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WALL STREET WALK DEAD END FOR CHESAPEAKE CLEANUP?

BRADFORD T. BARTELS*

INTRODUCTION

The Chesapeake Bay is the nation's largest estuary and a national treasure with more than 11,684 miles of shoreline.¹ The Chesapeake Bay's watershed encompasses 64,000 square miles of forests, cities, farms, marshes, creeks, rivers, and streams, as well as nearly 17 million Americans.² Sadly, this national treasure, like so many others nationwide, is being decimated by pollution and the destruction of its wetlands and forests.³ Numerous organizations have been created to clean up the Chesapeake Bay,⁴ and countless scholars have devoted tremendous time and research into proposals to clean up the Bay.⁵

Many of these studies and reports have thoroughly outlined the problems facing the Bay—including the sources leading to its environmental deterioration.⁶ Among these sources are an increase in agricultural runoff, a growing watershed population, and many other inherent problems associated with an increasing population.⁷ However, even with the knowledge gained from these studies, the watershed's vast size and its expansive sources of pollution have made remedying the situation very difficult.⁸ Given that the pollution originates from all across the Bay's

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¹ CHESAPEAKE BAY FOUNDATION, RESTORING CLEAN WATER AND THE CHESAPEAKE BAY: A PLAN FOR AMERICA'S NEXT PRESIDENT ii, iv (2008), *available at* <http://www.cbf.org/Document.Doc?id=53> (noting the Chesapeake Bay's shoreline is greater than the entire West Coast of the United States) [hereinafter RESTORING CLEAN WATER].

² *Id.* at iv.

³ *Id.*

⁴ *E.g.*, *What We Do*, CHESAPEAKE BAY FOUNDATION, <http://www.cbf.org/Page.aspx?pid=515> (last visited Nov. 13, 2010) [hereinafter *What We Do*].

⁵ *E.g.*, Jonathan Cannon, *Checking in on the Chesapeake: Some Questions of Design*, 40 U. RICH. L. REV. 1131 (2006).

⁶ *See, e.g.*, RESTORING CLEAN WATER, *supra* note 1, at ii.

⁷ *Id.* at 1.

⁸ *See id.* at ii, 1.

watershed—sometimes as far as Cooperstown, New York—it is clear that the Bay's condition is more complex and serious than ever.⁹

Numerous studies have also been devoted to proposed solutions for implementing restoration plans.¹⁰ These studies have proffered countless recommendations—ranging from proposed governance models¹¹ to recommendations for more litigators.¹²

This note will seek to remedy the Chesapeake Bay's condition by using shareholder proposals as a supplemental mechanism to change corporate environmental policy, as well as to control non-point sources of pollution that are devastating the Bay.¹³ Shareholder proposals are a tool that allow shareholders to compel the management of a corporation to submit a given issue to all shareholders for their vote.¹⁴ These proposals, regardless of whether they are adopted by the corporation, enable shareholders to influence corporate action and to hold management accountable for their actions.¹⁵ Proposals have been used in the past to address a wide range of issues including: energy efficiency, sustainability, and even human and animal rights.¹⁶

The Introduction of this note discusses the history of the Chesapeake Bay and the problems giving rise to its current environmental state. This part also details past cleanup proposals and their shortcomings. Part I explains the shareholder proposal process and how it is used to change companies' environmental policies. Specifically, this part outlines the history of environmental shareholder proposals and where they have been used successfully in the past. Part II analyzes shareholder proposals and the means by which they can be used to help clean up the Chesapeake Bay. In essence, these proposals will finally force the true polluters of the Bay to accept the environmental costs that have been so difficult to impose in years past.

⁹ See *id.* at ii (noting the Bay's watershed incorporates parts of six states).

¹⁰ See *id.* at 16.

¹¹ See Paul D. Barker, *The Chesapeake Bay Preservation Act: The Problem with State Land Regulation of Interstate Resources*, 31 WM. & MARY L. REV. 735 (1990).

¹² See Jon A. Mueller & Joseph Tannery, *State of the Chesapeake Bay in the Twenty-First Century: Why Does the Chesapeake Bay Need Litigators?*, 40 U. RICH. L. REV. 1113 (2006).

¹³ It is important to point out at the outset that this note does not propose to make shareholder remedies the “be-all and end-all” solution to cleaning up the Chesapeake Bay. Rather, this note proposes that shareholder proposals be used to supplement other crucial efforts and proposals already in use.

¹⁴ Elise N. Rindfleisch, *Shareholder Proposals: A Catalyst for Climate Change-Related Disclosure, Analysis, and Action?*, 5 BERKELEY BUS. L. J. 45, 57 (2008).

¹⁵ *Id.* at 57.

¹⁶ *Id.*

I. BACKGROUND

A. *The Chesapeake Bay: A Brief History*

In the minds and maps of many, the Chesapeake Bay is seen as the “large and dominant body of water, fringed on either side by tidewater Maryland and Virginia, ending at Norfolk on the south and at Havre de Grace on the north.”¹⁷ Although the Bay is often thought to be about 195 miles long and anywhere from four to thirty miles wide, it is actually twenty times that size.¹⁸

The Bay, which was formed some 12,000 years ago by glaciers, is currently North America’s largest estuary¹⁹ and the third largest in the world.²⁰ The Chesapeake Bay watershed, the area of land that drains into the Bay, is 64,000 square miles and encompasses parts of the District of Columbia and six separate states including: Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia.²¹ The average depth of the Bay is only about twenty-one feet, a depth which contributes to its high productivity and diversity.²² Approximately seventeen million people live in the Bay watershed, with an additional 150,000 people added to that total each year.²³

These statistics are eye-opening; however, equally surprising is the fact that the Bay watershed extends as far north as Cooperstown, New York, as far west as Pendleton County, West Virginia, as far south as Virginia Beach and Lynchburg, Virginia, and as far east as Seaford, Delaware.²⁴ All of this sprawling land has tremendous implications for the Bay’s health, as the watershed residents’ actions all eventually touch the Bay. This leaves the Bay to face the brunt of the residents’

¹⁷ TOM HORTON & WILLIAM EICHBAUM, CHESAPEAKE BAY FOUNDATION, TURNING THE TIDE: SAVING THE CHESAPEAKE BAY 3 (1991).

¹⁸ *Id.*

¹⁹ *Welcome to Bayville: Chesapeake Bay Frequently Asked Questions*, MARYLAND PUBLIC TELEVISION, <http://bayville.thinkport.org/resourcelibrary/faq.aspx> (last visited Nov. 13, 2010). An estuary is a place where saltwater from the ocean and freshwater flowing from rivers and streams meet. *Id.* Estuaries are usually very fertile and are commonly inhabited by very diverse plant and animal life. *Id.* There are 130 estuaries in the United States. *Id.*

²⁰ RESTORING CLEAN WATER, *supra* note 1, at ii.

²¹ *Id.*

²² *Id.* “The Bay supports 3,600 species of plant and animal life, including more than 300 fish species and 2,700 plant types.” *Id.*

²³ *Id.* (also noting that two of the five major North Atlantic ports—Baltimore and Hampton Roads—are on the Chesapeake Bay).

²⁴ HORTON & EICHBAUM, *supra* note 17, at 3.

collective actions as all sewage discharge, industrial outfall, oil spills, and even “every styrofoam coffee cup casually tossed into a drainageway” flow straight towards the Bay.²⁵

Furthermore, “[w]hen soil erodes from farmland, or from a forest bulldozed for development, the sediment can head only in one direction—bayward.”²⁶ Thus, although the Bay appears to many watershed residents as distant and even invisible, this seemingly “smallish pool of water [is] on the receiving end of all . . . activities, wise and foolish, across the vast lands of the watershed.”²⁷

B. *The Problems Facing the Bay*

As noted in a report by the Chesapeake Bay Foundation, “since colonial times, the Bay has lost half of its forested shorelines, over half of its wetlands, roughly 80 percent of its underwater grasses, and more than 96 percent of its oysters.”²⁸ The Bay is still well known for its great seafood production, especially oyster, blue crab, shad, and rockfish.²⁹ However, the Bay’s production is now a scintilla of its once abundant historical output.³⁰ Today, the Bay is producing less than thirty percent of its historical potential—a fact that helped earn the Bay a health grade of 28 out of 100 on the Chesapeake Bay Foundation’s *2008 State of the Bay Report*.³¹

Given the rising population of the Bay watershed, along with the inherent demands associated with this growth, the problems facing the Bay are becoming more complex and pervasive every day.³² The Chesapeake Bay watershed comprises more than 100,000 streams, creeks, and rivers, including some 150 major rivers.³³ This means “[o]ne can reach a Bay tributary in less than 15 minutes from nearly everywhere in the watershed.”³⁴

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ RESTORING CLEAN WATER, *supra* note 1, at ii.

²⁹ See CHESAPEAKE BAY FOUNDATION, 2008 STATE OF THE BAY 14–15 (2008), available at <http://www.cbf.org/Document.Doc?id=170> [hereinafter STATE OF THE BAY].

³⁰ *See id.* at 2.

³¹ *Id.* at 2, 20. The Chesapeake Bay Foundation measures the current state of the Bay by comparing it to the healthiest Chesapeake description they could find—the Bay that Captain John Smith depicted in his exploration narratives from the early 1600s, a theoretical 100. *Id.* at 20. “At its worst in the early 1980s, the Bay would have scored a 23. A ‘saved Bay’ would score a 70.” RESTORING CLEAN WATER, *supra* note 1, at ii.

