MARYLAND
LEAGUE OF
CONSERVATION
VOTERS

Gubernatorial Report Card
Governor Robert Ehrlich
2005 - 2006

Keeping Score for the Environment Since 1979

GRADING
Maryland's Governor

Dear Marylander,

For more than 25 years, the Maryland League of Conservation Voters has been the independent political voice for the environment in our state. We not only advocate for sound conservation policies, we also actively work to get pro-environment candidates elected and hold elected officials accountable. Report cards, such as the one you are now reading, are a key component of our "cycle of accountability."

Since 1997, the Maryland League of Conservation Voters has produced Gubernatorial Report Cards every two years to give voters an in-depth, unbiased look at our Governors' environmental records.

In Maryland, the Governor's office and its Administration, which includes the Department of the Environment and Department of Natural Resources, have an enormous impact on our natural resources and public health. The Administration's actions — or lack thereof — can directly affect Marylanders and our environment not just today but for decades to come.

We provide this report card — with an overall letter grade and grades in individual categories — as a measure for the Administration. The graded categories, and the issues detailed within each graded category, are not necessarily weighted equally. They are intended to be representative of the Administration's commitment to conservation and environmental protection, and not necessarily a comprehensive listing of every state action.

For the years 2005-2006, the Maryland League of Conservation Voters gives Governor Robert Ehrlich an overall grade of D for his environmental record.

The Ehrlich Administration has initiated some positive small-scale and pilot environmental programs, such as the Corsica River Initiative and the addition of hybrid buses to the state's fleet of vehicles.

But the Administration's lack of response to immediate conservation threats — such as Maryland's polluted waterways (including the Chesapeake Bay), bad development such as those proposed at Blackwater Refuge and Terrapin Run, and growing transportation needs — contributes to his low score.

One troubling pattern that has emerged is of the Ehrlich Administration proposing policy that would be bad for the environment — such as "writing off" waterways as too polluted, opening up restored rivers for commercial yellow perch fishing — then reversing its position, but only after public outcry. As a prime example, the Administration's two years of opposition to much-needed air pollution controls, which revealed hours of lobbying and ties to industry lobbyists, makes it difficult to grade Governor Ehrlich highly for reversing his position and signing the Healthy Air Act. Also, the Governor's budget raided 75 percent of funding for Program Open Space in his third year in office (having raided it the first two years as well). He did, however, leave the dedicated funding source untouched in the 2006 election year.

Gubernatorial Report Card: Governor Robert Ehrlich

OVERALL GRADE	D
Air Quality	D
Water Quality	C
Energy	D+
Fisheries & Wildlife	C
Smart Growth	C
Transportation	D-
Land Preservation & Open Space	D-
Administration & Appointments	D+
	F

The Administration has chosen not to enforce the law for air and water violations and has proposed selling water from state land to private developers. Through these actions, the Maryland Department of the Environment and Department of Natural Resources seem to be acting more in the interests of industries and developers than in the public's interest. In this critical election year, Governor Ehrlich's environmental score of D for 2005-2006, combined with his previous two-year score of a D+, should give voters cause for serious concern at the ballot box. Voters should seek a more steadfast environmental steward in the State House.

I hope you will use this report card, and share it with others, to help us make conservation a priority in our state.

J. Charles Fox,
Chairman of the Board of Directors

Cindy Schwartz
Executive Director

Air Quality

Grade C

Governor Ehrlich's record on air quality is mixed. The Governor takes credit for new and sweeping controls on pollution from coal-fired power plants in Maryland. However, the Ehrlich Administration opposed legislation in 2005 to reduce nitrogen oxides, sulfur dioxide and mercury emissions then offered similar actions through a departmental rulemaking. After raising the possibility of a veto, Ehrlich signed the Healthy Air Act into law. Meanwhile, the Administration was criticized for lax enforcement of clean air laws and failing to join a lawsuit with other states and municipalities regarding air pollution regulations.

