

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S.** \_\_\_\_\_

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program.

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IN THE SENATE OF THE UNITED STATES

Mr. CARDIN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Chesapeake Clean  
5 Water and Ecosystem Restoration Act of 2009”.

6 **SEC. 2. FINDINGS.**

7        Congress finds that—

8            (1) the Chesapeake Bay and the tributary  
9 waters of the Chesapeake Bay are natural resources

1 of outstanding ecological, economic, and cultural im-  
2 portance to the United States;

3 (2) for more than 20 years, the Federal Gov-  
4 ernment and the States of the Chesapeake Bay Wa-  
5 tershed, the Chesapeake Bay Commission, and var-  
6 ious local government, scientific, and citizen advisory  
7 boards have worked through the Chesapeake Bay  
8 Program of the Environmental Protection Agency to  
9 develop an unparalleled body of scientific informa-  
10 tion and cooperative partnerships to advance the  
11 Chesapeake Bay restoration effort;

12 (3) despite significant efforts by Federal, State,  
13 and local governments and other interested parties,  
14 water pollution in the Chesapeake Bay prevents the  
15 attainment of existing State water quality standards  
16 and the ecological goals of the Federal Water Pollu-  
17 tion Control Act (33 U.S.C. 1251 et seq.);

18 (4) the Chesapeake Bay Program partnership  
19 has developed a rich body of environmental data  
20 based on an extensive network of monitors, which  
21 provide a critical measure of success in attainment  
22 of the goals of the restoration effort;

23 (5) the Chesapeake Bay Program partnership  
24 has also developed some of the world's foremost

1 water quality and ecosystem computer models, which  
2 are invaluable planning tools for resource managers;

3 (6) the major pollutants affecting the water  
4 quality of the Chesapeake Bay and related tidal  
5 waters are nitrogen, phosphorus, and sediment;

6 (7) the largest developed land use in the Chesa-  
7 peake Bay watershed, and the largest single-sector  
8 source of nitrogen, phosphorus, and sediment pollu-  
9 tion, is agriculture;

10 (8) conservation practices have resulted in sig-  
11 nificant reductions in pollution loads from the agri-  
12 cultural sector;

13 (9) to speed continued progress in the agricul-  
14 tural sector, the Federal Government and State gov-  
15 ernments have initiated a number of agricultural  
16 conservation programs, including the Chesapeake  
17 Bay watershed initiative under section 1240Q of the  
18 Food Security Act of 1985 (16 U.S.C. 3839bb-4);

19 (10) atmospheric deposition of nitrogen oxides  
20 and ammonia on the Chesapeake Bay watershed  
21 contributes as much as  $\frac{1}{3}$  of the nitrogen pollution  
22 in the Chesapeake Bay;

23 (11) for years, a steady stream of technology  
24 development and increasingly stringent permit re-  
25 quirements have resulted in a steady decline in the

1 nitrogen and phosphorus pollution derived from  
2 wastewater treatment plants in the Chesapeake Bay  
3 watershed;

4 (12) suburban and urban development is the  
5 fastest growing land use sector in the Chesapeake  
6 Bay watershed, and stormwater runoff from that  
7 sector is the only major source of pollution in the  
8 watershed that is increasing;

9 (13) during the period beginning in 1990 and  
10 ending in 2000, impervious cover, the hardened sur-  
11 faces through which water cannot penetrate, in-  
12 creased by nearly 250,000 acres, about 41 percent,  
13 or the size of 5 Districts of Columbia;

14 (14) during that period, the watershed popu-  
15 lation of the Chesapeake Bay grew by just 8 per-  
16 cent;

17 (15) the population of the watershed is esti-  
18 mated to be growing by about 157,000 people per  
19 year;

20 (16) continuing at that rate, the population will  
21 increase to nearly 20,000,000 by 2030;

22 (17) about 58 percent of the watershed of the  
23 Chesapeake Bay is undeveloped and mostly forested,  
24 but as many as 100 hundred acres of forest are lost  
25 to development each day;

1           (18) States, local governments, developers, and  
2           nonprofit organizations have developed numerous  
3           low-impact development techniques since the late  
4           1990s, which use natural area protection, infiltra-  
5           tion, and pervious surfaces to reduce stormwater  
6           runoff and associated sediment and nutrient pollu-  
7           tion;

8           (19) many of those techniques are less expen-  
9           sive than traditional pollution stormwater control  
10          management techniques;

11          (20) the decline of key aquatic habitats and  
12          species has resulted in a loss of the important water  
13          quality benefits that the habitats and species tradi-  
14          tionally provided;

15          (21) native oysters, the numbers of which have  
16          declined precipitously in the Chesapeake Bay in sig-  
17          nificant part because of diseases brought into the  
18          watershed by nonnative oysters, are natural filters  
19          that once effectively filtered a volume of water equiv-  
20          alent to that of the entire Chesapeake Bay in a mat-  
21          ter of days;

22          (22) although less well-understood, menhaden,  
23          a species of fish found in the Chesapeake Bay, also  
24          provide important filtering capacity as well as a  
25          number of other key ecosystem functions;

1           (23) wetlands are a vital part of any major eco-  
2           system;

3           (24) studies have demonstrated that nontidal  
4           wetland near the Chesapeake Bay removed as much  
5           as 89 percent of the nitrogen and 80 percent of the  
6           phosphorus that entered the wetland through upland  
7           runoff, groundwater, and precipitation;

8           (25) riparian forests remove as much as 90 per-  
9           cent of nitrogen and phosphorus that would other-  
10          wise enter the water;

11          (26) the loss of forests and wetlands in the  
12          Chesapeake Bay has resulted in diminished water  
13          quality, among other effects;

14          (27) in certain locations in the Chesapeake  
15          Bay, nutria, a nonnative species, has caused exten-  
16          sive destruction of key wetlands; and

17          (28) in spite of the achievements of the Chesa-  
18          peake Bay Program partnership and increasing  
19          knowledge about ecosystem functions, the restora-  
20          tion of the Chesapeake Bay will require significantly  
21          stronger tools to manage pollution levels and other  
22          impediments to water quality.

23 **SEC. 3. CHESAPEAKE BAY PROGRAM.**

24          Section 117 of the Federal Water Pollution Control  
25          Act (33 U.S.C. 1267) is amended to read as follows:

1 **“SEC. 117. CHESAPEAKE BAY PROGRAM.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADMINISTRATIVE COST.—The term ‘ad-  
4 ministrative cost’ means the cost of salaries and  
5 fringe benefits incurred in administering a grant  
6 under this section.

7 “(2) ASIAN OYSTER.—The term ‘Asian oyster’  
8 means the species *Crassostrea ariakensis*.

9 “(3) BASELINE.—The term ‘baseline’ means  
10 the basic standard or level used for measuring (as  
11 applicable)—

12 “(A) the nutrient control requirements  
13 credit sellers must achieve before becoming eli-  
14 gible to generate saleable nutrient credits; or

15 “(B) the nutrient load reductions required  
16 of individual sources to meet water quality  
17 standards or goals under a TMDL or watershed  
18 implementation plan.

19 “(4) BASIN COMMISSIONS.—The term ‘basin  
20 commissions’ means—

21 “(A) the Interstate Commission on the Po-  
22 tomac River Basin established under the inter-  
23 state compact consented to and approved by  
24 Congress under the Joint Resolution of July  
25 11, 1940 (54 Stat. 748, chapter 579) and Pub-  
26 lic Law 91–407 (84 Stat. 856); and

1           “(B) the Susquehanna River Basin Com-  
2           mission established under the interstate com-  
3           pact consented to and approved by Congress  
4           under Public Law 91–575 (84 Stat. 1509) and  
5           Public Law 99–468 (100 Stat. 1193).

6           “(5) CHESAPEAKE BAY AGREEMENT.—The  
7           term ‘Chesapeake Bay Agreement’ means the for-  
8           mal, voluntary agreements executed to achieve the  
9           goal of restoring and protecting the Chesapeake Bay  
10          ecosystem and the living resources of the Chesa-  
11          peake Bay ecosystem and signed by the Chesapeake  
12          Executive Council.

13          “(6) CHESAPEAKE BAY ECOSYSTEM.—The term  
14          ‘Chesapeake Bay ecosystem’ means the ecosystem of  
15          the Chesapeake Bay watershed.

16          “(7) CHESAPEAKE BAY PROGRAM.—The term  
17          ‘Chesapeake Bay Program’ means the program di-  
18          rected by the Chesapeake Executive Council in ac-  
19          cordance with the Chesapeake Bay Agreement.