³² RESTORING CLEAN WATER, *supra* note 1, at 1.

³³ *Id.* at ii.

³⁴ *Id.*

This also means that the sources of the Bay's pollution are numerous, far-reaching, and fast-hitting.³⁵ For example, the watershed's growing population, its heavily fertilized agriculture, inadequate sewage treatment facilities, and the increasing stormwater runoff from construction have all worked to smother the waterways with excess nitrogen, phosphorous, and sediment pollution.³⁶ "The result—a dramatic decline in water quality and living resources—threatens the Bay's ecological and economic resilience."³⁷

The Chesapeake Bay Foundation's *2008 State of the Bay Report* sums up the Bay's current situation:

The health of the Chesapeake Bay is dangerously out of balance. Its degraded condition is especially staggering in the context of the public resources and attention focused on Bay health since the 1980s. Clearly, what public officials have done to date is insufficient, and has fallen short of their commitments to restore water quality in the Bay. If we are to significantly reduce pollution, remove the Bay from the nation's "dirty waters" list, and restore our national treasure, it is time for urgent action; time to hold our government leaders accountable to get the job done.³⁸

Given this humbling assessment and the watershed's growing population, a figure that already exceeds seventeen million, the stakes are at an all time high.³⁹ These figures are even more striking when one considers that with any population increase, there is a corresponding need for more houses, roads, and resources.⁴⁰ The cumulative effect of this growth will necessarily bring about more pollution—not from one person, place, or company, but rather just from the effects of "normal things that people do in [their] daily lives."⁴¹

³⁵ See MARYLAND PUBLIC TELEVISION, *supra* note 19. "The government has made it illegal for people or companies to dump harmful things into the Chesapeake Bay." *Id.* As a result, most of the pollution in the Bay doesn't come from any one person or company, rather from "non-point sources" that cannot be traced back to one specific place or source. *Id.* In sum, the pollution comes from a multitude of different people and places. *Id.*

³⁶ RESTORING CLEAN WATER, *supra* note 1, at 1.

³⁷ *Id.*

³⁸ STATE OF THE BAY, *supra* note 29, at 19.

³⁹ See RESTORING CLEAN WATER, *supra* note 1, at ii.

⁴⁰ MARYLAND PUBLIC TELEVISION, *supra* note 19.

⁴¹ *Id.*

C. *Past Organizations and Efforts Aimed at Saving the Bay*

The effort to clean up the Bay is far from a new endeavor.⁴² Beginning over 100 years ago with President Theodore Roosevelt,⁴³ numerous movements and efforts have been initiated to clean up the Bay.⁴⁴ These efforts have included important programs and proposals by numerous presidents—including Lyndon Johnson, Richard Nixon, Ronald Reagan, and Bill Clinton.⁴⁵ During these administrations, multiple programs and acts were promulgated, all of which had a significant positive impact on the Bay.⁴⁶ The most important actions with respect to the Chesapeake Bay's health include the creation of the Environmental Protection Agency ("EPA"), the enactment of the Clean Water Act, and the signing of the Chesapeake Bay Agreement.⁴⁷

The federal government alone has been working to understand and remedy the Bay's problems for more than forty years.⁴⁸ During the 1960s and 1970s, the Army Corps of Engineers conducted research and studied the Bay's deteriorating condition, an effort that eventually resulted in the cooperative federal-state Chesapeake Bay Program.⁴⁹ This program became a vital centerpiece for the effort to clean up the Bay and also helped expose the Bay's greatest pollution sources.⁵⁰ Similarly, the program developed many plans—such as "tributary strategies"—and worked on coordinating the actions of other federal entities in an effort to clean up the Bay.⁵¹

⁴² See RESTORING CLEAN WATER, *supra* note 1, at 1.

⁴³ *Id.* at 1 (proclaiming: "[t]he conservation of natural resources is the fundamental problem . . . [u]nless we solve that problem it will avail us little to solve all others.'").

⁴⁴ See RESTORING CLEAN WATER, *supra* note 1, at 1.

⁴⁵ *Id.* at 1.

⁴⁶ See *id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 16.

⁴⁹ See *id.*; see also *About Us*, CHESAPEAKE BAY PROGRAM, <http://www.chesapeakebay.net/aboutus.aspx?menuitem=14001> (last visited Nov. 13, 2010).

The Chesapeake Bay Program is a unique regional partnership that has led and directed the restoration of the Chesapeake Bay since 1983.

The Chesapeake Bay Program partners include the states of Maryland, Pennsylvania and Virginia; the District of Columbia; the Chesapeake Bay Commission, a tri-state legislative body; the Environmental Protection Agency, representing the federal government; and participating citizen advisory groups.

Id.

⁵⁰ RESTORING CLEAN WATER, *supra* note 1, at 16.

⁵¹ *Id.* "Other federal entities, including the Department of Commerce, the Department of Agriculture, the Department of the Interior, and the Department of Defense, are

In addition, the Clean Water Act was another vital initiative that had a great impact on the Bay's cleanup.⁵² This act was drafted with the objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and eliminate the discharge of pollutants into the Nation's waters.⁵³

In the late 1990s, the Chesapeake Bay and many of its tributaries were listed as "impaired waters" under section 303(d) of the Clean Water Act because of the Bay's excessive nitrogen, phosphorous, and sediment pollution levels.⁵⁴ Then, on June 28, 2000, Chesapeake Bay Program partners⁵⁵ came together "to sign the historic Chesapeake 2000 Agreement—a commitment to achieving specific, ambitious, measurable objectives to reduce pollution in local rivers, streams, and the Chesapeake Bay and remove these waterways from the federal impaired waters lists by 2010."⁵⁶ Equally important, the parties aimed to correct the pollution problem by "correct[ing] the nutrient- and sediment-related problems in the Chesapeake Bay and its tidal tributaries sufficiently to remove the Bay and the tidal portions of its tributaries' from the impaired waters list by 2010."⁵⁷ Basically, the Chesapeake Bay Program partners sought to determine the body, and then allocated plans and responsibilities among themselves in order to reach that level by 2010.⁵⁸

Unfortunately, although the Chesapeake Bay Program partners made some significant commitments and achievements, it became apparent, even before the beginning of 2010, that they would be unable to meet the pollution reduction goals they had set for themselves.⁵⁹ As a result, the Bay's pollution standards would revert back to those set by the Clean Water Act's requirement, and the burden would fall upon the shoulders

cooperating partners and receive funds from Congress to reduce pollution to the Bay and help to restore its biological diversity." *Id.*

⁵² *Id.* at 1, 16.

⁵³ Clean Water Act, 33 U.S.C. § 1251(a) (2006); RESTORING CLEAN WATER, *supra* note 1, at 16.

⁵⁴ Clean Water Act § 303(d), 33 U.S.C. § 1313 (2006); RESTORING CLEAN WATER, *supra* note 1, at 16.

⁵⁵ The parties to this agreement included the EPA, the Chesapeake Bay Commission, the District of Columbia, and the states of Maryland, Virginia, and Pennsylvania. RESTORING CLEAN WATER, *supra* note 1, at 16.

⁵⁶ *Id.*

⁵⁷ RESTORING CLEAN WATER, *supra* note 1, at 17 (quoting CHESAPEAKE BAY PROGRAM, CHESAPEAKE 2000, at 6 (2000)).

⁵⁸ RESTORING CLEAN WATER, *supra* note 1, at 17.

⁵⁹ *Id.*

of “thousands of towns, cities, states, and farmers and other landowners [to] reduce their sources of pollution to meet the [Clean Water Act’s] cap.”⁶⁰

D. Past Studies, Recommendations, and Their Shortcomings

Along with these organizations, numerous other groups and individuals have contributed countless reports and recommendations on behalf of the Bay.⁶¹ Government and private organizations, as well as institutions and individual scholars, have all conducted studies and put forth many persuasive arguments and influential recommendations.⁶²

One of the most influential of these groups is the Chesapeake Bay Foundation (“CBF”), whose primary mission is to seek solutions to the pollution that plagues the Bay.⁶³ The CBF also works to set the agenda across the six-state Chesapeake watershed, serves as a watchdog, and speaks out on behalf of the Chesapeake Bay to businesses, the government, and the public.⁶⁴

This organization is well known for many of its projects and publications—especially its annual *State of the Bay Report*.⁶⁵ The 2008 report found that the Bay’s health again scored a failing grade of twenty-eight, a figure that indicates the Bay’s serious health problems.⁶⁶ In the report, twelve separate indicators were addressed—the three major categories being pollution, habitat, and fisheries.⁶⁷ After grading each indicator with-

⁶⁰ *Id.* The Clean Water Act’s pollution cap was set for the Bay in a lawsuit after the Chesapeake Bay was placed on the impaired waters list and required that the pollution problems be addressed by May 2011. *Id.* at 16. This cap, or the Total Maximum Daily Load (“TMDL”), represents the maximum amount of pollution that will still permit a healthy water body. *Id.* Thus, if the Chesapeake Bay Program partners fail to reach their 2010 mark and thereby remove the Bay from the Clean Water Act’s impaired waters list, the Clean Water Act’s requirement of a Bay-wide TMDL for nitrogen, phosphorous, and pollution will be reinstated, and this will “provide the basis for thousands of individual state and local actions.” *Id.* at 17.