Healthy Air Act, the "4P" bill, and the Clean Power Rule - MIXED

In the 2005 legislative session, environmentalists and health advocates worked to pass the so-called "four pollutants" (4P) bill that would have placed restrictions on air pollution from power plants. The stricter regulation of the four pollutants — sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide — is critically important to improve Maryland's chronic air pollution. The bill died in a legislative committee. Later, it was exposed that the bill fell victim to a lobbying campaign closely coordinated between high-level Maryland Department of the Environment (MDE) officials and lobbyists for Constellation Energy, which owns and operates several plants that would have been subject to the bill's provisions. Lobbying materials written by Constellation were sent out word-for-word on MDE letterhead, including the signature of MDE Secretary Kendl Philbrick.

In November 2005, Governor Ehrlich proposed the "Maryland Clean Power Rule." The rule, based somewhat on the "4P" bill that MDE had earlier opposed, proposed cuts in emissions of three of the four key airborne pollutants from Maryland power plants by more than 250,000 tons annually. According to MDE, when fully implemented, the regulations cut annual emission of nitrogen oxide by 75 percent, sulfur dioxide by 85 percent, and mercury by 90 percent.

In the 2006 session, the legislature considered the "Healthy Air Act," a comprehensive successor to the "4P" legislation that was again opposed by the Ehrlich Administration. In a press release the Governor said, "The bill will dramatically increase the costs of electricity for consumers, force at least one power plant to close, and potentially cause rolling blackouts across Maryland." However, polling showed the bill was favored by 90 percent of Marylanders, and the bill passed by wide margins in both the Maryland House and Senate. After literally locking his door to prevent receipt of the Healthy Air Act and raising the possibility of a veto, Governor Ehrlich signed the bill. His press release announced his decision to sign the legislation, stating "today's announcement makes Maryland an undisputed national leader in air and water quality protection."

Bush EPA Regulations - FAILING

Governor Ehrlich blocked a request by the Attorney General to challenge the U.S. Environmental Protection Agency (EPA) regulations on coal-burning power plants. Under the Bush Administration EPA rules, power plants could avoid using cleaner coal-burning methods that reduce dangerous mercury emissions. Attorney General Curran's proposal would have had Maryland join twelve other states in a lawsuit to overturn the rules. Instead, Ehrlich Administration officials said they would seek a meeting with the EPA.

Regional Council for Improving Air Quality - SATISFACTORY

Recognizing that Maryland's air pollution problem requires regional solutions, the Ehrlich Administration signed onto a memorandum of understanding that created a regional council on air issues to include Virginia, Maryland, and Washington, D.C.

Air Quality continued

Baltimore City Air Quality Monitoring Halted - FAILING

The Ehrlich Administration stopped monitoring ozone pollution in Baltimore in 2003, despite the city's chronically bad air and the state's largest concentration of people with asthma. The Maryland Department of the Environment decided that keeping the monitors in the city was a redundant expense because the state maintains six others in the surrounding suburbs. However, the state maintained at least one, and sometimes two, ozone monitors in the city every summer from 1983 to 2002, with one gap in 2000 because of vandalism. The city monitors often measured ozone levels above federal standards, according to state data. On several occasions ozone levels measured at the monitors in the city failed to meet federal standards, while readings showed healthy air in suburban counties.

EPA Waiver to Relax Air Pollution Rules - FAILING

Following 2005's Hurricane Katrina, gas prices spiked in Maryland. In response, Governor Ehrlich requested a federal waiver from the U.S. Environmental Protection Agency to temporarily waive the requirement for the use of reformulated gasoline in Maryland. In April 2006, Governor Ehrlich again made this request, saying it was necessary to provide temporary relief to avoid temporary supply disruption and fuel shortages as refineries shift from MTBE to ethanol additives. Reformulated gasoline is used in Baltimore and Washington, D.C. metropolitan areas along with Cecil, Kent, and Queen Anne's counties to reduce ozone air pollution.

MDE Receives Air Toxics Grant - SATISFACTORY

In 2005, MDE was successful in securing a $300,000 grant from EPA to address air toxics emissions from small stationary sources of air pollution in two "Environmental Benefit District" areas in Maryland. One is located in Baltimore City/County while the other one is in Prince George's County near the D.C. border. Both of these areas have sensitive populations (e.g. children, elderly) and are at increased health risk from high levels of toxic air pollution.