20          “(8) CHESAPEAKE BAY STATE.—The term  
21          ‘Chesapeake Bay State’ means any of—

22                  “(A) the States of Delaware, Maryland,  
23                  New York, Pennsylvania, Virginia, and West  
24                  Virginia; or

25                  “(B) the District of Columbia.



1           “(9) CHESAPEAKE BAY WATERSHED.—The  
2 term ‘Chesapeake Bay watershed’ means the Chesa-  
3 peake Bay and the area consisting of 19 tributary  
4 basins within the Chesapeake Bay States through  
5 which precipitation drains into the Chesapeake Bay.

6           “(10) CHESAPEAKE EXECUTIVE COUNCIL.—The  
7 term ‘Chesapeake Executive Council’ means the sig-  
8 natories to the Chesapeake Bay Agreement.

9           “(11) CLEANING AGENT.—The term ‘cleaning  
10 agent’ means a laundry detergent, dishwashing com-  
11 pound, household cleaner, metal cleaner, degreasing  
12 compound, commercial cleaner, industrial cleaner,  
13 phosphate compound, or other substance that is in-  
14 tended to be used for cleaning purposes.

15           “(12) DIRECTOR.—The term ‘director’ means  
16 the Director of the Chesapeake Bay Program Office  
17 of the Environmental Protection Agency.

18           “(13) LOCAL GOVERNMENT.—The term ‘local  
19 government’ means any county, city, or other gen-  
20 eral purpose political subdivision of a State with ju-  
21 risdiction over land use.

22           “(14) MENHADEN.—The term ‘menhaden’  
23 means members of stocks or populations of the spe-  
24 cies *Brevoortia tyrannus*.

1           “(15) NUTRIA.—The term ‘nutria’ means the  
2 species *Myocaster coypus*.

3           “(16) POINT-OF-REGULATION.—The term  
4 ‘point-of-regulation’ means any entity that—

5                 “(A) is subject to a limitation on pollution  
6 or other regulation under this Act; and

7                 “(B) has sufficient technical capacity and  
8 legal authority to meet the obligations of the  
9 entity under this Act.

10           “(17) SIGNATORY JURISDICTION.—The term  
11 ‘signatory jurisdiction’ means a jurisdiction of a sig-  
12 natory to the Chesapeake Bay Agreement.

13           “(18) TMDL.—

14                 “(A) IN GENERAL.—The term ‘TMDL’  
15 means the total maximum daily load that the  
16 Administrator establishes or approves for nitro-  
17 gen, phosphorus, and sediment loading to the  
18 waters in the Chesapeake Bay mainstem and  
19 tidal tributaries identified on the list of a  
20 Chesapeake Bay State under section 303(d).

21                 “(B) INCLUSIONS.—The term ‘TMDL’  
22 may include nitrogen, phosphorus, and sedi-  
23 ment allocations in temporal units of greater  
24 than daily duration if applicable allocations—

1                   “(i) are demonstrated to achieve  
2                   water quality standards; and

3                   “(ii) do not lead to exceedances of  
4                   other applicable water quality standards  
5                   for local receiving waters.

6                   “(19) TRIBUTARY BASIN.—The term ‘tributary  
7                   basin’ means an area of land or body of water  
8                   that—

9                   “(A) drains into any of the 19 Chesapeake  
10                   Bay tributaries or tributary segments; and

11                   “(B) is managed through watershed imple-  
12                   mentation plans under this Act.

13                   “(b) CONTINUATION OF CHESAPEAKE BAY PRO-  
14                   GRAM.—

15                   “(1) IN GENERAL.—In cooperation with the  
16                   Chesapeake Executive Council (and as a member of  
17                   the Council), the Administrator shall continue the  
18                   Chesapeake Bay Program.

19                   “(2) PROGRAM OFFICE.—

20                   “(A) IN GENERAL.—The Administrator  
21                   shall maintain in the Environmental Protection  
22                   Agency a Chesapeake Bay Program Office.

23                   “(B) FUNCTION.—The Chesapeake Bay  
24                   Program Office shall provide support to the  
25                   Chesapeake Executive Council by—

1           “(i) implementing and coordinating  
2 science, research, modeling, support serv-  
3 ices, monitoring, data collection, and other  
4 activities that support the Chesapeake Bay  
5 Program;

6           “(ii) developing and making available,  
7 through publications, technical assistance,  
8 and other appropriate means, information  
9 pertaining to the environmental quality  
10 and living resources of the Chesapeake  
11 Bay ecosystem;

12           “(iii) in cooperation with appropriate  
13 Federal, State, and local authorities, as-  
14 sisting the signatories to the Chesapeake  
15 Bay Agreement in developing and imple-  
16 menting specific action plans to carry out  
17 the responsibilities of the signatories to the  
18 Chesapeake Bay Agreement;

19           “(iv) coordinating the actions of the  
20 Environmental Protection Agency with the  
21 actions of the appropriate officials of other  
22 Federal agencies and State and local au-  
23 thorities in developing strategies to—

1                   “(I) improve the water quality  
2                   and living resources in the Chesapeake Bay ecosystem; and

3  
4                   “(II) obtain the support of the  
5                   appropriate officials of the agencies  
6                   and authorities in achieving the objectives of the Chesapeake Bay Agreement; and

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8  
9                   “(v) implementing outreach programs  
10                  for public information, education, and participation to foster stewardship of the resources of the Chesapeake Bay.

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12  
13                  “(c) INTERAGENCY AGREEMENTS.—The Administrator may enter into an interagency agreement with a  
14                  Federal agency to carry out this section.

15  
16                  “(d) TECHNICAL ASSISTANCE AND ASSISTANCE  
17                  GRANTS.—

18                  “(1) IN GENERAL.—In cooperation with the  
19                  Chesapeake Executive Council, the Administrator may provide technical assistance, and assistance  
20                  grants, to nonprofit organizations, State and local  
21                  governments, colleges, universities, and interstate  
22                  agencies to carry out this section, subject to such  
23                  terms and conditions as the Administrator considers  
24                  appropriate.  
25

1 “(2) FEDERAL SHARE.—

2 “(A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the Federal share of an as-  
4 sistance grant provided under paragraph (1)  
5 shall be determined by the Administrator in ac-  
6 cordance with guidance issued by the Adminis-  
7 trator.

8 “(B) CHESAPEAKE BAY STEWARDSHIP  
9 GRANTS PROGRAM.—The Federal share of an  
10 assistance grant provided under paragraph (1)  
11 to carry out an implementing activity under  
12 subsection (h)(2) shall not exceed 75 percent of  
13 eligible project costs, as determined by the Ad-  
14 ministrator.

15 “(3) NON-FEDERAL SHARE.—An assistance  
16 grant under paragraph (1) shall be provided on the  
17 condition that non-Federal sources provide the re-  
18 mainder of eligible project costs, as determined by  
19 the Administrator.

20 “(4) ADMINISTRATIVE COSTS.—Administrative  
21 costs shall not exceed 10 percent of the annual grant  
22 award.

23 “(e) IMPLEMENTATION AND MONITORING  
24 GRANTS.—

1           “(1) IN GENERAL.—On the request of the chief  
2 executive of the Chesapeake Bay State, the Adminis-  
3 trator—

4           “(A) shall make an implementation grant  
5 to the Chesapeake Bay State, or a designee of  
6 a Chesapeake Bay State (such as a soil con-  
7 servation district, nonprofit organization, local  
8 government, college, university, interstate basin  
9 commission, or interstate agency), for the pur-  
10 pose of implementing the TMDL plans of the  
11 Chesapeake Bay State and achieving the goals  
12 established under the Chesapeake Bay Agree-  
13 ment, subject to such terms and conditions as  
14 the Administrator considers to be appropriate;  
15 and

16           “(B) may make a monitoring grant to—

17           “(i) a Chesapeake Bay State, or a  
18 designee of a Chesapeake Bay State (such  
19 as a soil conservation district, nonprofit or-  
20 ganization, local government, college, uni-  
21 versity, interstate basin commission, or  
22 interstate agency), for the purpose of mon-  
23 itoring the ecosystem of freshwater tribu-  
24 taries to the Chesapeake Bay; or

1                   “(ii) the States of Delaware, Mary-  
2                   land, or Virginia, the District of Columbia,  
3                   or a designee (such as a nonprofit organi-  
4                   zation, local government, college, univer-  
5                   sity, or interstate agency) for the purpose  
6                   of monitoring the Chesapeake Bay, includ-  
7                   ing the tidal waters of the Chesapeake  
8                   Bay.