⁶¹ See, e.g., *Our History*, CHESAPEAKE BAY FOUNDATION, <http://www.cbf.org/Page.aspx?pid=392> (last visited Nov. 13, 2010).

⁶² See, e.g., *id.*

⁶³ *What We Do*, *supra* note 4.

⁶⁴ *Id.*

⁶⁵ See *Publications*, CHESAPEAKE BAY FOUNDATION, <http://www.cbf.org/Page.aspx?pid=548> (last visited Nov. 13, 2010) [hereinafter *Publications*].

⁶⁶ STATE OF THE BAY, *supra* note 29, at 2.

⁶⁷ *Id.* at 3. The individual indicators within the pollution category include: nitrogen/phosphorous, dissolved oxygen, water clarity, and toxics; within the habitat category they include: forested buffers, underwater grasses, wetlands, and resource lands; and within the fisheries category they include: rockfish, oyster, crab, and shad. *Id.*

in the categories and providing detailed explanations for each grade, the report goes on to address the EPA's past failures in cleaning up the Bay.⁶⁸ Finally, the report provides four recommendations for the EPA to follow in order to effect change.⁶⁹ These include:

- (1) Develop a Bay-wide regulatory limit on pollution by 2010 and implement programs to reach 80 percent of that limit by 2012.
- (2) Toughen construction and municipal storm sewer system regulations and permits to ensure compliance with pollution-reduction goals so that there will be no net increase in pollution to the region's waterways.
- (3) Require all power plants within the Bay region to reduce nitrogen and mercury pollution.
- (4) Target new and existing funding, including federal highway dollars, to achieve the most pollution reduction.⁷⁰

The CBF is also well known for the reports it issues to government agencies and the president.⁷¹ In its recent report, *Restoring Clean Water and the Chesapeake Bay: A Plan for America's Next President*, the CBF outlines the Chesapeake Bay, past and present, and provides a detailed analysis of the problems facing the Bay today.⁷²

The report provides recommendations for the President in seven main categories.⁷³ These are: cleaning up agricultural pollution; improving sewage treatment to reduce pollution; stopping urban and suburban stormwater pollution; reducing airborne pollutants and greenhouse gases; preserving and restoring species, habitats, and natural areas; providing environmental education for all children; and reauthorizing and strengthening the Chesapeake Bay Program.⁷⁴ Furthermore, the report recommends that although individuals, businesses, citizens, and local and

⁶⁸ *Id.* at 6–16.

⁶⁹ *Id.* at 17–18. These four recommendations are part of thirty-three specific, measurable actions provided to the EPA by the CBF. *Id.*

⁷⁰ *Id.*

⁷¹ See *Publications*, *supra* note 65.

⁷² See RESTORING CLEAN WATER, *supra* note 1.

⁷³ See *id.* at 2–3.

⁷⁴ *Id.* Each of these recommendations contains sub-recommendations with specific actions and goals. See *id.*

state governments all have critical roles, a large part of the work can only be done by federal authorities and with the aid of their resources.⁷⁵

Along with the CBF and various organizations, individual scholars have made many contributions and recommendations for the cleanup of the Bay.⁷⁶ Some have recommended a compact among states granting regulatory authority over the Bay area to an interstate agency,⁷⁷ and some have analogized the Chesapeake Bay's problem to that of other interstate natural resource problems recommending collaborative approaches among the watershed states.⁷⁸ Others have written insightful articles about the gulf between promise and product of environmental regulation,⁷⁹ the inadequacy of the "no stricter than federal law" mentality that states have when setting their regulations for the Bay,⁸⁰ and the need for more litigators to "Save the Bay!"⁸¹

Despite all the efforts and studies conducted, only one thing remains clear: "the health of the Chesapeake Bay is dangerously out of balance."⁸² This fact is especially humbling considering the vast amount of public resources and attention focused on the Bay since the 1980s.⁸³ However, as the Bay's pollution standards likely "revert to the Clean Water Act's requirement of a Bay-wide TMDL for nitrogen, phosphorus,

⁷⁵ *Id.* at 18.

⁷⁶ *See, e.g.*, Barker, *supra* note 11.

⁷⁷ *E.g., id.* at 771 (noting that "the compact would grant sufficient authority to the agency to effectuate fairly and uniformly the purpose of environmental preservation, while balancing the legitimate development interests of all jurisdictions").

⁷⁸ *See, e.g.*, Andrea K. Gerlak & Tanya Heikkila, *Comparing Collaborative Mechanisms in Large-Scale Ecosystem Governance*, 46 NAT. RESOURCES J. 657 (2006) (comparing the Northwest Power and Conservation Council's Fish and Wildlife Program in the Columbia River Basin, the Chesapeake Bay Program, the CALFED Bay-Delta Program in California's San Francisco Bay/Sacramento-San Joaquin River Delta, and the Florida Everglades Restoration Program); *see also* Robert W. Adler & Michele Straube, *Watersheds and the Integration of U.S. Water Law and Policy: Bridging the Great Divides*, 25 WM. & MARY ENVTL. L. & POL'Y REV. 1 (2000) (discussing the value of integrated approaches to water quality, water quantity, land use, and ecosystem protection, and how these programs are likely to be more successful than previous fragmented approaches to water resource protection and management).

⁷⁹ *See, e.g.*, Robert V. Percival, *Protecting Coastal and Estuarine Resources—Confronting the Gulf Between the Promise and Product of Environmental Regulation*, 47 MD. L. REV. 341 (1988) (introducing a symposium and articles on the problem of regulation implementation).

⁸⁰ *See, e.g.*, Roy A. Hoagland & Jean G. Watts, *Federal Minimums: Insufficient to Save the Bay*, 29 U. RICH. L. REV. 635 (1995).

⁸¹ *See, e.g.*, Mueller & Tannery, *supra* note 12. "Save the Bay" is the motto of the Chesapeake Bay Foundation. *Id.* at 1114.

⁸² STATE OF THE BAY, *supra* note 29, at 19.

⁸³ *Id.*

and sediment pollution,”⁸⁴ should the answer to the problem rely on governmental leaders as the CBF’s *2008 State of the Bay Report* suggests?⁸⁵

This note proposes that the Bay’s problem goes well beyond government failures. Given the far-reaching and complex problems facing the Bay, as well as the extensive research and studies that have defined the sources of its pollution, it should be clear that the problem requires every player involved to do their part. Efforts should not be fragmented, and blame should not be passed. “Water knows no political boundaries,”⁸⁶ so why then should the effort to clean up the Bay rest in one party’s hands?

Past articles have made clear that it is easy for those responsible for the Bay’s health to pass the blame and to do the minimum to keep constituents happy.⁸⁷ It is even easier to do this in the context of the Chesapeake Bay’s problem, as those responsible for the Bay’s health can merely point to a scapegoat: the “untouchable sources of pollution” that are dispersed across the 64,000 mile watershed.⁸⁸ Likewise, many of the Bay’s watershed residents can ignore the Bay’s problems, as they do not likely feel, see, or even realize that their pollution and daily activities are devastating a national treasure.⁸⁹ When drivers pass signs on the road, “You are entering the Chesapeake Bay Watershed,” how many drivers realize what a watershed is, let alone that the styrofoam cup they throw out their car window in Cooperstown, New York can reach the Chesapeake Bay?⁹⁰ How many homebuilders in Harrisburg, Pennsylvania realize that the construction and sewage that follows from their work will influence the oyster population in the Chesapeake Bay?⁹¹

Furthermore, even if residents are aware of their individual impact on the Bay, how many will be able to comprehend the overall cumulative effect of seventeen million residents?⁹² These invisible costs must

⁸⁴ See *supra* note 57 and accompanying text. As noted earlier, this reversion will “provide the basis for thousands of individual state and local actions to reduce pollution” and the successful removal of pollution will depend on “whether thousands of towns, cities, states, and farmers and other landowners reduce their sources of pollution to meet the TMDL cap.” RESTORING CLEAN WATER, *supra* note 1, at 17.

⁸⁵ STATE OF THE BAY, *supra* note 29, at 19.

⁸⁶ *Id.* at 17 (quoting Editorial, *Chesapeake Bay Left Up a Creek*, CHRISTIAN SCIENCE MONITOR (Jan. 12, 2009, 12:00 AM), <http://csmonitor.com/commentary/the-monitors-view/2009/0112/p08s01-comv.html>).

⁸⁷ See Hoagland & Watts, *supra* note 80, at 635.

⁸⁸ See MARYLAND PUBLIC TELEVISION, *supra* note 19 (discussing non-point sources of pollution that cannot be traced back to one specific place or source).

⁸⁹ See *id.*

⁹⁰ See HORTON & EICHBAUM, *supra* note 17, at 3.

⁹¹ See *id.*

⁹² See RESTORING CLEAN WATER, *supra* note 1, at ii.

be imposed on the proper parties, and everyone must do their part to solve this crisis.⁹³

E. Learning from the Chesapeake Bay Foundation's Efforts

One effort that has proven successful in the past is that of the CBF.⁹⁴ Through targeted advocacy, communication, education, and lobbying, the CBF has had a tremendous success in improving the Bay's condition.⁹⁵ It has been able to use its targeted plan to shape the EPA's policies, as well as to force watershed states to adopt programs to improve water quality in the Bay.⁹⁶ However, despite the success of the program, it has not been enough.

