

S. 1816 Chesapeake Clean Water and Ecosystem Restoration Act

COG staff summary of key points as revised (draft of April 28, 2010)
5/6/10

Background

- Originally introduced Oct. 20, 2009, by Sen. Ben Cardin (MD). Sen. Cardin plans to reintroduce a new version shortly; the latest version represents revisions from a new draft of the bill circulated in March 2010 for comments.
- Its House counterpart, H.R. 3852, is sponsored by Rep. Elijah Cummings (MD).

Summary

- The bill would amend Section 117 of the Clean Water Act, which governs the EPA Chesapeake Bay Program.
- Overall, the bill would codify the Bay TMDL development and implementation process into federal law, including such details as deadlines, the content of the state's watershed implementation plans and the process by which EPA reviews and approves or disapproves of those plans.
- In some aspects, it expands EPA powers compared to what currently exists within the Clean Water Act and, in other aspects, it makes explicit powers that have not been specifically defined before.
- The bill would authorize—but not appropriate – a number of new federal funds for Bay restoration activities, including a one-time \$1.5 billion grant program for urban stormwater projects.

Key changes from March 11 version (*text in italics refers to the page in the new discussion draft where the change can be found*).

- Language in the findings section that noted a 41-percent increase in imperviousness from urban development in the decade from 1990 -2000 while population increased 8.5 percent in the same period has been revised to say only that impervious surface increased faster (not quantified) than population in this period, while population rose 10 percent. (*p. 6*)
- The latest version restores previous language that clarifies that in the Bay TMDL daily does not have to mean daily. (*p. 14*)
- The latest version added language under the monitoring grants section that encourages recipients to analyze the effectiveness of “green infrastructure techniques” for stormwater management. (*p. 30*)

- The latest version added language under the Stewardship Grants section to encourage public-private partnerships. (p. 39)
- The latest version amends language specifying the basis of the TMDL from
 - (i) scientific data;
 - (ii) technical consideration; and
 - (iii) principles of equity among geographical regions and source sectors.

to

- (i) scientific data;
- (ii) technical feasibility and effectiveness; and
- (iii) principles of equity among geographical regions, sources, and source categories. (p. 38)

Note – COG has asked for the inclusion of financial effectiveness as an evaluation criteria for the TMDL.

- The latest version modifies language regarding the renewal of expired permits to make the process somewhat less stringent than in the previous version (p. 41- 42). The previous version had language indicating that no permit could be renewed, administratively continued or extended unless its effluent limits were in accordance with TMDL WLAs. The new version simply calls for such permits to be brought to the attention of EPA, which can object to their continuance.
- The latest version deletes language that would have required the states to adopt water quality criteria for the protection of freshwater systems from eutrophication by May 12, 2013,
- The latest version added a new section under its citizen suit litigation section that spells out the requirements for jurisdiction (federal district courts); defines notice, venue and intervention (same as currently exists under Section 505b and c of the Clean Water Act); and clarifies that the court may award litigation costs as is currently the case under Section 505d. (p. 84)

Key provisions of interest that have stayed the same

- The bill still has the same deadlines as EPA has announced for various TMDL milestones, including:
 - Dec. 31, 2010, for EPA to issue a Bay-wide series of TMDLs.
 - May 12, 2011, for the states to submit watershed implementation plans (WIPs) designed to achieve the water quality standards under the TMDLs.
 - May 12, 2017, for the states to achieve 60 percent of the implementation under their WIPs.
 - May 12, 2025, for the states to achieve 100 percent of the implementation under their WIPs.)
- The bill still calls for “enforceable or otherwise binding measures” to meet the WLAs and LAs on both point and nonpoint sources, respectively.

- It will still establish “de minimus” federal standards for stormwater permitting programs. States must assure EPA that for any new development or redevelopment site above certain thresholds, the owner will:
 - Maintain or restore predevelopment hydrology for temperature, rate, volume and duration of flow to the maximum extent technically feasible.
 - To the extent that this is not feasible, the owner will provide “compensation” both in and outside “the affected subwatershed.”
 - Final details to be determined by EPA by May 2011.

- Still delineates the specific content of EPA’s review and approval process for the state WIPs and spells out the consequences of a state failure to submit its WIP, submit its biennial report, or meet its 2-year implementation milestones. These include:
 - Withholding Clean Water Act funding.
 - Taking over administration of the state program for implementing the WIP, enforcing permits and promulgating new point source and nonpoint source regulations as necessary.
 - Requiring 2:1 offsets for any new discharges.

- The bill still would authorize funding in the following categories:
 - Implementation grants: \$80 million annually.
 - Chesapeake Stewardship grants: \$15 million annually for six years
 - Monitoring grants: \$5 million annually each for freshwater and estuarine.
 - MS4 Planning grants for municipalities: \$10 million.
 - MS4 Implementation grants for municipalities: \$1.5 billion.
 - Nutria Eradication grants: \$4 million annually.
 - Ag Centers of Excellence \$10 million for six years

(Note: These are authorizations only; Congressional appropriation would be necessary for these funds to actually become available.)

Other provisions continue to include a requirement for EPA to report to Congress on commercial products that impact water quality, a ban on the use of Asian oysters, an expansion of the nutria eradication program on the Delmarva Peninsula, and a moratorium on the menhaden reduction fishery.