9                   “(2) ADMINISTRATION.—In making implemen-  
10                  tation grants to each of the Chesapeake Bay States  
11                  for a fiscal year under this subsection, the Adminis-  
12                  trator shall ensure that not less than—

13                   “(A) 10 percent of the funds available to  
14                   make such grants are made to the States of  
15                   Delaware, New York, and West Virginia; and

16                   “(B) 20 percent of the funds available to  
17                   make such grants are made to States for the  
18                   sole purpose of providing technical assistance to  
19                   agricultural producers and foresters to access  
20                   conservation programs and other resources de-  
21                   voted to improvements in water quality in the  
22                   Chesapeake Bay and the tributaries of the  
23                   Chesapeake Bay.

24                  “(3) PROPOSALS.—

25                   “(A) IMPLEMENTATION GRANTS.—



1           “(i) IN GENERAL.—A Chesapeake  
2 Bay State described in paragraph (1) may  
3 apply for a grant under this subsection for  
4 a fiscal year by submitting to the Adminis-  
5 trator a comprehensive proposal to imple-  
6 ment programs and achieve the goals es-  
7 tablished under the Chesapeake Bay  
8 Agreement.

9           “(ii) IMPLEMENTATION GRANT CON-  
10 TENTS.—A proposal under clause (i) shall  
11 include—

12                   “(I) a description of proposed ac-  
13 tions that the Chesapeake Bay State  
14 commits to take within a specified  
15 time period that are designed—

16                           “(aa) to achieve and main-  
17 tain all applicable water quality  
18 standards, including standards  
19 necessary to support the aquatic  
20 living resources of the Chesa-  
21 peake Bay and related tributaries  
22 and to protect human health;

23                           “(bb) to restore, enhance,  
24 and protect the finfish, shellfish,  
25 waterfowl, and other living re-

1 sources, habitats of those species  
2 and resources, and ecological re-  
3 lationships to sustain all fisheries  
4 and provide for a balanced eco-  
5 system;

6 “(cc) to preserve, protect,  
7 and restore those habitats and  
8 natural areas that are vital to the  
9 survival and diversity of the liv-  
10 ing resources of the Chesapeake  
11 Bay and associated rivers;

12 “(dd) to develop, promote,  
13 and achieve sound land use prac-  
14 tices that protect and restore wa-  
15 tershed resources and water qual-  
16 ity, reduce or maintain reduced  
17 pollutant loadings for the Chesa-  
18 peake Bay and related tribu-  
19 taries, and restore and preserve  
20 aquatic living resources;

21 “(ee) to promote individual  
22 stewardship and assist individ-  
23 uals, community-based organiza-  
24 tions, businesses, local govern-  
25 ments, and schools to undertake

1 initiatives to achieve the goals  
2 and commitments of the Chesapeake Bay Agreement; or

3  
4 “(ff) to provide technical assistance to agricultural producers, foresters, and other eligible entities, through technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses;

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16 “(II) a commitment to dedicate  
17 not less than 20 percent of the grant  
18 of the Chesapeake Bay under this  
19 subsection to support technical assistance for agricultural and forestry land  
20 or nutrient management practices  
21 that protect and restore watershed resources and water quality, reduce or  
22 maintain reduced pollutant loadings  
23 for the Chesapeake Bay and related  
24  
25

1 tributaries, and restore and preserve  
2 aquatic living resources; and

3 “(III) the estimated cost of the  
4 actions proposed to be taken during  
5 the fiscal year.

6 “(B) MONITORING GRANTS.—

7 “(i) IN GENERAL.—A Chesapeake  
8 Bay State described in paragraph (1) may  
9 apply for a grant under this subsection for  
10 a fiscal year by submitting to the Adminis-  
11 trator a comprehensive proposal to monitor  
12 freshwater or estuarine ecosystems, includ-  
13 ing water quality.

14 “(ii) MONITORING GRANT CON-  
15 TENTS.—A proposal under this subpara-  
16 graph shall include—

17 “(I) a description of the proposed  
18 monitoring system;

19 “(II) certification by the Chesa-  
20 peake Bay Program Director that  
21 such a monitoring system includes  
22 such parameters as the Chesapeake  
23 Bay Program Director determines to  
24 be necessary to assess progress to-  
25 ward achieving the goals of the Chesa-

1                   peake Clean Water and Ecosystem  
2                   Restoration Act of 2009; and

3                   “(III) the estimated cost of the  
4                   monitoring proposed to be conducted  
5                   during the fiscal year.

6                   “(iii) CONCURRENCES.—The Adminis-  
7                   trator shall—

8                   “(I) obtain the concurrence of  
9                   the Director of the United States Geo-  
10                  logical Survey regarding the design  
11                  and implementation of the freshwater  
12                  monitoring systems established under  
13                  this subsection; and

14                  “(II) obtain the concurrence of  
15                  the Director of the Chesapeake Bay  
16                  Office of the National Oceanic and  
17                  Atmospheric Administration regarding  
18                  the design and implementation of the  
19                  estuarine monitoring systems estab-  
20                  lished under this subsection.

21                  “(iv) CONSULTATION.—The Adminis-  
22                  trator shall—

23                  “(I) consult with the Interstate  
24                  Commission on the Potomac River  
25                  Basin, the Susquehanna River Basin

1 Commission, and the Chesapeake Bay  
2 States regarding the design and im-  
3 plementation of the freshwater moni-  
4 toring systems established under this  
5 subsection, giving particular attention  
6 to the measurement of the water qual-  
7 ity effectiveness of agricultural con-  
8 servation program implementation (in-  
9 cluding geospatial agricultural con-  
10 servation program data), including the  
11 Chesapeake Bay Watershed Initiative  
12 under section 1240Q of the Food Se-  
13 curity Act of 1985 (16 U.S.C.  
14 3839bb-4);

15 “(II) consult with Old Dominion  
16 University, the Virginia Institute of  
17 Marine Science, the University of  
18 Maryland Center for Environmental  
19 Science, and the Chesapeake Bay  
20 States regarding the estuarine moni-  
21 toring systems established under this  
22 subsection;

23 “(III) consult with the Chesa-  
24 peake Bay Program Scientific and  
25 Technical Advisory Committee regard-

1                   ing independent review of monitoring  
2                   designs giving particular attention to  
3                   integrated freshwater and estuarine  
4                   monitoring strategies; and

5                   “(IV) consult with Federal de-  
6                   partments and agencies regarding co-  
7                   operation in implementing monitoring  
8                   programs.

9                   “(f) FEDERAL FACILITIES COORDINATION.—

10                   “(1) SUBWATERSHED PLANNING AND RESTORA-  
11                   TION.—A Federal agency that owns or operates a  
12                   facility (as defined by the Administrator) within the  
13                   Chesapeake Bay watershed shall participate in re-  
14                   gional and subwatershed planning and restoration  
15                   programs.

16                   “(2) COMPLIANCE WITH AGREEMENTS AND  
17                   PLANS.—The head of each Federal agency that owns  
18                   or occupies real property in the Chesapeake Bay wa-  
19                   tershed shall ensure that the property, and actions  
20                   taken by the agency with respect to the property,  
21                   comply with—

22                   “(A) the Chesapeake Bay Agreement;

23                   “(B) the Federal Agencies Chesapeake  
24                   Ecosystem Unified Plan;

1           “(C) the Chesapeake Bay action plan de-  
2           veloped in accordance with subparagraph  
3           (g)(1)(A); and

4           “(D) any subsequent agreements and  
5           plans.