This note seeks to show how this model could be expanded and utilized in further contexts. Where the CBF efforts have mainly focused on government and state entities, and to a certain degree on private individuals through education, they have largely missed corporate governance policies.⁹⁷ The CBF's model would fit perfectly in this arena as shareholder activism, education, and litigation are all becoming an increasingly important tool in shaping environmental and social concerns across the corporate spectrum.

II. SHAREHOLDER PROPOSALS

A. "Wall Street Walk" to "Wall Street Talk"

In years past, shareholders who were unhappy with corporate policy were told to take the "Wall Street Walk"—that is, sell their shares

⁹³ See generally JESSE DUKEMINIER ET AL., PROPERTY 35–50 (6th ed. 2006) (discussing invisible costs). According to Dukeminier, private property rights increase efficiency by internalizing externalities. See *id.* at 36. The inherent limitation on private property is transaction costs. *Id.* Thus, private property originates when the increase in efficiency exceeds the transaction costs of instituting private property. See *id.* at 36–37. Here, the same concept applies. By forcing individuals to internalize the Bay's decline and pay for the externalities they do not feel (the pollution), eventually the costs will force citizens to take action when the costs imposed exceed the cost of not fixing the Bay.

⁹⁴ See Mueller & Tannery, *supra* note 12, at 1113–14.

⁹⁵ See *id.* at 1114. Mueller and Tannery discuss the importance of litigation in the context of cleaning up the Bay. *Id.* Their article outlines the CBF's past and present litigation, and explains why a litigation department is necessary to further improve the Chesapeake Bay. *Id.*

⁹⁶ See *id.* at 1122.

⁹⁷ See *id.* at 1115–16.

and find another corporation in which to invest.⁹⁸ Today, shareholders are discovering a greater voice, and companies are making the switch from the “Wall Street Walk” to the “Wall Street Talk.”⁹⁹ Companies are recognizing the importance of enhancing shareholder value, and similarly, the necessity of listening to shareholder ideas.¹⁰⁰ Instead of telling shareholders to leave the business to the corporate managers, corporations are increasingly listening to shareholders.¹⁰¹ They are listening to shareholders both indirectly—in the form of market activity and changing stock prices—and directly—in the form of shareholder demands and proposals.¹⁰²

B. The History of Shareholder Proposals, the Securities Exchange Act of 1934, and the SEC

Between 1933 and 1940, reacting to concerns about the management of U.S. companies and the workings of U.S. capital markets, Congress and President Roosevelt enacted numerous securities statutes.¹⁰³ One of the most important of these acts was the Securities Exchange Act of 1934 (“1934 Act”), which still regulates the exchanges, as well as certain actions in the markets today.¹⁰⁴ Relevant here, the 1934 Act delegates power to the Securities and Exchange Commission (“SEC”) to regulate the proxy process, whereby shareholders vote on certain matters.¹⁰⁵ The 1934 Act also identifies the information public-reporting companies are required to disclose to the market on a regular basis.¹⁰⁶

This mandatory disclosure requirement is required at fixed times throughout the year and is intended to provide a mechanism for corporate

⁹⁸ Jayne E. Zanglein, *From Wall Street Walk to Wall Street Talk: The Changing Face of Corporate Governance*, 11 DEPAUL BUS. L.J. 43, 45–46 (1998).

⁹⁹ *Id.* at 45.

¹⁰⁰ *See id.*

¹⁰¹ *See id.* at 45–47, 122.

¹⁰² *See id.* at 47–48, 122.

¹⁰³ D. GORDON SMITH & CYNTHIA A. WILLIAMS, *BUSINESS ORGANIZATIONS: CASES, PROBLEMS, AND CASE STUDIES* 447 (2d ed. 2008).

¹⁰⁴ Securities Exchange Act of 1934, 15 U.S.C. § 78a; SMITH & WILLIAMS, *supra* note 103, at 447–48. The exchanges include the New York Stock Exchange, the American Stock Exchange, and eight regional exchanges. SMITH & WILLIAMS, *supra* note 103, at 447–48.

¹⁰⁵ SMITH & WILLIAMS, *supra* note 103, at 448.

¹⁰⁶ *Id.* The information required includes “significant corporate developments, such as the resignation of a CEO or the company’s accountants, and the purchase or sale of significant assets, such as a subsidiary.” *Id.* “‘Public reporting companies’ are defined as companies with securities listed on a national securities exchange . . . or with common stock held by more than 750 shareholders and with assets of \$10 million or more . . . or with bonds listed on an exchange and held by more than 300 people.” *Id.*

accountability to the shareholders.¹⁰⁷ This apprises shareholders of management's actions and provides a means for them to react accordingly.¹⁰⁸ Another purpose of the federal proxy regulation is to provide shareholders with the requisite information needed to make intelligent voting choices.¹⁰⁹

In one particular disclosure requirement—a proxy statement—companies are required to provide information directly to shareholders whenever the shareholders are entitled to vote on a matter, and thus, “whenever the shareholder’s proxy is being ‘solicited.’”¹¹⁰ The proxy solicitation process normally occurs before the corporation’s annual meeting required under state law; however, proxies can also be solicited at other times throughout the year.¹¹¹ These proxies are often used to inform voters of proposed fundamental corporate changes, such as the approval of a merger, removal of directors, and other major corporate changes.¹¹² Because the “overwhelming majority” of entitled shareholders vote pre-election by giving their proxy (legal authority) to a delegee to vote their shares on the proxy statement, “the proxy solicitation process in a public corporation is the voting process, and the focus of regulatory activity is in ensuring that the proxy statement is comprehensive and accurate.”¹¹³

Shareholders can also propose topics for the agenda of the annual meeting, as well as submit shareholder resolutions suggesting a certain change or action within the company.¹¹⁴ To do this, the shareholder sends a shareholder resolution with a 500-word supporting statement to the company before the annual meeting and asks the company to include the resolution and supporting statement in the company’s proxy statement.¹¹⁵ The company will then decide whether the resolution meets the procedural and substantive requirements that the SEC has established, and either reluctantly include the resolution, or exclude it, if it feels it is legally entitled to.¹¹⁶

¹⁰⁷ SMITH & WILLIAMS, *supra* note 103, at 449.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (noting also that these shareholders are sometimes the people who will be exercising voting power for institutional investors, such as mutual fund or pension fund managers).

¹¹¹ *Id.* (citing Delaware General Corporation Law (DGCL) § 211(b); Model Business Corporation Act (Model Act) § 7.01).

¹¹² *Id.*

¹¹³ SMITH & WILLIAMS, *supra* note 103, at 449; *see also* Securities Exchange Act of 1934 § 14a, 15 U.S.C. § 78n(a) (2006) (codifying the 1934 Act and setting out the requirements for proxy statements).

¹¹⁴ SMITH & WILLIAMS, *supra* note 103, at 450.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

In recent years, shareholders have become increasingly active in placing shareholder resolutions on the agenda, “challenging everything from executive compensation to the structure of the CEO’s position with respect to environmental compliance.”¹¹⁷ Shareholder proposals are one of the few powers shareholders hold in a public corporation, and they are imperative for shareholders to voice their opinions.¹¹⁸ One type of proposal in particular is known as a social activist proposal.¹¹⁹ In these proposals, shareholders ask boards of directors to study or disclose certain pressing social issues, such as environmental and human rights issues.¹²⁰

[O]nce a communication is identified as a proxy solicitation, Rules 14a-3 to 14a-15 apply, requiring the party engaging in a proxy solicitation to send a “proxy statement” with specified information to the shareholders being solicited. These rules regulate the information that must be provided to shareholders (Rule 14a-3 . . .); the format for the actual proxy card that shareholders are asked to fill out (Rule 14a-4); and the format for the presentation of information (Rule 14a-5). In addition, Rule 14a-6 requires anyone soliciting a proxy to file a preliminary proxy statement with the SEC, followed by the filing of a definitive proxy statement, which is also sent to shareholders

Rule 14a-7 concerns the obligation of companies either to provide interested shareholders with a shareholders’ list so that the shareholders can communicate directly with other shareholders concerning a resolution or to mail soliciting materials directly to shareholders at the soliciting shareholders’ expense. Rule 14a-8 sets out the reasons that companies can exclude shareholder proposals from the company’s proxy statement Given that shareholders greatly prefer their materials to be included in the company’s proxy statement and thus mailed at the company’s expense, much of the debate and legal wrangling over shareholder proposals takes place in the context of Rule 14a-8.

Id. at 450–51.

¹¹⁷ *Id.* at 450.

¹¹⁸ *See id.* at 460.

¹¹⁹ SMITH & WILLIAMS, *supra* note 103, at 460.

¹²⁰ *Id.*

Most social activist shareholder proposals are brought by members of the “socially responsible investment” (SRI) community, [a group that] evaluates companies on both financial, and social and environmental grounds. SRI investors seek to screen companies for investment based upon the products or practices . . . [in which they are engaged]. In addition, SRI funds actively engage with companies in their portfolios to discuss emerging risks to those companies from social, environmental and human rights issues. As the corporate responsibility trend in business has continued to develop, SRI investors are often seen as valuable partners with companies to help develop best practices across a range of these issues Each of the big “fund families” (such as Fidelity, Magellan, and Vanguard) now has SRI funds.