Water Quality

Grade D+

Despite passing the Bay Restoration Fund to clean up sewage plants in the first two years of his term, Governor Ehrlich's actions over the last two years have done little to address the serious — and worsening — condition of Maryland's rivers and bays. With more than 90 percent of Maryland's waterways listed as "impaired," water quality is an urgent matter that must be addressed.

Proposal to "Write Off" Impaired Water - FAILING

Currently, Maryland classifies all waterways as falling into one of four water quality categories, which define a water body's use (and its health). In March 2005, the Maryland Department of the Environment proposed a new category that would have allowed a waterway to be listed as too polluted to justify the expense of cleaning it up. Such waters would then be exempt from clean-up requirements. Such a classification would have had the effect of "writing off" badly polluted waters – including many urban streams. After enormous public outcry, MDE withdraw its proposal.

Corsica River Initiative - GOOD

As part of a public-private partnership with the Oyster Recovery Partnership, Governor Ehrlich in September 2005 oversaw the creation of the Corsica Restoration Project. This project's aim is to clean up this six-mile long Eastern Shore river and remove it from the State's "impaired waters list" in five years. The Corsica River project is an intensive but small-scale river cleanup with the potential to be used as a model for other Maryland waterways.

Increased Pollution Limits for Baltimore Harbor – FAILING

The 1972 Clean Water Act requires that Maryland set limits for pollution in waterways, known as Total Maximum Daily Loads (TMDLs). The state has taken years to propose pollution limits for Baltimore Harbor, and in July 2006 the Ehrlich Administration proposed levels of nitrogen pollution for the Harbor that were substantially higher than what was proposed by the agency in 2003. According to conservation organizations, these looser pollution limits will make it much more difficult for the state to meet its 2010 Chesapeake Bay water quality goals.

TMDL Guidance - SHOWS PROMISE

In June 2006, MDE issued its "Total Maximum Daily Load (TMDL) Guidance for Local Government." The document is intended as a planning aid to counties and municipalities throughout the State following a two-year effort in which extensive exchange occurred between MDE and local units of government. Establishing TMDLs for impaired waterways remains way behind schedule in Maryland.

Maryland Beaches Dangerously Polluted – FAILING

A report issued by the Natural Resources Defense Council identified more than 40 public beaches in Maryland that remain dangerously polluted, failing to meet health standards more than 25 percent of the time. Three beaches in Kent County failed to meet health standards more than 50 percent of the time.

Pollution Limits Included in Sewage Treatment Plant Permits – SHOWS PROMISE

In August 2005, Maryland adopted new water quality standards aimed at cleaning up impaired waterways. In conjunction with these new standards and Bay Restoration Fund-supported facility upgrades, the first sewage treatment plant permits with enforceable nitrogen limits were issued. These permit limits will ensure that the state's biggest sewage treatment plants dramatically reduce nitrogen pollution to Maryland rivers. These limits are a result of years of effort on the part of the conservation community to obtain enforceable permit limits and hold sewage treatment plants accountable for their pollution discharges.

Energy

Grade C

Energy is becoming a critical issue across the country, including Maryland. Overall the Ehrlich Administration has done little to promote energy conservation or propose new ideas or monies for renewable energy sources or energy efficiency.

Community Energy & Economic Development Grants - INCOMPLETE

In the 2006 General Assembly session, the Department of Natural Resources strongly opposed the Community Energy and Economic Development Grant Program (SB 175/HB 476). This is a bill that would have opened up state money for grants to run programs to promote renewable energy and energy efficiency.

Fisheries & Wildlife

Grade C

The Ehrlich Administration's handling of fish and wildlife issues remains a mixed bag. In 2006, Maryland joined with twelve other coastal states to put a cap on the catch of menhaden. However, threats to fisheries and wildlife continued in the state due to the Department of Natural Resources' proposal to open up restored rivers to commercial yellow perch fishing and opposition to protections for state forests.