6           “(g) FEDERAL ANNUAL ACTION PLAN AND  
7           PROGRESS REPORT.—The Administrator, in accordance  
8           with Executive Order 13508 entitled ‘Chesapeake Bay  
9           Protection and Restoration’ and signed on May 12, 2009  
10          (74 Fed. Reg. 23099), shall—

11           “(1) make available to the public, not later than  
12          March 31 of each year—

13           “(A) a Chesapeake Bay action plan de-  
14           scribing, in the greatest practicable degree of  
15           detail, how Federal funding proposed in the an-  
16           nual budget of the United States submitted by  
17           the President to Congress will be used to pro-  
18           tect and restore the Chesapeake Bay during the  
19           upcoming fiscal year; and

20           “(B) an annual progress report that—

21           “(i) assesses the key ecological at-  
22           tributes that reflect the health of the  
23           Chesapeake Bay ecosystem;

24           “(ii) reviews indicators of environ-  
25           mental conditions in the Chesapeake Bay;



1                   “(iii) distinguishes between the health  
2                   of the Chesapeake Bay ecosystem and the  
3                   results of management measures;

4                   “(iv) assesses implementation of the  
5                   action plan during the preceding fiscal  
6                   year;

7                   “(v) recommends steps to improve  
8                   progress in restoring and protecting the  
9                   Chesapeake Bay; and

10                  “(vi) describes how Federal funding  
11                  and actions will be coordinated with the  
12                  actions of States, basin commissions, and  
13                  others;

14                  “(2) create and maintain, with the concurrence  
15                  of the Secretary of Agriculture, a Chesapeake Bay-  
16                  wide database containing comprehensive data on im-  
17                  plementation of conservation management practices  
18                  in the Chesapeake Bay watershed that —

19                         “(A) includes baseline conservation man-  
20                         agement practice implementation data as of the  
21                         effective date of the Chesapeake Clean Water  
22                         and Ecosystem Restoration Act of 2009;

23                         “(B) includes data on subsequent con-  
24                         servation management practice implementation

1 projects funded by or reported to the Agency or  
2 the Department;

3 “(C) presents the required data in statis-  
4 tical or aggregate form without identifying  
5 any—

6 “(i) individual owner, operator, or  
7 producer; or

8 “(ii) specific data gathering site; and

9 “(D) is made available to the public not  
10 later than December 31, 2010.

11 “(h) CHESAPEAKE BAY PROGRAM.—

12 “(1) MANAGEMENT STRATEGIES.—The Admin-  
13 istrator, in coordination with other members of the  
14 Chesapeake Executive Council, shall ensure that  
15 management plans are developed and implemented  
16 by Chesapeake Bay States to achieve and main-  
17 tain—

18 “(A) the nutrient goals of the Chesapeake  
19 Bay Agreement for the quantity of nitrogen and  
20 phosphorus entering the Chesapeake Bay and  
21 the watershed of the Chesapeake Bay;

22 “(B) the water quality requirements nec-  
23 essary to restore living resources in the Chesa-  
24 peake Bay ecosystem;

1           “(C) the Chesapeake Bay Basinwide Tox-  
2           ins Reduction and Prevention Strategy goal of  
3           reducing or eliminating the input of chemical  
4           contaminants from all controllable sources to  
5           levels that result in no toxic or bioaccumulative  
6           impact on the living resources of the Chesa-  
7           peake Bay ecosystem or on human health;

8           “(D) habitat restoration, protection, cre-  
9           ation, and enhancement goals established by  
10          Chesapeake Bay Agreement signatories for wet-  
11          land, riparian forests, and other types of habi-  
12          tat associated with the Chesapeake Bay eco-  
13          system; and

14          “(E) the restoration, protection, creation,  
15          and enhancement goals established by the  
16          Chesapeake Bay Agreement signatories for liv-  
17          ing resources associated with the Chesapeake  
18          Bay ecosystem.

19          “(2) CHESAPEAKE BAY STEWARDSHIP GRANTS  
20          PROGRAM.—The Administrator, in cooperation with  
21          the Chesapeake Executive Council, shall—

22                 “(A) establish a Chesapeake Bay Steward-  
23                 ship Grants Program; and

24                 “(B) in carrying out that program—

1                   “(i) offer technical assistance and as-  
2                   sistance grants under subsection (d) to  
3                   local governments, soil conservation dis-  
4                   tricts, academic institutions, and nonprofit  
5                   organizations in the Chesapeake Bay re-  
6                   gion to implement—

7                   “(I) cooperative watershed strate-  
8                   gies that address the water quality,  
9                   habitat, and living resource needs in  
10                  the Chesapeake Bay ecosystem;

11                  “(II) locally based protection and  
12                  restoration programs or projects with-  
13                  in a watershed that complement the  
14                  State watershed implementation  
15                  plans, including the creation, restora-  
16                  tion, or enhancement of habitat asso-  
17                  ciated with the Chesapeake Bay eco-  
18                  system; and

19                  “(III) innovative nitrogen, phos-  
20                  phorus, or sediment reduction efforts;  
21                  and

22                  “(ii) give preference to cooperative  
23                  projects that involve local governments.

24                  “(i) TOTAL MAXIMUM DAILY LOAD.—

25                  “(1) TMDL.—

1           “(A) ESTABLISHMENT.—Not later than  
2           December 31, 2010, the Administrator shall es-  
3           tablish a Chesapeake Bay-wide TMDL.

4           “(B) REQUIREMENTS.—The Administrator  
5           shall not establish or approve a TMDL de-  
6           scribed in subparagraph (A) unless the TMDL  
7           includes—

8                   “(i) wasteload allocations for nitrogen,  
9                   phosphorus, and sediment necessary to im-  
10                  plement the applicable water quality stand-  
11                  ards in the Chesapeake Bay watershed and  
12                  achieve those standards in the Chesapeake  
13                  Bay and the tidal tributaries of the Chesa-  
14                  peake Bay;

15                  “(ii) enforceable or otherwise binding  
16                  load allocations for all nonpoint sources,  
17                  including atmospheric deposition, agricul-  
18                  tural runoff, and stormwater sources for  
19                  which a permit under section 402 is not  
20                  required;

21                  “(iii) a margin of safety so as to en-  
22                  sure that the TMDL does not exceed any  
23                  applicable water quality standard; and

24                  “(iv) a requirement for no net in-  
25                  crease of nitrogen, phosphorus, and sedi-

1                   ment loads above the pollution limitations  
2                   necessary to meet water quality standards  
3                   for the Chesapeake Bay, including no net  
4                   projected increased pollutant loads from—

5                               “(I) new or increased impervious  
6                               surfaces;

7                               “(II) concentrated animal feeding  
8                               operations;

9                               “(III) transportation systems;  
10                              and

11                              “(IV) septic systems.

12                   “(2) PERMITS.—

13                               “(A) IN GENERAL.—Effective beginning on  
14                   January 1, 2011, a new or reissued permit  
15                   issued by the Administrator under section  
16                   402(a) or a State authorized to administer a  
17                   permit program under section 402(b) shall in-  
18                   clude limits consistent with all applicable  
19                   wasteload allocations in the Chesapeake Bay  
20                   TMDL.

21                               “(B) PERMITS.—

22                               “(i) IN GENERAL.—Effective begin-  
23                   ning on January 1, 2011, each Chesapeake  
24                   Bay State shall submit to the Adminis-  
25                   trator copies of any permit for discharges

1 of nitrogen, phosphorus, or sediment into  
2 the Chesapeake Bay watershed that is al-  
3 lowed to continue beyond 5 years pursuant  
4 to a State law analogous to section 558(c)  
5 of title 5, United States Code, not later  
6 than 60 days after the expiration date of  
7 the permit.

8 “(ii) REVIEW.—The Administrator  
9 shall have the opportunity to review and  
10 object to the continuance of the permit in  
11 accordance with the process described in  
12 section 402(d) for permits proposed to be  
13 issued by a State.

14 “(j) ACTIONS BY STATES.—

15 “(1) WATERSHED IMPLEMENTATION PLANS.—

16 “(A) PLANS.—

17 “(i) IN GENERAL.—Not later than  
18 May 12, 2011, each Chesapeake Bay State  
19 shall, after providing for reasonable notice  
20 and 1 or more public hearings, adopt and  
21 submit to the Administrator for approval a  
22 watershed implementation plan for the por-  
23 tion of each of the 92 tidal water segments  
24 that is subject to the jurisdiction of the

1 Chesapeake Bay State that together com-  
2 prise the Chesapeake Bay.

3 “(ii) TARGETS.—The watershed im-  
4 plementation plan shall establish reduction  
5 targets, key actions, and schedules for re-  
6 ducing, to levels that will attain water  
7 quality standards, the loads, of nitrogen,  
8 phosphorus, and sediment, including pollu-  
9 tion from—

10 “(I) agricultural runoff;

11 “(II) point sources, including  
12 point source stormwater discharges;

13 “(III) nonpoint source  
14 stormwater runoff; and

15 “(IV) septic systems and other  
16 onsite sewage disposal systems.