Id. at 460–61.

C. *Social Activist Proposals*

Shareholder proposals have been used since the early 1940s; however, it was not until 1968 that these proposals were finally used as a means for achieving social ends.¹²¹ In 1968, the Vietnam War was deep in the minds of the American people, and the country was experiencing a “social revolution.”¹²² With this backdrop, religious investors and antiwar groups propounded a proxy resolution to the Dow Chemical Company, asking it to amend its articles of incorporation to prevent Dow napalm from being used in the war in Vietnam.¹²³ Although this one isolated action was relatively unimportant, social activists saw the tremendous power and publicity generated by the action.¹²⁴

As a result, social activists began to submit more social proposals each year; and although these proposals generally received only between two and three percent approval, they indicated a new trend and strategy for social activists.¹²⁵ This pattern continued for decades, and despite the persistently low voter support, shareholder activists justified the practice—to them, it was a means for engaging top management in discussions about the issues.¹²⁶ They also justified the practice as a potential bargaining chip—if management would agree to changes, the activists would agree to remove potentially embarrassing proposals before they became public.¹²⁷

In the last few years, this modestly growing practice saw a dramatic change.¹²⁸ A sudden spike in proposals occurred, “in part in reaction to numerous well-publicized corporate governance failures (such as at Enron, WorldCom, Tyco, and HealthSouth), and in part as a result of shareholder activists’ increasing sophistication.”¹²⁹ The number of proposals

¹²¹ *Id.* at 460.

¹²² See *US History: The '60s Become a Time of Social Revolution and Unrest*, VOANEWS.COM (Apr. 25, 2007), <http://www.voanews.com/specialenglish/archive/2007-04/2007-04-25-voa1.cfm?moddate=2007-04-25>.

¹²³ SMITH & WILLIAMS, *supra* note 103, at 461; see *Medical Comm. for Human Rights v. SEC*, 432 F.2d 659, 662 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972). On certiorari to the U.S. Supreme Court, the appellate court’s decision was vacated, as the issue was moot. *Medical Comm. for Human Rights*, 404 U.S. at 405. During the judicial process, DOW had included in its proxy statement the shareholder’s requested proposal, which received little support, and the Court concluded that the alleged wrongful behavior could not reasonably be expected to recur. 404 U.S. at 406.

¹²⁴ SMITH & WILLIAMS, *supra* note 103, at 461.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

have increased greatly in recent years—in the 2003 proxy season alone, there were 893 shareholder resolutions on the ballot, compared with 802 in the 2002 proxy season.¹³⁰

These figures and the growth of shareholder proposals are important; however, the percentage of votes in support of these resolutions is even more indicative of the power of this movement.¹³¹ Twenty percent of corporate governance proposals passed in 2002, and the average support of social issue proposals climbed to 9.4 percent.¹³² Although only one social activist proposal passed in 2002, that proposal—which sought to have the Cracker Barrel Company institute a policy forbidding discrimination on the basis of sexual orientation—made a tremendous mark on shareholder proposals.¹³³

D. *Environmental Shareholder Proposals*

Today, as the shareholder activist movement continues to gain steam, environmental and social issues are receiving more attention and support than ever before.¹³⁴ For example, in 2002, twenty percent, or 1.2 billion shares of Exxon-Mobil, were voted in support of Exxon-Mobil issuing a report on its strategic initiatives to produce sustainable energy.¹³⁵ Shareholders are realizing that although companies are often not obligated to make suggested changes or adopt proposals, the management and boards of directors are obligated to discuss these matters when trying to decide how to deal with a proposal. This in turn requires management to

¹³⁰ SMITH & WILLIAMS, *supra* note 103, at 461. One quarter of these proposals were social and environmental proposals. *Id.* at 461–62.

¹³¹ *Id.* at 462.

¹³² *Id.*

¹³³ *Id.* In this case, the SEC issued a no-action letter upholding Cracker Barrel's decision to exclude a gay rights proposal. *Id.* at 462 n.3. The SEC concluded that the proposal fell within the ordinary business exception. *Id.* This decision landed the SEC in court for allegedly changing its position on what they constituted to be ordinary business. *Id.* (citing *New York City Employees' Retirement Sys. v. SEC*, 45 F.3d 7 (2d Cir. 1995)). When companies are faced with a proposal that they wish to exclude, they can seek a no-action letter from the SEC. *Id.* at 464. After writing to the appropriate office in the SEC and describing the reason for the exclusion of the proposal, the SEC will evaluate the circumstances and decide whether to issue a no-action letter. *Id.* This letter means that if the company excludes the proposal, the SEC will recommend no enforcement action be taken against the company. SMITH & WILLIAMS, *supra* note 103, at 464. Conversely, they may refuse to issue a no-action letter and leave the possibility for a lawsuit open. *See id.*

¹³⁴ *See id.* at 462.

¹³⁵ *Id.*

confront these issues, and whether they accept or reject the proposal for placement in the proxy, they will have knowledge of the issue and be aware of it when making decisions on behalf of the corporation in the future.

One particular environmental topic that is making a splash among corporations is climate change.¹³⁶ Climate change is one of the hottest topics today—constantly discussed by mass media, politicians, scientists—and now corporations.¹³⁷ It is predicted that climate change will cause drastic societal reactions and correspondingly serious economic effects.¹³⁸ The environmental risk that climate change poses and its predicted economic effects provide an important illustration of how environmental issues affect corporations and the shareholders of publicly held corporations.¹³⁹

Environmental risks, such as climate change, present many business risks and opportunities for corporations.¹⁴⁰ For example, they can create “physical risks, regulatory risks, litigation risks, competitive risks, and reputational risks.”¹⁴¹ Conversely, environmental risks can serve as a boon to those corporations who use the prospective environmental risks to their advantage.¹⁴² Proactive corporations can benefit through competitive opportunities, financial opportunities, and reputational opportunities.¹⁴³ Regardless of whether these companies benefit or are hindered by environmental risks, it is clear that “these risk[s] . . . directly impact their business and, in turn, their shareholders’ investment.”¹⁴⁴

Many corporations have realized the potential impact environmental changes can make on their business—including General Electric (“GE”) and British Petroleum (“BP”).¹⁴⁵ These corporations are actively taking advantage of the opportunities that climate change presents to their businesses.¹⁴⁶ GE’s “Ecomagination” campaign, which focuses on reducing carbon emissions, and BP’s investment in lower carbon and alternative fuels and technologies, both provide examples of how corporations can benefit from environmentally conscious policies.¹⁴⁷

¹³⁶ See Rindfleisch, *supra* note 14, at 47.

¹³⁷ *Id.* at 46–47.

¹³⁸ *Id.* at 47.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Rindfleisch, *supra* note 14, at 47.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *See id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 47–48.

Shareholders are well aware of the climate change-related risks and opportunities that face their corporations.¹⁴⁸ They are also well aware of the fact that environmental risks and shareholder value are inextricably linked.¹⁴⁹ If a company fails to take action, this leaves the shareholders' investment at risk.¹⁵⁰ This in turn provides a clear motivation for shareholders to inform management of current environmental risks and their potential impact on the corporation.¹⁵¹

Thus, if a corporation's management fails to take certain actions in regard to environmental risks, shareholders can use shareholder proposals as a mechanism to compel management to submit the issue to all shareholders for their vote.¹⁵² These proposals, regardless of their success, allow shareholders to "secure disclosure, deeper analysis, and action from the corporations."¹⁵³ Shareholder proposals can demand that corporations address various environmental risks in their business by taking steps to remedy certain environmental problems.¹⁵⁴ Furthermore, shareholders can demand more extensive disclosure on behalf of the corporation regarding risks and opportunities associated with environmental risks.¹⁵⁵

E. The Effect of Shareholder Proposals

A few examples of recent shareholder proposals are helpful to understand the power and promise that shareholder actions can provide in the environmental context. Shareholders of the Anadarko Petroleum Corporation, an oil and gas exploration company incorporated in Delaware, submitted a letter in October 2003, "requesting a dialogue with Anadarko's on its climate change-related policies."¹⁵⁶ After Anadarko ignored the letter, the shareholder group filed a shareholder proposal demanding, among other things, that management "prepare a report . . . explaining how the company is responding to rising regulatory, competitive and public pressure to significantly reduce [greenhouse gas] emissions."¹⁵⁷ The proposal

¹⁴⁸ Rindfleisch, *supra* note 14, at 48.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *See id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *See* Rindfleisch, *supra* note 14, at 48.

¹⁵⁵ *See id.*

¹⁵⁶ *Id.* at 62.