Atlantic States Marine Fisheries Commission Cap on Menhaden – SATISFACTORY

In August 2005, as part of the Atlantic States Marine Fisheries Commission, Maryland voted with other coastal states 12-2 to establish a five-year annual cap on menhaden in Chesapeake Bay. Environmentalists and fishing organizations had sought to limit the catch because of the current depletion of menhaden — a small fish vital to the Bay's ecosystem. In July 2006, Maryland and Virginia announced an agreement to limit the menhaden catch. Under the agreement, industrial fishing boats can catch only 109,000 tons in a year, the average of the last five years. If they go under the limit, they can carry over to the next year to a maximum of 122,000 metric tons. Some applauded the agreement, but others criticized the agreement as continuing to allow fishing at levels still too high.

Opposition to State Forest Protection – FAILING

During the 2005 legislative session, the Department of Natural Resources (DNR) opposed legislation designed to create a wildlife preserve in Maryland that would eventually provide wildlife corridors to forests in adjacent states. Bills that would have protected Green Ridge State Forest and Crabtree Creek lands (HB 1240/HB 1244), were defeated in large part because of DNR's opposition.

During the 2006 legislative session, DNR again opposed legislation designed to create connected and protected wildlife preserves in Maryland. These bills (HB 9/HB 10) were withdrawn in large part because of DNR's opposition to them.

Proposal to Allow Commercial Fishing of Yellow Perch – NEEDS IMPROVEMENT

Once plentiful in Maryland waters, yellow perch experienced significant decline in the 1970s. In the late 1980s, most rivers were closed to yellow perch fishing. After years of restoration efforts to bring yellow perch back in healthy numbers, in 2006 the Department of Natural Resources proposed opening up the Choptank and Nanticoke River to commercial fishing of yellow perch. This prompted outcry from state recreational fisherman groups who said that commercial fishing of yellow perch would be in direct conflict with its successful restoration work. After strong lobbying and activism by sports fishermen, DNR agreed to withdraw its proposal.

Smart **Growth**

Grade D-

Maryland was once nationally renowned for its Smart Growth programs, but commitment to Smart Growth principles has diminished under the Ehrlich Administration. Despite projections of enormous population growth over the next several decades, the Governor has refused to engage in state-level leadership in managing growth. The Administration's unwillingness to stop the devastating development outside Blackwater National Wildlife Refuge and its proposal to allow developers to purchase water from state lands raise very serious concerns.

Blackwater Refuge Development – FAILING

Maryland's Blackwater National Refuge on the Eastern Shore is a thriving marshland full of wildlife and critical habitat near the City of Cambridge. The fragile refuge is very susceptible to the pressures of modern population, such as pollution, runoff, and chemicals. A new planned development would build a golf course and clubhouse, a conference center and hotel, parking lots, and a retail center in the most environmentally sensitive area within 1,000 feet of the Little Blackwater River, which flows straight into the Refuge and the Chesapeake Bay. Under Maryland planning law and the 1997 Smart Growth law, the state could have not only refused to endorse this plan, it could have challenged it. The Ehrlich Administration has refused to intervene.

Proposal to Drill for Water in State Lands - FAILING

Maryland is experiencing rapid population growth and development, and water shortages in areas that have poorly planned development are becoming common. In 2006 the Ehrlich Administration's Department of Natural Resources revealed a proposal to lease or sell water on and under state lands to private developers. Drilling for water in state lands would allow even more unsustainable development projects. It would also encourage such unwise development nearer to sensitive park resources and diminish the water available to the park for its own natural purposes.

Terrapin Run - FAILING

A development slated for Terrapin Run in Allegany County is another example of environmentally destructive development failing to abide by basic Smart Growth principles. This development would put 4,300 houses and a shopping plaza on 900 acres of land intended for conservation or agriculture use. It is located in one of the driest areas of the state and would have to pull 250,000 gallons of water per day from a nearby creek. The development is completely lacking in infrastructure to support it – in fact, the nearest middle or high school is 30 miles away. The Ehrlich Administration has refused to intervene.

Advisory Committee to Review Water Needs – SATISFACTORY

Maryland's population will grow by more than one million people in the next quarter-century, which will put a strain on critical drinking water resources. Governor Ehrlich formed an Advisory Committee on the Management and Protection of the State's Water Resources in 2003, and in 2005 he extended a successor committee. This committee's purpose is to advise the State in programs and policies for the long-term sustainable use and protection of water resources. The 16 member Advisory Committee was to report its interim findings and recommendations by July 1, 2006 and its final findings and recommendations by July 1, 2008.