17 “(iii) POLLUTION LIMITATIONS.—

18 “(I) IN GENERAL.—The tribu-  
19 tary pollution limitations shall be the  
20 nitrogen, phosphorous, and sediment  
21 cap loads identified in the tributary  
22 cap load agreement numbered EPA  
23 903–R–03–007, date December 2003,  
24 and entitled ‘Setting and Allocating  
25 the Chesapeake Bay Basin Nutrient



1 and Sediment Loads: The Collaborative Process, Technical Tools and  
2 Innovative Approaches,’ or a Chesapeake Bay TMDL established by the  
3 Administrator.  
4  
5

6 “(II) STRINGENCY.—A watershed implementation plan shall be designed to attain, at a minimum, the  
7 pollution limitations described in sub-  
8 clause (I).  
9  
10

11 “(iv) PLAN REQUIREMENTS.—Each  
12 watershed implementation plan shall—

13 “(I) include State-adopted management measures, including rules or  
14 regulations, permits, consent decrees,  
15 and other enforceable or otherwise  
16 binding measures, to require and  
17 achieve reductions from pollution  
18 sources;  
19

20 “(II) include programs to achieve  
21 voluntary reductions from pollution  
22 sources, including funding commitments necessary to implement those  
23 programs;  
24

1                   “(III) include any additional re-  
2                   quirements or actions that the Chesa-  
3                   peake Bay State determines to be nec-  
4                   essary to attain the pollution limita-  
5                   tions by the deadline established in  
6                   this paragraph;

7                   “(IV) provide for enforcement  
8                   mechanisms, including a penalty  
9                   structure for failures, such as fees or  
10                  forfeiture of State funds, including  
11                  Federal funds distributed or otherwise  
12                  awarded by the State to the extent  
13                  the State is authorized to exercise  
14                  independent discretion in amounts of  
15                  such distributions or awards, for use  
16                  in case a permittee, local jurisdictions,  
17                  or any other party fails to adhere to  
18                  assigned pollutant limitations, imple-  
19                  mentation schedules, or permit terms;

20                  “(V) include a schedule for im-  
21                  plementation divided into 2-year peri-  
22                  ods, along with computer modeling to  
23                  demonstrate the projected reductions  
24                  in nitrogen, phosphorus, and sediment

1 loads associated with each 2-year pe-  
2 riod;

3 “(VI) include the stipulation of  
4 alternate actions as contingencies;

5 “(VII) account for how the  
6 Chesapeake Bay State will address  
7 additional loadings from growth  
8 through offsets or other actions; and

9 “(VIII) provide assurances  
10 that—

11 “(aa) if compared to an esti-  
12 mated 2008 baseline based on  
13 modeled loads, the initial plan  
14 shall be designed to achieve, not  
15 later than May 31, 2017, at least  
16 60 percent of the nutrient and  
17 sediment limitations described in  
18 clause (iii)(I);

19 “(bb) the management  
20 measures required to achieve a  
21 50-percent reduction of nutrient  
22 and sediment limitations shall be  
23 in effect upon submission of the  
24 plan;

1                   “(cc) the Chesapeake Bay  
2 State will have adequate per-  
3 sonnel, funding, and authority  
4 under State (and, as appropriate,  
5 local) law to carry out the imple-  
6 mentation plan, and is not pro-  
7 hibited by any provision of Fed-  
8 eral or State law from carrying  
9 out the implementation plan; and

10                   “(dd) in a case in which a  
11 Chesapeake Bay State has relied  
12 on a local government for the im-  
13 plementation of any plan provi-  
14 sion, the Chesapeake Bay State  
15 has the responsibility for ensur-  
16 ing adequate implementation of  
17 the provision.

18                   “(B) IMPLEMENTATION.—

19                   “(i) IN GENERAL.—In implementing a  
20 watershed implementation plan, each  
21 Chesapeake Bay State shall follow a strat-  
22 egy developed by the Administrator for the  
23 implementation of adaptive management  
24 principles to ensure full implementation of

1 all plan elements by not later than May  
2 12, 2025, including —

3 “(I) biennial evaluations of State  
4 actions;

5 “(II) progress made toward im-  
6 plementation;

7 “(III) determinations of nec-  
8 essary modifications to future actions  
9 in order to achieve objectives; and

10 “(IV) appropriate provisions to  
11 adapt to climate changes.

12 “(ii) DEADLINE.—Not later than May  
13 12, 2025, each Chesapeake Bay State  
14 shall—

15 “(I) fully implement the water-  
16 shed implementation plan of the  
17 State; and

18 “(II) have in place all the mecha-  
19 nisms outlined in the plan that are  
20 necessary to attain the applicable pol-  
21 lutant limitations for nitrogen, phos-  
22 phorus, and sediments.

23 “(C) PROGRESS REPORTS.—Not later than  
24 May 12, 2014, and biennially thereafter, each  
25 Chesapeake Bay State shall submit to the Ad-

1            administrator a progress report that, with respect  
2            to the 2-year period covered by the report—

3                    “(i) includes a listing of all manage-  
4                    ment measures that were to be imple-  
5                    mented in accordance with the approved  
6                    watershed implementation plan of the  
7                    Chesapeake Bay State, including a descrip-  
8                    tion of the extent to which those measures  
9                    have been fully implemented;

10                   “(ii) includes a listing of all the man-  
11                   agement measures described in clause (i)  
12                   that the Chesapeake Bay State has failed  
13                   to fully implement in accordance with the  
14                   approved watershed implementation plan  
15                   of the Chesapeake Bay State;

16                   “(iii) includes monitored and collected  
17                   water quality data;

18                   “(iv) includes Chesapeake Bay Pro-  
19                   gram computer modeling data that detail  
20                   the nitrogen, phosphorus, and sediment  
21                   load reductions projected to be achieved as  
22                   a result of the implementation of the man-  
23                   agement measures and mechanisms carried  
24                   out by the Chesapeake Bay State;

1           “(v) includes, for the subsequent 2-  
2           year period, implementation goals and  
3           Chesapeake Bay Program computer mod-  
4           eling data detailing the projected pollution  
5           reductions to be achieved if the Chesa-  
6           peake Bay State fully implements the sub-  
7           sequent round of management measures;

8           “(vi) identifies compliance informa-  
9           tion, including violations, actions taken by  
10          the Chesapeake Bay State to address the  
11          violations, and dates, if any, on which com-  
12          pliance was achieved; and

13          “(vii) specifies any revisions to the  
14          watershed implementation plan submitted  
15          under this paragraph that the Chesapeake  
16          Bay State determines are necessary to at-  
17          tain the applicable pollutant limitations for  
18          nitrogen, phosphorus, and sediments.

19          “(2) ISSUANCE OF PERMITS.—

20          “(A) IN GENERAL.—Notwithstanding any  
21          other provision of this Act (including any exclu-  
22          sion or exception contained in a definition  
23          under section 502), for the purpose of achieving  
24          the nitrogen, phosphorus, and sediment reduc-  
25          tions required under a watershed implementa-

1           tion plan, a Chesapeake Bay State may issue a  
2           permit in accordance with section 402 for any  
3           pollution source the Chesapeake Bay State de-  
4           termines to be necessary.

5           “(B) ENFORCEMENT.—The Administrator  
6           shall enforce any permits issued in accordance  
7           with the watershed implementation plan in the  
8           same manner as other permits issued under  
9           section 402 are enforced.

10          “(3) STORMWATER PERMITS.—

11           “(A) IN GENERAL.—Effective beginning  
12          January 1, 2013, the Chesapeake Bay State  
13          shall provide assurances to the Administrator  
14          that—

15           “(i) the owner or operator of any de-  
16          velopment or redevelopment project pos-  
17          sessing an impervious footprint that ex-  
18          ceeds a threshold to be determined by the  
19          Administrator through rulemaking, will use  
20          site planning, design, construction, and  
21          maintenance strategies for the property to  
22          maintain or restore, to the maximum ex-  
23          tent technically feasible, the  
24          predevelopment hydrology of the property



1 with regard to the temperature, rate, vol-  
2 ume, and duration of flow; and

3 “(ii) as a further condition of permit-  
4 ting such a development or redevelopment,  
5 the owner or operator of any development  
6 or redevelopment project possessing an im-  
7 pervious footprint that exceeds a threshold  
8 to be determined by the Administrator  
9 through rulemaking will compensate for  
10 any unavoidable impacts to the  
11 predevelopment hydrology of the property  
12 with regard to the temperature, rate, vol-  
13 ume, and duration of flow, such that—

14 “(I) the compensation within the  
15 jurisdictional boundaries of the local  
16 government shall provide in-kind miti-  
17 gation of function at a ratio to be de-  
18 termined by the Administrator  
19 through rulemaking; and

20 “(II) the compensation outside  
21 the jurisdictional boundaries of the  
22 local government shall provide in-kind  
23 mitigation, at a ratio to be determined  
24 by the Administrator through rule-

1 making , within the tributary water-  
2 shed in which the project is located.