¹⁵⁷ *Id.* (quoting Anadarko Petroleum Corp., Proxy Statement (Schedule 14A), at 25 (Mar. 12,

explained that the need for this report rested upon the climate change-related risks and opportunities that faced the corporation.¹⁵⁸

Anadarko submitted a request to the SEC to exclude the proposal from its proxy materials, arguing “that the proposal: (1) dealt with matters pertaining to the corporation’s ‘ordinary business’ operations (Rule 14a-8(i)(7)); (2) contained ‘false or misleading statements’ (Rule 14a-8(i)(3)); and (3) requested an action already substantially implemented (Rule 14a-8(i)(10)).”¹⁵⁹

The SEC disagreed with Anadarko, and Anadarko reluctantly included the proposal in its proxy materials.¹⁶⁰ The proposal won 31.4 percent of the shareholders’ vote; however, Anadarko’s response was limited.¹⁶¹ The shareholders again filed shareholder proposals in 2005, 2006, and 2007, each time gaining new accessions.¹⁶² These proposals ultimately made Anadarko agree to reduce greenhouse gas emissions and arrange meetings between investors and senior executives.¹⁶³

At ConocoPhillips Company, an integrated energy corporation, shareholders filed a shareholder proposal in 2003 asking the corporation to disclose business risks associated with greenhouse gas emissions.¹⁶⁴ ConocoPhillips requested a no-action letter from the SEC, and the SEC agreed, finding that the owner of the shares did not hold the securities for the requisite one year, and was therefore not eligible to file a shareholder proposal.¹⁶⁵

Although ConocoPhillips won its shareholder proposal exclusion request, it decided to implement the request anyway.¹⁶⁶ The company agreed to develop its first climate change risk statement and committed itself to addressing climate change risks above and beyond its legal obligations.¹⁶⁷ Then, in 2007, another shareholder request, which was later withdrawn, prompted ConocoPhillips to join the U.S. Climate Action Partnership and

2004)).

¹⁵⁸ *Id.* at 62–63.

¹⁵⁹ *Id.* at 63.

¹⁶⁰ Rindfleisch, *supra* note 14, at 63–64.

¹⁶¹ *Id.* at 64.

¹⁶² *Id.* at 64–65. This shows that although corporations may not be *required* to take action based upon shareholder proposals, they take shareholder concerns into consideration and discuss these matters when making corporate decisions.

¹⁶³ *Id.* at 65.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 66.

¹⁶⁶ Rindfleisch, *supra* note 14, at 66.

¹⁶⁷ *Id.*

to adopt other efficiency measures.¹⁶⁸ These proposals thus directly altered management's view of climate change.¹⁶⁹

Shareholder proposals have proven to be an effective means for furthering environmental goals.¹⁷⁰ Despite the fact that many corporations' initial response to proposals is to fight against their inclusion in proxy materials, shareholder proposals are effective in initiating corporate action.¹⁷¹ "By and large these proposals are a catalyst for climate change-related disclosure, analysis, and action."¹⁷² These proposals have clearly shaped the way that companies look at climate change and other environmental issues. They can also be used in the same manner to help clean up the Bay and to finally educate corporations and investors on internalizing the invisible costs of the Bay's pollution.

III. SHAREHOLDER PROPOSALS AS A MEANS TO CLEAN UP THE BAY

A. *Pollution & Companies Affecting the Chesapeake Bay*

As indicated in Part I, excess nitrogen and phosphorous pollution are the leading threats to the health of the Chesapeake Bay.¹⁷³ Nitrogen and phosphorous pollution come from numerous sources, the top sources including agricultural waste, urban and suburban runoff, sewage treatment plants, and air pollution from automobiles and power plants.¹⁷⁴ Other threats include sprawl, toxic pollution, and poor fishery management.¹⁷⁵

This pollution and the resultant degradation to the Bay's health have tremendous implications for the Bay watershed.¹⁷⁶ The pollution's damage is especially problematic if one considers the areas affected, including the watershed's economy, job supply, human health, and clean drinking water.¹⁷⁷ Given that the Bay's watershed is 64,000 square miles and

¹⁶⁸ *Id.* at 66–67. The U.S. Climate Action Partnership is "a coalition supporting a national policy to reduce greenhouse gas emissions by sixty to eighty percent by 2050." *Id.* at 67. ConocoPhillips also "agreed to fund \$300 million of low-carbon fuels research, committed to reduce ten percent of greenhouse gases at refineries by 2012 through efficiency measures, and will incorporate carbon cost in its capital spending plans." *Id.*

¹⁶⁹ *Id.* at 66.

¹⁷⁰ See Rindfleisch, *supra* note 14, at 70.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ RESTORING CLEAN WATER, *supra* note 1, at ii.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See *id.*

¹⁷⁷ *Id.*

encompasses seventeen million residents spread across six states, it is obvious that the pollution affecting the Bay is widespread.¹⁷⁸ Countless people touch the Bay everyday—both knowingly and unknowingly—however, few people truly pay the environmental costs that they owe to the Bay's health. These costs can be imposed, but it will take more than one party to change the status quo that has proven insufficient thus far.

One source that can help change people's perceptions and aid in re-evaluating the costs associated with the Bay's health is corporate entities. Corporate entities, and more specifically, publicly traded corporations, are spread across the Bay watershed.¹⁷⁹ Corporations employ thousands of watershed residents and play a tremendous role in local economies;¹⁸⁰ however, they also make their mark in a less beneficial way—through pollution, and more specifically, water pollution.¹⁸¹ In a recent online news series—*Toxic Waters*—the New York Times has been reporting on growing pollution in American waters and regulators' inadequate responses.¹⁸² The study has found thus far, that “in the last five years alone, chemical factories, manufacturing plants and other workplaces have violated water pollution laws more than half a million times.”¹⁸³ More importantly, the study also revealed that the vast majority of those polluters escaped punishment, as state officials often ignore illegal dumping while the EPA refuses to intervene.¹⁸⁴

In an interview with Representative James L. Oberstar, a Minnesota Democrat, he stated: “The E.P.A. and states have completely dropped the ball. Without oversight and enforcement, companies will use our lakes

¹⁷⁸ See *id.*

¹⁷⁹ See *The Global 2000*, FORBES.COM, http://www.forbes.com/lists/2009/18/global-09_The-Global-2000-United-States_10Rank.html (last visited Nov. 13, 2010) for a listing of the largest publicly traded corporations in the U.S. including electric power companies, logistics providers, manufacturing and food producers, and countless others. Many of these corporations as well as other businesses have a strong presence in the Bay watershed. See, e.g., *Businesses for the Bay, Members in Virginia*, VA. DEPT OF ENVTL. QUALITY, <http://www.deq.state.va.us/p2/b4b/members.html> (last visited Nov. 13, 2010).

¹⁸⁰ See Howard R. Ernst, *Chesapeake Bay Blues: Science, Politics, and the Struggle to Save the Bay*, PUB. MANAGER: NEW BUREAUCRAT, Mar. 22, 2004, available at 2004 WLNR 22649076.

¹⁸¹ See Charles Duhigg, *Clean Water Laws Are Neglected, at a Cost in Suffering*, N.Y. TIMES, Sept. 12, 2009, http://www.nytimes.com/2009/09/13/us/13water.html?_r=1; see also Matthew Bloch et al., *Toxic Waters: Find Water Polluters Near You*, N.Y. TIMES, May 5, 2009, <http://projects.nytimes.com/toxic-waters/polluters/Maryland> (listing polluters specifically in Maryland, part of the Chesapeake Bay watershed).

¹⁸² E.g., Duhigg, *supra* note 181.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

and rivers as dumping grounds—and that’s exactly what is apparently going on.”¹⁸⁵ When the same issue was posed to William D. Ruckelshaus, the first EPA head under President Nixon, he remarked:

When we started regulating water pollution in the 1970s, there was a huge public outcry because you could see raw sewage flowing into the rivers. Today the violations are much more subtle—pesticides and chemicals you can’t see or smell . . . [a]nd so a lot of the public pressure on regulatory agencies has ebbed away.¹⁸⁶

Based on all of the studies conducted and all of the scholarship devoted to the Bay’s decline, it is evident that pollution is still going unpunished. The sources of the pollution are widespread and often difficult to pinpoint; however, much of the non-point pollution has been traced through these studies.¹⁸⁷ The problem today is one of implementation—how do you impose costs upon residents and companies of the watershed who have enjoyed the same privileges and positions in the watershed without personally seeing a change in the Bay? In other words, how do you encourage residents and companies to pay for costs they cannot see or smell—the same costs they have been free to ignore for the past fifty years?

If the Chesapeake’s decline is to be remedied, it is clear that those responsible for the pollution must be held accountable and begin paying the price. Furthermore, the public must be educated on the sources of the Bay’s pollution, and join in the effort to reassign these costs. Once the public understands its impact on the Bay, it can educate others, and encourage companies to follow suit.

B. Sharing Responsibility for the Chesapeake Bay’s Condition

Looking at a listing of companies in the Chesapeake Bay watershed, it is abundantly clear that there are many public companies that could be recruited in an effort to clean up the Bay.¹⁸⁸ Among these companies are some of the biggest in the world—including companies such as Exxon-Mobil, Northrop Grumman Corporation, and R.R. Donnelley & Sons Company.¹⁸⁹ These three companies in particular all have a strong

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See *infra* notes 35–36, 173–75 and accompanying text.

¹⁸⁸ See *supra* note 179 and accompanying text.

