the House of Representatives heeded their alarm bells, and passed a bill that prohibits the EPA from finalizing this desperately needed rule. A similar bill was introduced in the Senate, but did not make it out of the Senate Environment Committee. With the switch in control, we may very well see a renewed attempt to strip EPA of its ability to give guidance on what is covered under the Clean Water Act.

Indeed, the new majority leader, Mitch McConnell, has identified his top priority in January as "to try to do whatever I can to get the EPA reined in." The new head of the Senate Environment Committee, James Inhofe, has pushed in the past to roll back water pollution rules.

Ultimately, the new majority lacks the votes to override a potential Presidential veto, which means that even if it does get the provocatively named "Waters of the United States Regulatory Overreach Protection Act" passed in both houses, President Obama can block it initially.

But McConnell aides have signaled plans to use the appropriations, legislative, and the oversight process to fight the Obama Administration on environmental regulation. Our recommendation? Fasten your seatbelt, it's going to be a bumpy ride. ■

Emerging Threats in 2015 *continued...*

Over on the Potomac, we are facing equally challenging issues. In addition to the ever-present threats of agricultural pollution, stormwater runoff, sewage overflows, and point source pollution that we continue to work on, we are turning our attention to new (or newly identified) threats such as fracking, coal ash, oil-by-rail transport, and above-ground chemical storage.



The federal government has just approved a major LNG export facility on the Chesapeake Bay, which we fear will lead to increased upstream activity throughout our watershed, including pipeline construction and renewed attempts to extract shale gas in the Upper Potomac and Shenandoah, which we plan to keep an eye on.

Having identified over two dozen coal ash storage sites in the Potomac watershed, from which heavy metals flow into our ground and surface

water, we are renewing our advocacy efforts in this area. We are also beginning to look at the threats posed by unregulated or under-regulated petrochemical activity, such as above-ground storage of toxic chemicals and rail transport of crude oil from the Dakotas—neither of which are adequately addressed by federal or state regulations.

Throughout our watershed the resolution of each threat weighs heavily on the shoulders of our government leaders. To create lasting change for our rivers and streams legal action is often required to initiate action in a world where issues like these can go unnoticed or simply ignored.

The coming year is going to be an uphill battle, and we are going to need all the support we can get. Not only do we have to worry about Congress's anti-environmental agenda, we also have serious threats—algae, fracking, coal ash—in our own backyard. As your Riverkeepers, we intend to fight these threats on your behalf, and we hope you will stand with us for a cleaner, pollution-free Potomac and Shenandoah. ■

An Unsteady Balance for Farms and Clean Water

Millions of livestock animals are raised in the Shenandoah Valley, a region that by most standards is the breadbasket of Virginia. Agriculture has intensified over the past 40 years, as landowners work to produce more with their limited acreage and to out-strip the drop in commodity prices. The result? The confinement of animals in what are known as concentrated animal feeding operations (CAFOs). CAFOs allow farmers to house, feed, and care for large numbers of animals as economically as possible in order to meet increasing demand.

Along with the prosperity that has come with the growth of poultry and dairy farms in the valley, a legacy of waste management issues has also developed. Hundreds of millions of pounds of manure are produced each year, much of which can be recycled as fertilizer, but the animal agriculture industry has shown it needs regulations to ensure responsible manure storage and disposal. In the decades before regulations existed, so much manure was spread on the land that tens of thousands of acres now have a tremendous build-up of fertilizer.

This build up of fertilizer on the land release pollutants such as nitrogen and phosphorous into surrounding bodies of water. Nitrogen and phosphorous pollution causes excessive algae growth, which severely impacts river use and recreation, inhibiting fishing, swimming, tubing, and paddling. Algae degrades the health of the ecosystem by depleting oxygen and sunlight, and, in some instances, releases dangerous toxins. Many of our members have seen the effects of agricultural pollution in the form of algae blooms clogging the Shenandoah River, or the "dead zones" in the Chesapeake Bay.

The regulation of discharges from CAFOs is essential to reducing pollution in Virginia waterways and the Bay. Out of the six states in the Chesapeake Bay watershed, Virginia is the second-largest contributor of nitrogen and the largest contributor of phosphorous. Agriculture in Virginia, including CAFOs, causes at least one-third of this pollution.

On September 17, 2014 Shenandoah Riverkeeper, represented by the Environmental Integrity Project and joined by a number of other local environmental groups, petitioned the EPA to revoke Virginia's authority to manage the Clean Water Act Program. This petition was prompted by what

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contributor of
PHOSPHOROUS
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we feel are fatal flaws in Virginia's proposed CAFO permitting program and by delays in initiating permitting.

EPA delegated Clean Water Act authority and responsibility for establishing a discharge permitting program to Virginia in 1975. In comparison to other states with similar programs, Virginia has done a good job in regulating discharges from CAFOs. But, judging from the continued water quality issues in the Valley, there is more to be done. As a start, Virginia must begin implementing the federal CAFO permitting program in addition to the state program.

Currently, the state program fails to allow any citizen review of the permits and does not collect adequate information regarding how individual CAFOs plan to manage their manure—both requirements for permitting procedures under the Clean Water Act.

The Clean Water Act is structured so that states may be "delegated" to enforce the law in their jurisdictions. While a state may impose more stringent regulations, it must at least meet the standards set forth in the federal law. If a state fails to meet these standards, the EPA is empowered to revoke the state's authority to implement the law.

Virginia is required to implement a CAFO permitting program that fully complies with the Clean Water Act. However, Virginia's inspection system does allow for the proper identification of CAFOs which require discharge permits, causing delays in permit issuance and unregulated discharges. While Virginia has recently developed a permit template, it excludes public review until the final permit is already approved.

The most troubling part of this permit is that the state does not require the CAFO operator to submit their Nutrient Management Plan during the application process, a necessary part in ensuring manure is managed lawfully. These deficiencies are in clear violation of the Clean Water Act.

The de-delegation petition filed by Shenandoah Riverkeeper highlights these major deficiencies for the EPA. While the petition seems like a drastic measure, it will provide the push needed for Virginia to fulfill its legal duties, and help to limit the nitrogen and phosphorous pollution going into the Shenandoah River, making this just one more step in our work to free the Shenandoah River from the clutches of the algae invasion! ■



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EVENT RECAP:

Harvest Hoedown

October 25, 2014

George Ohrstrom's Barn "Camden"

Yeehaw, was that a hoedown or what?! Thanks to all of our sponsors and guests the 1st Annual Shenandoah Harvest Hoedown was a swinging success! You heard right—1st Annual. Make sure to join us next year for an even bigger and better event. We expect everyone will be practicing their hay bale throwing and cornhold tossing skills until then!

We owe a special thank you to George Ohrstrom for hosting us at his gorgeous, rustic barn in Boyce, VA, as well as to Jordan Springs Market and Clyde's Restaurant Group for delicious food. And a round of applause for the Naked Mountain Boys for providing us with their entertainment. The event raised over \$12,400 to support our programmatic work in the Shenandoah and to bring forth a new Shenandoah Riverkeeper.



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The Last Paddle

October 5, 2014

Key Bridge Boathouse



Together we raised over \$1,400 to support a healthier Potomac River!

Staff had a blast joining over 90 participants for a final paddle on the Potomac along the Georgetown waterfront. A big thanks to Key Bridge Boathouse for hosting us and to Clyde's of Georgetown for generously donating vouchers to all who attended. From beginners to the experienced, everyone enjoying a little paddling and splashing to cool off at the end of a great summer. We can't wait to get back on the water with you next spring! Stay tuned!



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