3 “(B) ADMINISTRATION.—Not later than  
4 December 31, 2012, the Administrator shall  
5 promulgate regulations that—

6 “(i) define the term ‘predevelopment  
7 hydrology’ in subparagraph (A);

8 “(ii) establish the thresholds under  
9 subparagraph (A); and

10 “(iii) establish the compensation ra-  
11 tios under subparagraph (A)(ii).

12 “(4) PHOSPHATE BAN.—

13 “(A) PHOSPHORUS IN CLEANING  
14 AGENTS.—Each Chesapeake Bay State shall  
15 provide to the Administrator, not later than 3  
16 years after the date of enactment of the Ches-  
17 apeake Clean Water and Ecosystem Restoration  
18 Act of 2009, assurances that within the juris-  
19 diction, except as provided in subparagraph  
20 (B), a person may not use, sell, manufacture,  
21 or distribute for use or sale any cleaning agent  
22 that contains more than 0.0 percent phosphorus  
23 by weight, expressed as elemental phosphorus,  
24 except for a quantity not exceeding 0.5 percent

1 phosphorus that is incidental to the manufac-  
2 ture of the cleaning agent.

3 “(B) PROHIBITED QUANTITIES OF PHOS-  
4 PHORUS.—Each Chesapeake Bay State shall  
5 provide to the Administrator, not later than 3  
6 years after the date of enactment of the Ches-  
7 peake Clean Water and Ecosystem Restoration  
8 Act of 2009, assurances that, within the juris-  
9 diction, a person may use, sell, manufacture, or  
10 distribute for use or sale a cleaning agent that  
11 contains greater than 0.0 percent phosphorus  
12 by weight, but does not exceed 8.7 percent  
13 phosphorus by weight, if the cleaning agent is  
14 a substance that the Administrator, by regula-  
15 tion, excludes from the limitation under sub-  
16 paragraph (A), based on a finding that compli-  
17 ance with that subparagraph would—

18 “(i) create a significant hardship on  
19 the users of the cleaning agent; or

20 “(ii) be unreasonable because of the  
21 lack of an adequate substitute cleaning  
22 agent.

23 “(k) ACTION BY ADMINISTRATOR.—

24 “(1) IN GENERAL.—Not later than 60 days  
25 after the date of enactment of the Chesapeake Clean

1 Water and Ecosystem Restoration Act of 2009, the  
2 Administrator shall establish minimum criteria that  
3 any proposed watershed implementation plan must  
4 meet before the Administrator may approve such a  
5 plan.

6 “(2) COMPLETENESS FINDING.—

7 “(A) IN GENERAL.—Not later than 60  
8 days after the date on which the Administrator  
9 receives a new or revised proposed watershed  
10 implementation plan from a Chesapeake Bay  
11 State, the Administrator shall determine wheth-  
12 er the minimum criteria for the plan established  
13 under paragraph (1) have been met.

14 “(B) EFFECT OF FINDING OF INCOM-  
15 PLETENESS.—If the Administrator determines  
16 under subparagraph (A) that all or any portion  
17 of a submitted watershed implementation plan  
18 does not meet the minimum criteria established  
19 under paragraph (1), the Chesapeake Bay State  
20 submitting the plan shall be treated as not hav-  
21 ing made the submission.

22 “(3) APPROVAL AND DISAPPROVAL.—

23 “(A) DEADLINE.—Not later than 90 days  
24 after determining that a watershed implementa-  
25 tion plan meets minimum criteria in accordance

1 with paragraph (2)(A), the Administrator shall  
2 approve or disapprove the plan.

3 “(B) FULL AND PARTIAL APPROVAL AND  
4 DISAPPROVAL.—In carrying out this paragraph,  
5 the Administrator—

6 “(i) shall approve a watershed imple-  
7 mentation plan if the plan meets all appli-  
8 cable requirements under this section; and

9 “(ii) may approve the plan in part  
10 and disapprove the plan in part if only a  
11 portion of the plan meets those require-  
12 ments.

13 “(C) CONDITIONAL APPROVAL.—The Ad-  
14 ministrator—

15 “(i) may conditionally approve a re-  
16 vised watershed implementation plan based  
17 on a commitment of the Chesapeake Bay  
18 State submitting the plan to adopt specific  
19 enforceable management measures by not  
20 later than 1 year after the date of approval  
21 of the plan revision; but

22 “(ii) shall treat a conditional approval  
23 as a disapproval under this paragraph if  
24 the Chesapeake Bay State fails to comply

1 with the commitment of the Chesapeake  
2 Bay State.

3 “(D) FULL APPROVAL REQUIRED.—A new  
4 or revised watershed implementation plan shall  
5 not be treated as meeting the requirements of  
6 this section until the Administrator approves  
7 the entire new or revised plan.

8 “(E) CORRECTIONS.—In any case in which  
9 the Administrator determines that the action of  
10 the Administrator approving, disapproving, con-  
11 ditionally approving, or promulgating any new  
12 or revised watershed implementation plan was  
13 in error, the Administrator—

14 “(i) may, in the same manner as the  
15 approval, disapproval, conditional approval,  
16 or promulgation, revise the action of the  
17 Administrator, as appropriate, without re-  
18 quiring any further submission from the  
19 Chesapeake Bay State; and

20 “(ii) shall make the determination of  
21 the Administrator, and the basis for that  
22 determination, available to the public.

23 “(F) EFFECTIVE DATE.—The provisions of  
24 a State watershed implementation plan shall

1 take effect upon the date of approval of the  
2 plan.

3 “(4) CALLS FOR PLAN REVISION.—In any case  
4 in which the Administrator determines that water-  
5 shed implementation plan for any area is inadequate  
6 to attain or maintain applicable pollution limitations,  
7 the Administrator—

8 “(A) shall notify the Chesapeake Bay  
9 State of, and require the Chesapeake Bay State  
10 to revise the plan to correct, the inadequacies;

11 “(B) may establish reasonable deadlines  
12 (not to exceed 180 days after the date on which  
13 the Administrator provides the notification) for  
14 the submission of a revised watershed imple-  
15 mentation plan;

16 “(C) make the findings of the Adminis-  
17 trator under paragraph (3) and notice provided  
18 under subparagraph (A) public; and

19 “(D) require the Chesapeake Bay State to  
20 comply with the requirements applicable under  
21 the initial watershed implementation plan, ex-  
22 cept that the Administrator may adjust any  
23 dates (other than attainment dates) applicable  
24 under those requirements, as appropriate.

1           “(5) FEDERAL IMPLEMENTATION.—If a Chesa-  
2           peake Bay State fails to submit a watershed imple-  
3           mentation plan, to submit a biennial report, or to  
4           correct a previously missed 2-year commitment made  
5           in a watershed implementation plan, the Adminis-  
6           trator shall, after issuing a notice to the State and  
7           providing a 90-day period in which the failure may  
8           be corrected—

9                   “(A) withhold all funds otherwise available  
10                  to the Chesapeake Bay State under this Act;

11                  “(B) develop and administer a watershed  
12                  implementation plan for that Chesapeake Bay  
13                  State until such time as the Chesapeake Bay  
14                  State has remedied the plan, reports, or  
15                  achievements to the satisfaction of the Adminis-  
16                  trator;

17                  “(C) require that all permits issued under  
18                  section 402 for new or expanding discharges of  
19                  nitrogen, phosphorus, or sediments acquire off-  
20                  sets that exceed by 100 percent an amount that  
21                  would otherwise be required, taking into ac-  
22                  count attenuation, equivalency, and uncertainty;  
23                  and



1           “(D) for the purposes of developing and  
2 implementing a watershed implementation plan  
3 under subparagraph (B)—

4           “(i) notwithstanding any other provi-  
5 sion of this Act (including any exclusion or  
6 exception contained in a definition under  
7 section 502), promulgate such regulations  
8 or issue such permits as the Administrator  
9 determines to be necessary to control pollu-  
10 tion sufficient to meet the water quality  
11 goals defined in the watershed implementa-  
12 tion plan; and

13           “(ii) enforce any permits issued in ac-  
14 cordance with the watershed implementa-  
15 tion plan in the same manner as other per-  
16 mits issued under section 402 are en-  
17 forced.