¹⁸⁹ See *The Global 2000*, *supra* note 179.

presence in the watershed; however, more importantly, all three have also been commended for their pollution prevention efforts within the Bay watershed.¹⁹⁰

Parker's Exxon, located in Washington, D.C., won an award for its pollution prevention activities.¹⁹¹ Parker's Exxon reclaimed and recycled antifreeze, and then sold the recycled products to customers for a profit.¹⁹² It also recycled used oil filters by selling them to an independent recycling company, and used environmentally safe cleaning products instead of water, thereby preventing waste water from entering the Bay.¹⁹³ Finally, Parker's Exxon trained all of its employees in pollution prevention, and educated them to be aware of how their actions impacted the Bay.¹⁹⁴ To reward the employees for their efforts, employees were treated to lunch with the income derived from their recycling efforts.¹⁹⁵ This proves that companies can be environmentally conscious, while remaining profitable. Furthermore, companies and franchises—such as Parker's Exxon—can use accolades and press releases to increase their reputation in the eyes of consumers.

Northrop Grumman Corporation's Electronic Sensors and Systems Sector in Linthicum, Maryland, is another example of how a global company can develop a mutually beneficial relationship with the Bay.¹⁹⁶ The Electronic Sensors and Systems Sector ("ESSS") employs more than 7,400 people to design and produce advanced electronic products.¹⁹⁷ Like Parker's Exxon, ESSS won an award for its efforts in implementing pollution prevention activities at its facilities.¹⁹⁸ ESSS utilized alternative products to

¹⁹⁰ See, e.g., *The Chesapeake Bay Program Would Like to Recognize and Congratulate the Winners of Businesses for the Bay*, CHESAPEAKE BAY PROGRAM, <http://archive.chesapeakebay.net/info/bus.html> (last visited Nov. 13, 2010) [hereinafter CHESAPEAKE BAY PROGRAM].

¹⁹¹ *Id.* Note that although Parker's Exxon is a franchise, and thus, many of its actions are not legally binding on Exxon (the franchisor), its reputation can still impact Exxon. All one needs to look at is the reputation British Petroleum franchises have incurred as a result of the recent gulf spill to understand that franchises' and franchisors' reputations are often one and the same. See, e.g., Cheryl Phillips, *BP Offers Gas Station Owners Help: BP Boycotts Hurt Franchise*, EXAMINER (June 30, 2010), <http://www.examiner.com/business-headlines-in-providence/bp-offers-gas-station-owners-help-bp-boycotts-hurt-franchise-owners>. Exxon can write or amend its franchise agreement to encourage franchises to take responsibility for the Bay's pollution. Exxon shareholders are impacted in this sense.

¹⁹² CHESAPEAKE BAY PROGRAM, *supra* note 190.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See *id.*

¹⁹⁷ *Id.*

¹⁹⁸ CHESAPEAKE BAY PROGRAM, *supra* note 190.

reduce the use of its metal-cutting lubricants and alkaline cleaners, while eliminating the use of solvents as a metal degreaser.¹⁹⁹ Likewise, ESSS used paints with “low levels of volatile organic compounds” and utilized equipment that allowed it to apply less paint without reducing quality.²⁰⁰ Finally, like Parker’s Exxon, ESSS trained all of its employees to seek pollution prevention and encouraged teams of employees to develop solutions in an effort to clean up the Bay.²⁰¹

R.R. Donnelley & Sons Company, located in Lancaster, Pennsylvania, is yet another example of a company that has made a positive mark on the Bay and has been rewarded for its efforts.²⁰² R.R. Donnelley is a global provider of integrated communications with more than 60,000 customers.²⁰³ In its Lancaster West facility—which houses web offset printing presses used in the production of telephone books and magazines—management implemented a program to eliminate and reduce the use of toxics.²⁰⁴ By substituting materials and modifying processes, the Lancaster West facility “achieved a 95% reduction in Resource Conservation & Recovery Act Hazardous Waste generation and an 85% reduction of Toxics Release Inventory chemical releases.”²⁰⁵ As a result, the company saved \$15,000 annually on disposal costs at a time when the facility’s production increased by sixty percent.²⁰⁶ These efforts earned the Lancaster West facility Pennsylvania’s Governor’s Award for Environmental Excellence.²⁰⁷

These three companies and their efforts provide excellent examples of how a company’s environmental efforts can benefit the company, while helping the Chesapeake Bay. These three companies also provide evidence of the positive impact that companies’ everyday actions and operations can have on the Bay. However, for every one of these companies’ positive efforts to clean up the Bay, there are hundreds of companies who are not only ignoring efforts to clean up the Bay, but are violating pollution laws at an alarming rate.²⁰⁸

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ CHESAPEAKE BAY PROGRAM, *supra* note 190.

²⁰² *Id.*

²⁰³ *About Us*, R.R. DONNELLEY, <http://www.rrdonnelley.com/wwwRRD1/AboutUs/AboutUs.asp> (last visited Nov. 13, 2010).

²⁰⁴ CHESAPEAKE BAY PROGRAM, *supra* note 190.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *See* Matthew Bloch et al., *supra* note 181.

Shareholders have the power to make this information more prevalent and bring companies' actions to the attention of investors and the public. This in turn can help to redistribute the responsibilities and costs associated with the Bay by bringing those responsible for the pollution to the forefront, while also rewarding those who are working to clean up the Bay. Once people become aware of the pollution costs and its origin, they can gain the needed public support to help finally implement change.²⁰⁹ In the shareholder proposal context, shareholders will need to make their proposals clearly outline the social importance of cleaning up the Chesapeake Bay and its watershed. This will allow shareholders to transcend the everyday business practice exclusion to proposals, and allow for their ideas to be disseminated to the companies' shareholders and the greater investment community.

C. *Shareholder Strategies and Recent Trends*

Shareholders have the ability to provide for proactive change within corporations through shareholder proposals.²¹⁰ In the past, corporations often cited the ordinary business exception in an effort to block these efforts—arguing that the proposals encroached into management's inherent power to regulate the ordinary business operations of a company.²¹¹ However, today, the SEC has become more antagonistic to this defense and has rejected the argument more frequently.²¹² In doing so, the SEC has recognized that proposals involving significant social policy issues are often important enough to warrant inclusion into proxy statements despite the impact they may have on ordinary business practices.²¹³ For example, in January 2010, the SEC issued “‘interpretative guidance’ to help companies decide when and whether to disclose” climate change-related matters.²¹⁴ The SEC said that companies “could be helped or hurt by climate-related lawsuits, business opportunities or legislation and should promptly disclose such potential impacts.”²¹⁵

²⁰⁹ See Duhigg, *supra* note 181 (William Ruckelshaus's comment stating that public outcry is missing today because pollution is not as evident as it was when the EPA was created).

²¹⁰ SMITH & WILLIAMS, *supra* note 103, at 460.

²¹¹ See 17 C.F.R. § 240.14a-8(i)(7) (2008).

²¹² See, e.g., John M. Broder, *S.E.C. Adds Climate Risk to Disclosure List*, N.Y. TIMES, Jan. 28, 2010, <http://www.nytimes.com/2010/01/28/business/28sec.html>.

²¹³ See *id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

The SEC took this step as a result of pressure from environmental and investors groups such as California Public Employees Retirement System (“CALPERS”), one of the nation’s largest public pension funds.²¹⁶ In response to the SEC’s new guidance, CALPERS stated:

We’re glad the S.E.C. is stepping up to the plate to protect investors. Ensuring that investors are getting timely, material information on climate-related impacts, including regulatory and physical impacts, is absolutely essential. Investors have a fundamental right to know which companies are well positioned for the future and which are not.²¹⁷

It is clear that the investment community is becoming more engaged with environmental issues, as the risks and opportunities associated with these issues often translate directly into financial performance.²¹⁸

As indicated above in Part III, the SEC has begun to take a broader view of social policy issues, and this is further evidenced by its recent guidance. The SEC is now urging companies to “consider, for example, whether any new law or international treaty limiting carbon dioxide emissions might increase operating costs and prompt a disclosure requirement.”²¹⁹ Furthermore, the SEC noted that companies might be well-positioned to take advantage of new laws; for example, those mandating increased production of renewable electricity.²²⁰

Shareholders have taken note of the SEC’s new view and have targeted environmental issues at major companies.²²¹ In the Marcellus Shale—a rock formation which spans parts of New York, Pennsylvania, and West Virginia—a shareholder proposal campaign has been aimed at twelve companies including Chesapeake Energy Corporation and Exxon Mobil Corporation.²²² Shareholder proposals sponsored by Green Century Funds and the Investor Environment Health Network have sought to increase transparency among drilling companies and to require them to provide information about drilling’s effect on the environment.²²³ This effort

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *See supra* text accompanying notes 133–153.

²¹⁹ Broder, *supra* note 212.

²²⁰ *Id.*

²²¹ *See supra* text accompanying notes 155–169.

²²² Anna Driver, *Investors Target Marcellus Shale Drillers*, REUTERS, Jan. 27, 2010, <http://www.reuters.com/article/idUSTRE60P5P620100126>.