Transportation

Grade D-

Marylanders remain frustrated with long commutes and increasing traffic. But the Ehrlich Administration's transportation policy remains focused essentially on one single road construction project – the Intercounty Connector. The state's transportation policy suffers from lack of planning and funding for the Maryland's increasingly serious transportation needs.

Fast Track for the Intercounty Connector - FAILING

Governor Ehrlich's top transportation priority is the Intercounty Connector (ICC), a more than $3 billion highway project proposed for Montgomery and Prince George's counties that critics claim will be environmentally destructive and do little to alleviate traffic problems in the region. In 2005, the Administration proposed to borrow over $750 million of Maryland's future federal transportation dollars, which will severely limit federal funds for important transit, roads, and other transportation solutions for decades.

In April 2006, environmental groups criticized the environmental impact study prepared by the State Highway Administration as being incomplete, inadequate and biased. Governor Ehrlich officially "broke ground" on the ICC in May 2006.

Opposition to Purple Line - FAILING

This urgently needed and popular metro extension has ground to a halt under the Ehrlich Administration as much needed funds are steered to the ICC. While the Administration says they support this line, all efforts have been toward unworkable plans such as changing project from rail to buses. The Ehrlich Administration has not adequately funded planning for the Purple Line, causing further delays.

Cleaner Buses - INCOMPLETE

In April 2005, Ehrlich Administration representatives on the Metro Board helped kill a plan to purchase some 120 compressed natural gas buses for the Washington area transit system in favor of dirtier diesel buses. A handful of diesel-hybrid buses have been purchased for both the Metro fleet and the Baltimore area MTA. In April 2006 Governor Ehrlich announced the state will add ten new hybrid buses to its fleet, with federal funding contributing 80 percent of the costs. If the pilot program works, the state hopes to add 300 hybrid buses over the next six years.

Overhaul of Bus Routes in Baltimore - INCOMPLETE

Taking on a huge challenge, the Ehrlich Administration began an effort to overhaul bus routes in Baltimore for the first time. Although credited for taking on a long-overdue project, many of the changes turned out to be controversial and difficult on long-time riders. The Administration had to back off parts of the plan, saying it would implement the overhaul in phases.

Transportation Planning Panels - NEEDS IMPROVEMENT

The legislature passed bills in 2005 and 2006 that would have established, respectively, a commission to study Southern Maryland Transportation needs and a commission to study the Red Line corridor in Baltimore. The Governor vetoed both. In the case of the Red Line corridor study, Ehrlich created his own panel by executive order.

Land Preservation & Open Space

Grade D+

Maryland is facing serious land use pressures, as the State's population grows and permanent protection of sensitive land is becomes increasingly important. Program Open Space is the state's premier land conservation program, and over the past decade its funding has been repeatedly raided — never more so than under Governor Ehrlich's Administration. This election year, however, the Governor kept full funding for Program Open Space. He also now supports a ballot amendment that would prevent state conservation lands from being sold off without proper review.

Program Open Space – NEEDS IMPROVEMENT

In 1969, in an effort to help land conservation keep pace with development, the legislature passed the Program Open Space law that established the real estate transfer tax as the dedicated funding source for Program Open Space and other land conservation programs. For his first three years in office, Governor Ehrlich's budget diverted this dedicated land conservation funding to unrelated purposes. In 2005 the Governor's budget cut funding for Program Open Space by nearly 75 percent. After a great deal of pressure from the public and a strong campaign by a coalition of environmental organizations, land trusts, recreation and parks associations, and businesses, the Governor's budget fully funded the program.

Open Space Amendment – NEEDS IMPROVEMENT

In 2004, the Ehrlich Administration proposed to sell 836 acres of Southern Maryland conservation lands to a politically connected private developer below market price without a guarantee of preservation. As a result, in the 2005 session, the General Assembly passed a Constitutional Amendment that would require General Assembly approval to sell any state lands purchased with conservation funds. Originally, Governor Ehrlich said the legislation was not necessary and he was not in favor of legislation to "diminish gubernatorial power or the power of the Board of Public Works." In the face of strong public opinion, the Administration eventually reversed course and came out in favor of the amendment, it will be on the ballot in November 2006.