18           “(6) NITROGEN AND PHOSPHORUS TRADING  
19 PROGRAM.—

20           “(A) ESTABLISHMENT.—Not later than  
21 May 12, 2012, the Administrator, in coopera-  
22 tion with each Chesapeake Bay State, shall es-  
23 tablish an interstate nitrogen and phosphorus  
24 trading program for the Chesapeake Bay for  
25 the generation, trading, and use of nitrogen and

1 phosphorus credits to facilitate the attainment  
2 and maintenance of the Chesapeake Bay-wide  
3 TMDL for nitrogen and phosphorus.

4 “(B) TRADING SYSTEM.—The trading pro-  
5 gram established under this subsection shall, at  
6 a minimum—

7 “(i) define and standardize nitrogen  
8 and phosphorus credits and establish pro-  
9 cedures or standards for ensuring equiva-  
10 lent water quality benefits for all credits;

11 “(ii) establish procedures or standards  
12 for certifying and verifying nitrogen and  
13 phosphorus credits to ensure that credit-  
14 generating practices from both point  
15 sources and nonpoint sources are achieving  
16 actual reductions in nitrogen and phos-  
17 phorus;

18 “(iii) establish procedures or stand-  
19 ards for generating, quantifying, trading,  
20 and applying credits to meet regulatory re-  
21 quirements and allow for trading to occur  
22 between and across point source or  
23 nonpoint sources;

1           “(iv) establish baseline requirements  
2           that a credit seller must meet before be-  
3           coming eligible to generate saleable credits;

4           “(v) establish points-of-regulation at  
5           the sub-State level to facilitate trading and  
6           promote water quality goals under which—

7                   “(I) States may designate point  
8                   sources as points-of-regulation;

9                   “(II) States may aggregate mul-  
10                  tiple sources to serve as points-of-reg-  
11                  ulation; and

12                  “(III) the Administrator shall es-  
13                  tablish guidelines or standards to en-  
14                  sure that points-of-regulation shall be  
15                  generally consistent across States;

16           “(vi) ensure that credits are used in  
17           accordance with permit requirements under  
18           the national pollutant discharge elimi-  
19           nation system established under section  
20           402 and trade requirements have been ade-  
21           quately incorporated into the permits;

22           “(vii) ensure that private contracts  
23           between credit buyers and credit sellers  
24           contain adequate provisions to ensure en-  
25           forceability under applicable law;

1           “(viii) establish procedures or stand-  
2           ards for providing public transparency on  
3           nutrient trading activity;

4           “(ix) ensure that, if the local receiving  
5           water is impaired for the nutrient being  
6           traded but a TMDL has not yet been im-  
7           plemented for the impairment—

8                   “(I) trades are required to result  
9                   in progress toward or the attainment  
10                  of water quality standards in the local  
11                  receiving water; and

12                   “(II) sources in the watershed  
13                   may not rely on credits produced out-  
14                   side of the watershed;

15           “(x) require that the application of  
16           credits to meet regulatory requirements  
17           under this section not cause or contribute  
18           to exceedances of water quality standards,  
19           total maximum daily loads, or wasteload or  
20           load allocations for affected receiving  
21           waters, including avoidance of localized im-  
22           pacts;

23           “(xi) except as part of a consent  
24           agreement, prohibit the purchase of credits  
25           from any entity that is in significant non-

1 compliance with an enforceable permit  
2 issued under section 402;

3 “(xii) consider and incorporate, to the  
4 maximum extent practicable, elements of  
5 State trading programs in existence as of  
6 the date of enactment of the Chesapeake  
7 Clean Water and Ecosystem Restoration  
8 Act of 2009; and

9 “(xiii) allow for, as appropriate, the  
10 aggregation and banking of credits by  
11 third parties.

12 “(C) FACILITATION OF TRADING.—In  
13 order to attract market participants and facili-  
14 tate the cost-effective achievement of water-  
15 quality goals, the Administrator shall ensure  
16 that the trading program established under this  
17 paragraph—

18 “(i) includes measures to mitigate  
19 credit buyer risk;

20 “(ii) makes use of the best available  
21 science in order to minimize uncertainty  
22 and related transaction costs to traders,  
23 including the Administrator, in consulta-  
24 tion with the Secretary of Agriculture, sup-  
25 porting research and other activities that

1 increase the scientific understanding of  
2 nonpoint nutrient pollutant loading and  
3 the ability of various structural and non-  
4 structural alternatives to reduce the loads;

5 “(iii) eliminates unnecessary or dupli-  
6 cative administrative processes; and

7 “(iv) incorporates a permitting ap-  
8 proach under the national pollutant dis-  
9 charge elimination system established  
10 under section 402 that allows trading to  
11 occur without requiring the reopening or  
12 reissuance of permits to incorporate indi-  
13 vidual trades.

14 “(7) AUTHORITY RELATING TO DEVELOP-  
15 MENT.—The Administrator shall—

16 “(A) establish, for projects resulting in im-  
17 pervious development, guidance relating to site  
18 planning, design, construction, and maintenance  
19 strategies to ensure that the land maintains  
20 predevelopment hydrology with regard to the  
21 temperature, rate, volume, and duration of flow;

22 “(B) establish model ordinances and guide-  
23 lines with respect to the construction of low-im-  
24 pact development infrastructure and non-  
25 structural low-impact development techniques

1 for use by States, local governments, and pri-  
2 vate entities; and

3 “(C) not later than 180 days after promul-  
4 gation of the regulations under subsection  
5 (j)(3)(B), issue such guidance, model ordi-  
6 nances, and guidelines as are necessary to carry  
7 out this paragraph.

8 “(8) ASSISTANCE WITH RESPECT TO  
9 STORMWATER DISCHARGES.—

10 “(A) GRANT PROGRAM.—The Adminis-  
11 trator may provide grants to any local govern-  
12 ment within the Chesapeake Bay watershed  
13 that adopts the guidance, ordinances, and  
14 guidelines issued under paragraph (7).

15 “(B) USE OF FUNDS.—A grant provided  
16 under subparagraph (A) may be used by a local  
17 government to pay costs associated with—

18 “(i) developing, implementing, and en-  
19 forcing the guidance, ordinances, and  
20 guidelines issued under paragraph (7); and

21 “(ii) implementing projects designed  
22 to reduce stormwater discharges.

23 “(9) CONSUMER AND COMMERCIAL PRODUCT  
24 REPORT.—Not later than 3 years after the date of  
25 enactment of the Chesapeake Clean Water and Eco-

1 system Restoration Act of 2009, the Administrator,  
2 in consultation with the Chesapeake Executive Coun-  
3 cil, shall—

4 “(A) review consumer and commercial  
5 products, the use of which may affect the water  
6 quality of the Chesapeake Bay watershed or as-  
7 sociated tributaries, to determine whether fur-  
8 ther product nutrient content restrictions are  
9 necessary to restore or maintain water quality  
10 in the Chesapeake Bay watershed and those  
11 tributaries; and

12 “(B) submit to the Committees on Appro-  
13 priations, Environment and Public Works, and  
14 Commerce, Science, and Transportation of the  
15 Senate and the Committees on Appropriations,  
16 Natural Resources, Energy and Commerce, and  
17 Transportation and Infrastructure of the House  
18 of Representatives a product nutrient report de-  
19 tailing the findings of the review under sub-  
20 paragraph (A).

21 “(I) PROHIBITION ON INTRODUCTION OF ASIAN OYS-  
22 TERS.—Not later than 2 years after the date of enactment  
23 of the Chesapeake Clean Water and Ecosystem Restora-  
24 tion Act of 2009, the Administrator shall promulgate reg-  
25 ulations—



1           “(1) to designate the Asian oyster as a ‘biologi-  
2           cal pollutant’ in the Chesapeake Bay and tidal  
3           waters pursuant to section 502;

4           “(2) to prohibit the issuance of permits under  
5           sections 402 and 404 for the discharge of the Asian  
6           oyster into the Chesapeake Bay and tidal waters;  
7           and

8           “(3) to specify conditions under which scientific  
9           research on Asian oysters may be conducted within  
10          the Chesapeake Bay and tidal waters.

11          “(m) CHESAPEAKE NUTRIA ERADICATION PRO-  
12          GRAM.—

13           “(1) GRANT AUTHORITY.—Subject to the avail-  
14           ability of appropriations, the Secretary of the Inte-  
15           rior (referred to in this subsection as the ‘Sec-  
16           retary’), may provide financial assistance to the  
17           States of Delaware, Maryland, and Virginia to carry  
18           out a program to implement measures—

19                   “(A) to eradicate or control nutria; and

20                   “(B) to restore marshland damaged by nu-  
21           tria.