²²³ *Id.*

has brought the Marcellus Shale to the forefront of the news, and has gained the attention of prominent officials such as New York City's Mayor Michael Bloomberg.²²⁴ In an interview, Mayor Bloomberg stated that he was opposed to drilling in the city's upstate watershed—pointing out that the risks involved were too great.²²⁵ These efforts, like the Anadarko and ConocoPhillips proposals above, prove that shareholder proposals make an impact on the company, as well as the surrounding community.²²⁶

The effort by investors and environmental groups can also be seen today in courts, which are increasingly becoming a battlefield for climate fights and other environmental issues.²²⁷ In three major lawsuits filed by environmental groups, private lawyers, and state officials, courts are currently being asked to determine the impact of climate change on certain locales.²²⁸ In Kivalina, Alaska—an island of 400 Inupiat Eskimos north of the Arctic Circle—the village brought suit against two dozen fuel and utility companies alleging that they helped cause climate change, which is accelerating the island's devastating erosion.²²⁹ In Connecticut, environmental lawyers teamed up with attorneys general in eight states and the City of New York “seeking a court order to reduce greenhouse gas emissions.”²³⁰ Finally, in Mississippi, Gulf Coast property owners brought suit, claiming that industry-produced emissions contributed to climate change and thus increased the potency of Hurricane Katrina in 2005.²³¹

What does this all mean for shareholders and companies in the Chesapeake Bay watershed? Harold Kim, senior vice president for reform initiatives at the United States Chamber Institute for Legal Reform, believes that the situation is “trending into an area that could be explosive—for better or for worse.”²³² With legislative failures, such as a bill to curb gases that passed in the House last year but failed to advance in the Senate, and the climate talks in Copenhagen that produced little, courts could become “a significant battleground” to clean up the legislature's inaction.²³³

²²⁴ *See id.*

²²⁵ *Id.*

²²⁶ *See supra* text accompanying notes 155–169.

²²⁷ *See* John Schwartz, *Courts as Battlefields in Climate Fights*, N.Y. TIMES, Jan. 27, 2010, <http://www.nytimes.com/2010/01/27/business/energy-environment/27lawsuits.html>.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Schwartz, *supra* note 227 (quoting Harold Kim).

Regardless of whether courts become an explosive battleground for environmental issues, or the legislature steps up to the plate and follows through on its promises to impose new environmental standards, businesses will be forced to adapt. This is true in both climate change-related issues, as well as in pollution issues. The Chesapeake Bay and the companies in its watershed will invariably be subjected to changing regulations, such as the new pollution standards taking effect this year.²³⁴ With all of the uncertainty and proposed legislation, it is clear that shareholders have a reason to worry and to be heard by corporations about those concerns.

The SEC is aware of this fact, and has given a wider understanding of the importance of social responsibility issues in the shareholder proposal context.²³⁵ Thus, today, more than ever before, shareholders have the ability to bring the Chesapeake Bay and its decline to the forefront of corporations' agendas and to force management to deal with their company's impact on the Bay. This is even more evident given courts' recent willingness to accept more environmental cases and permit cases beyond the discovery stage.²³⁶

D. Shareholder Proposals to Change the Bay

Shareholders today have a greater opportunity to shape environmental corporate policy than ever before with respect to the Bay. They have the ability to get their views across on issues, such as the decline of the Chesapeake Bay, and also to suggest changes in corporate reporting policies with respect to watershed pollution. Once this occurs, other shareholders will become educated, and the public will become more aware of the problems facing the Bay. Corporations are at an incredible crossroads. They can take advantage of the risks associated with these uncertainties, or they can perish by ignoring them.

Specifically, the Chesapeake Bay and the pollution facing its watershed present numerous risks for companies.²³⁷ These include regulatory

²³⁴ See *supra* text accompanying notes 58–59.

²³⁵ See, e.g., Broder, *supra* note 212 (SEC requiring disclosure of serious risks in the climate change context because of uncertainty and potential legislation).

²³⁶ See, e.g., Schwartz, *supra* note 227 (“If the climate-change cases even get to the discovery stage, and if the energy industry possesses embarrassing e-mail messages and memorandums similar to those that proved devastating to tobacco companies . . . , ‘it’s a hammer’ that could drive industries to the negotiating table.”).

²³⁷ See *supra* text accompanying notes 140–55; Rindfleisch, *supra* note 14, at 47.

risks, litigation risks, competitive risks, and reputational risks.²³⁸ Conversely, companies can take advantage of these risks and turn them into competitive, reputational, and financial opportunities.

Businesses are constantly reporting risks to investors and forecasting business and market outlooks. It is clear that sustainability, protecting the Chesapeake, and using mechanisms to clean up pollution are all incredible opportunities. Companies may cite increased cost and point the finger at other companies, arguing, 'why should I clean up more than my share if my neighbor is simply going to make up for my portion of the pollution when I change?'²³⁹ However, with shareholder encouragement and new information provided through shareholder proposals, companies can realize that these costs are not going to be discounted forever. One day, management will be forced to make up for their company's contribution to the pollution. Environmental groups and shareholder activist groups are becoming more popular and vocal today than ever before.²⁴⁰ Analogous to the tobacco companies and the plaintiffs' fight to find a cause of action, shareholders will continue to press until they are successful.²⁴¹

Instead of fighting these proposals and shareholder efforts, companies today can take advantage of the opportunities that will be recognized by helping the Bay. Like the above three examples of companies working to change the Bay, companies can help the Bay while making a profit in the process. It is important to remember that for every threat, there is an equal opportunity to be exploited. If companies are to do a cost-benefit analysis, it is clear that simple steps can add up. Simply changing procedures or educating employees can recognize immediate costs.

Furthermore, companies can begin these changes today on their own terms and benefit from the public relations aspect as well. Once the proposed regulations become enforced and the legislature finally gets its act together, the companies will be faced with a worse situation than if they had acted themselves. Often, it is easier to change on your own terms, than to be forced into terms that you are not ready for. Paul Otellini, the chief executive of Intel, recently made this point clear:

²³⁸ Rindfleisch, *supra* note 14, at 47.

²³⁹ This belief is similar to the idea of invisible costs discussed above—it is difficult to reconcile paying for an invisible cost that has been free for so long. See *DUKEMINIER ET AL.*, *supra* note 93, at 39–40.

²⁴⁰ See *supra* text accompanying Part II.D.

²⁴¹ See Schwartz, *supra* note 227 (stating, "[t]hey lost the first cases; they kept on trying new theories . . . and eventually won big." *Id.*).

Having run a company through a major transition, it's a lot easier to change when you can than when you have to. . . . The cost is less. You have more time. I am a little worried that by the time we wake up to the crisis we will be in the abyss.²⁴²

Shareholders have a unique opportunity today to have their voices heard by corporations as never before. Given environmental concerns, the SEC's new guidance, and the courts' willingness to hear environmental cases, shareholders have more leverage than ever before when presenting companies with shareholder proposals. Companies will be forced to deal with these requests—and whether or not they include the proposals in their proxy statements—management will be forced to deal with the issues presented. This is an important step in turning costs that have been invisible to this point into internalized costs that are accounted for in all business actions within the Chesapeake Bay watershed.

CONCLUSION

Shareholder proposals are an important tool that can be used by shareholders and the investment community to alert other shareholders and investors to important business trends, risks, and opportunities.²⁴³ These proposals also allow shareholders to express their concerns to management, and if presented properly, to be heard through proxy statements by other shareholders as well.²⁴⁴ Although companies are not required to act upon these proposals, the examples above prove that shareholder proposals can be effective in changing corporate environmental policy.

This note has shown that the Chesapeake Bay is a prime target for shareholder action. The Chesapeake Bay and its watershed have been an active target for studies and legislation; however, the implementation of efforts to clean up the Bay has fallen short thus far. This note does not seek to remedy the Chesapeake Bay's decline merely by using shareholder proposals to change corporate policy. Rather, this note seeks to explain how shareholder proposals can be used as an important supplement to current efforts and other solutions.

²⁴² Thomas L. Friedman, *A Word from the Wise*, N.Y. TIMES, Mar. 2, 2010, <http://www.nytimes.com/2010/03/03/opinion/03friedman.html> (referring to America's shortsightedness in regard to technology and education).

²⁴³ See *supra* text accompanying Part II.B.

²⁴⁴ See *supra* text accompanying Part II.B.

For example, the CBF and its litigation efforts are pivotal to the success of the Bay.²⁴⁵ Recently, the CBF and other health and environmental organizations sued the EPA to “mandate the promulgation of hazardous air pollutant emission standards from electric utility steam generating units, as required under the Clean Air Act.”²⁴⁶ Efforts such as this, as well as continued action on the part of private citizen groups, will remain vital to restoring the Bay. Furthermore, continued legislation and enforcement will be essential—especially given that the pollution standards will be reverting back to the Clean Water Act levels.

The CBF and its reports are correct in that the President and legislature must act if the Bay’s deterioration is to improve. However, where the CBF recommends that the government alone can change the problem, this note disagrees. Shareholder proposals could serve an essential gap-filler in the CBF’s plan, by changing public support from the ground up. Shareholder proposals can encourage companies to change on their own terms, and to benefit from the change through first-mover opportunities and public relations. Finally, companies can benefit by avoiding costly litigation and fines.

The “Wall Street Walk” is no longer. It’s time that shareholders begin to voice their concerns and to impose the pollution costs that have been discounted for so long in the Chesapeake Bay watershed. It’s time shareholders and investment groups use the “Wall Street Talk” to change corporate policy and begin to turn the tide of the Chesapeake’s deterioration once and for all.

²⁴⁵ See generally Mueller & Tannery, *supra* note 12 (discussing the CBF’s past and present litigation efforts).

²⁴⁶ Carol McCabe, *Proposed Consent Decree Could Set New Standards for Power Plant Mercury Emissions*, CLIENT ALERT ON THE ENV’T (Manko, Gold, Katcher & Fox, LLP), Dec. 2009.