Funding for Allegheny Trail - SATISFACTORY

In August 2005 Governor Ehrlich announced his support for the Allegheny Highlands Trail and committed the state funds necessary to complete the final phase. This trail is part of a seven trail, 130-mile biking and hiking network known as the Great Allegheny Passage that will contiguously link Pittsburgh, Pennsylvania to Cumberland, Maryland. The Great Allegheny Passage will be the longest multi-purpose trail in the eastern United States.

Administration Approval of Unicorn Lake Landfill – MIXED

In the 2006 legislative session, a bi-partisan majority passed an emergency bill (SB 51) to prevent the construction of an environmentally destructive landfill near Unicorn Lake in Queen Anne's County. Studies showed the creation of the landfill would release metals at 500 times the level considered to be safe. Local and state elected officials, along with area residents, strongly opposed the rubble landfill. The Maryland Department of the Environment (MDE) opposed the bill and actively worked to defeat it. MDE even issued a letter to Governor Ehrlich requesting that SB 51 be vetoed and refused to release the letter for public view. On May 2, 2006, Governor Ehrlich signed SB 51, which will protect Unicorn Lake for at least three years.

Administration & Appointments

The administration of state agencies and appointments within the agencies remains a weak point for the Ehrlich Administration. In particular, extraordinary failures to enforce air pollution and water pollution laws that have been exposed could be attributed to failures in leadership.

Grade F

Non-Enforcement of Clean Air Laws – FAILING

In May 2006 an investigation revealed that despite increased air pollution and thousands of recorded violations by Maryland's seven dirtiest coal-fired power plants, MDE has issued only one fine in over three years. In addition, despite a federal law requiring that new permits be written by 1999 for the two worst violators (Chalk Point and Dickerson), MDE has yet to write any new permits. These two power plants are among the country's worst polluters.

Non-Enforcement of Water Pollution Laws – FAILING

In August 2005, a local television news reporter discovered that New Earth Services, a composting plan in Dorchester County on the Eastern shore, had retention ponds leaking pollution in extreme levels straight into the Bay. Records show that the Maryland Department of the Environment had known about the pollution for years, but did nothing to stop it until after the investigation began. After this time MDE leveraged a $50,000 fine to New Earth and ordered it to close its operation. Earlier the federal EPA had stepped in and said that New Earth had been violating Clean Water rules for years.

Conflict of Interest on Menhaden Panel – FAILING

A month before an important vote to limit menhaden fishing along the Atlantic, Ehrlich-appointed DNR deputy associate secretary Pete Jensen was forced to resign due to his paid consulting for Cambridge-based Wallace and Associates, which has ties to Omega Proteins, a Virginia company criticized for its over-fishing of menhaden.

DNR Sued under Public Information Act – FAILING

After several years of struggling, a Maryland conservation group was forced to file a lawsuit in Montgomery County Circuit Court to gain access to DNR's electronic files concerning timber sales in Maryland's state forests.

Ehrlich Appoints Harkins to Maryland Environmental Service - NEEDS IMPROVEMENT

Governor Ehrlich appointed former Harford County Executive and former State Senator James Harkins to head the Maryland Environmental Service, a quasi-governmental body responsible for managing state environmental projects. While a member of the Maryland General Assembly, Harkins had a lifetime environmental score of 27 percent from Maryland LCV.

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Special Thanks

Special thanks are due to all of the committed environmental leaders who provided their valuable input on this scorecard.

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The Maryland League of Conservation Voters is governed by a volunteer board of directors consisting of conservation leaders, leading citizens, and former elected officials. Board members serve strictly as individuals and not as official representatives of any organization.

MARYLAND LEAGUE OF CONSERVATION VOTERS

For more than 25 years, the non-partisan Maryland League of Conservation Voters has served as the political voice for the environment. We advocate for sound conservation policies, promote environmentally responsible candidates, and hold individual elected officials accountable through our scorecards and reports. Join us today at www.mdlcv.org.

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