22           “(2) GOALS.—The continuing goals of the pro-  
23           gram shall be—

24                   “(A) to eradicate nutria in the Chesapeake  
25           Bay ecosystem; and

1                   “(B) to restore marshland damaged by nu-  
2                   tria.

3                   “(3) ACTIVITIES.—In the States of Delaware,  
4                   Maryland, and Virginia, the Secretary shall require  
5                   that the program under this subsection consist of  
6                   management, research, and public education activi-  
7                   ties carried out in accordance with the document  
8                   published by the United States Fish and Wildlife  
9                   Service entitled ‘Eradication Strategies for Nutria in  
10                  the Chesapeake and Delaware Bay Watersheds’,  
11                  dated March 2002, or any updates to the document.

12                  “(n) STUDY ON THE IMPACTS OF THE COMMERCIAL  
13                  HARVESTING OF MENHADEN ON THE WATER QUALITY  
14                  OF THE CHESAPEAKE BAY.—

15                  “(1) DEFINITIONS.—In this subsection:

16                         “(A) FISHERIES COMMISSION.—The term  
17                         ‘Fisheries Commission’ means the Atlantic  
18                         States Marine Fisheries Commission established  
19                         under the interstate compact consented to and  
20                         approved by pursuant to the Act of May 4,  
21                         1942 (56 Stat. 267, chapter 283) and the Act  
22                         of May 19, 1949 (63 Stat. 70, chapter 238).

23                         “(B) FISHING.—Except as otherwise pro-  
24                         vided, the term ‘fishing’—

25                                 “(i) means—

1                   “(I) the commercial catching,  
2                   taking, or harvesting of menhaden,  
3                   except when incidental to harvesting  
4                   that occurs in the course of commer-  
5                   cial or recreational fish-catching ac-  
6                   tivities directed at a species other  
7                   than menhaden;

8                   “(II) the attempted commercial  
9                   catching, taking, or harvesting of  
10                  menhaden; or

11                  “(III) any operation at sea in  
12                  support of, or in preparation for, any  
13                  activity described in subclause (I) or  
14                  (II); and

15                  “(ii) does not include any scientific re-  
16                  search authorized by the Federal Govern-  
17                  ment or by any State Government.

18                  “(2) STUDY.—Not later than 5 years after the  
19                  date of enactment of the Chesapeake Clean Water  
20                  and Ecosystem Restoration Act of 2009, building on  
21                  the research underway or conducted under the over-  
22                  sight of the National Oceanic and Atmospheric Ad-  
23                  ministration, the Administrator, in cooperation and  
24                  consultation with the Administrator of the National  
25                  Oceanic and Atmospheric Administration and the

1 Fisheries Commission, shall conduct and submit to  
2 Congress a study for the purposes of determining—

3 “(A) progress toward understanding the  
4 structure of the menhaden population of the At-  
5 lantic Coast of the United States and of the  
6 Chesapeake Bay;

7 “(B) the role of the population as filter  
8 feeders, including the role of the population  
9 with respect to impacting water clarity, dis-  
10 solved oxygen levels, and other ecosystem func-  
11 tions;

12 “(C) the role of the population as prey spe-  
13 cies for predatory fish in the Chesapeake Bay  
14 and in coastal ecosystems;

15 “(D) the impact on the Atlantic coastal  
16 and Chesapeake Bay ecosystems of fishing for  
17 menhaden;

18 “(E) the impact on attainment of the  
19 water quality goals of this Act of commercial  
20 fishing for menhaden; and

21 “(F) the recommendations of the Adminis-  
22 trator, if any, for future sustainable manage-  
23 ment of such fishing and additional research  
24 needed to fully address the progress, roles, and  
25 impacts described in this paragraph.

1 “(o) EFFECT ON OTHER REQUIREMENTS.—

2 “(1) IN GENERAL.—Nothing in this section re-  
3 moves or otherwise affects any other obligation for  
4 a point source to comply with other applicable re-  
5 quirements under this Act.

6 “(2) VIOLATIONS BY STATES.—The failure of a  
7 State to submit a watershed implementation plan or  
8 biennial report, or to correct a previously missed 2-  
9 year commitment made in a watershed implementa-  
10 tion plan, by the applicable deadline established  
11 under this section shall—

12 “(A) constitute a violation of this Act; and

13 “(B) subject the State to—

14 “(i) enforcement action by the Admin-  
15 istrator; and

16 “(ii) civil actions commenced pursuant  
17 to section 505.

18 “(3) FAILURE OF ADMINISTRATOR TO ACT.—

19 The failure of the Administrator to act under this  
20 section shall subject the Administrator to civil ac-  
21 tions commenced pursuant to section 505.

22 “(p) EVALUATION BY THE INSPECTOR GENERAL.—

23 The Inspector General of the Environmental Protection  
24 Agency shall evaluate the implementation of this section  
25 on a periodic basis of not less than once every 3 years.

1 “(q) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IMPLEMENTATION AND MONITORING  
3 GRANTS.—

4 “(A) AUTHORIZATION OF APPROPRIA-  
5 TIONS.—In addition to amounts authorized to  
6 be appropriated or otherwise made available to  
7 carry out this section, there are authorized to  
8 be appropriated to the Administrator—

9 “(i) to provide implementation grants  
10 under subsection (e)(3)(A), \$80,000,000  
11 for each of fiscal years 2010 through  
12 2015, to remain available until expended;

13 “(ii) to carry out a freshwater moni-  
14 toring program under subsection (e)(3)(B),  
15 \$5,000,000 for each of fiscal years 2010  
16 through 2015; and

17 “(iii) to carry out a Chesapeake Bay  
18 and tidal water monitoring program under  
19 subsection (e)(3)(B), \$5,000,000 for each  
20 of fiscal years 2010 through 2015.

21 “(B) COST SHARING.—The Federal share  
22 of the cost of a program carried out using  
23 funds from a grant provided—

24 “(i) under subparagraph (A)(i) shall  
25 not exceed 50 percent; and

1                   “(ii) under clause (ii) or (iii) of sub-  
2                   paragraph (A) shall not exceed 80 percent.

3                   “(2) CHESAPEAKE STEWARDSHIP GRANTS.—

4                   There is authorized to be appropriated to carry out  
5                   subsection (h)(2) \$15,000,000 for each of fiscal  
6                   years 2010 through 2014.

7                   “(3) STORM WATER POLLUTION PLANNING AND  
8                   IMPLEMENTATION GRANTS.—

9                   “(A) AUTHORIZATION OF APPROPRIA-  
10                  TIONS.—In addition to amounts authorized or  
11                  otherwise made available to carry out this sec-  
12                  tion, there are authorized to be appropriated to  
13                  the Administrator—

14                         “(i) to carry out subsection  
15                         (k)(8)(B)(i), \$10,000,000; and

16                         “(ii) to carry out subsection  
17                         (k)(8)(B)(ii), \$1,500,000,000.

18                   “(B) COST-SHARING.—A grant provided  
19                   for a project under—

20                         “(i) subsection (k)(8)(B)(i) may not  
21                         be used to cover more than 80 percent of  
22                         the cost of the project; and

23                         “(ii) subsection (k)(8)(B)(ii) may not  
24                         be used to cover more than 75 percent of  
25                         the cost of the project.

1           “(4) NUTRIA ERADICATION GRANTS.—

2                   “(A) IN GENERAL.—There is authorized to  
3 be appropriated to the Secretary of the Interior  
4 to provide financial assistance in the Chesa-  
5 peake Bay watershed under subsection (m)  
6 \$4,000,000 for each of fiscal years 2010  
7 through 2015.

8                   “(B) COST-SHARING.—

9                           “(i) FEDERAL SHARE.—The Federal  
10 share of the cost of carrying out the pro-  
11 gram under subsection (m) may not exceed  
12 75 percent of the total costs of the pro-  
13 gram.

14                           “(ii) IN-KIND CONTRIBUTIONS.—The  
15 non-Federal share of the cost of carrying  
16 out the program under subsection (m) may  
17 be provided in the form of in-kind con-  
18 tributions of materials or services.

19           “(5) LIMITATION ON ADMINISTRATIVE EX-  
20 PENSES.—Not more than 10 percent of the annual  
21 amount of any grant provided by the Administrator  
22 or Secretary under any program described in para-  
23 graph (1), (2), (3), or (4) may be used for adminis-  
24 trative expenses.



1           “(6) AVAILABILITY.—Amounts authorized to be  
2           appropriated under this subsection shall remain  
3           available until expended.”.