

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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

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

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IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ 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 Basin 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”.

6 **SEC. 2. FINDINGS.**

7        Congress finds that—

8            (1) the Chesapeake Bay and the tributary wa-  
9        ters of the Chesapeake Basin 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 Maryland, Pennsylvania,  
5 and Virginia, the District of Columbia, the Chesa-  
6 peake Bay Commission, and various local govern-  
7 ment, scientific, and citizen advisory boards have  
8 worked through the Chesapeake Basin Program of  
9 the Environmental Protection Agency to develop an  
10 unparalleled body of scientific information and coop-  
11 erative partnerships to advance the Chesapeake Bay  
12 restoration effort;

13 (3) pursuant to a memorandum of under-  
14 standing executed among the States of Delaware  
15 and New York in 2000, and the State of West Vir-  
16 ginia in 2002, those States began formal participa-  
17 tion in the Chesapeake Basin Program water quality  
18 restoration effort;

19 (4) despite significant efforts by Federal, State,  
20 and local governments and other interested parties,  
21 water pollution in the Chesapeake Bay—

22 (A) prevents the attainment of existing  
23 State water quality standards and the ecological  
24 goals of the Federal Water Pollution Control  
25 Act (33 U.S.C. 1251 et seq.); and

1 (B) therefore, requires the development  
2 and implementation of a total maximum daily  
3 load under section 303(d) of that Act (33  
4 U.S.C. 1313(d));

5 (5) a primary reason for the schedule to develop  
6 a Chesapeake Bay total maximum daily load is the  
7 Virginia total maximum daily load consent decree  
8 dated 1999, which settled the civil action styled  
9 American Canoe Ass'n, Inc. v. EPA, Civil No. 98-  
10 979-A (E.D. Va.), under which the Environmental  
11 Protection Agency must establish a Chesapeake Bay  
12 total maximum daily load by not later than May 1,  
13 2011;

14 (6) the principals' staff committee of the Chesapeake  
15 Basin Program, consisting of officials from  
16 each Chesapeake Bay State, the District of Colum-  
17 bia, the Chesapeake Bay Commission, and the Envi-  
18 ronmental Protection Agency, has requested a slight-  
19 ly accelerated schedule, under which the Environ-  
20 mental Protection Agency should complete a Chesapeake  
21 Bay total maximum daily load by not later  
22 than December 31, 2010;

23 (7) the Chesapeake Bay total maximum daily  
24 load will address all segments of the Chesapeake  
25 Bay and tidal tributaries that are identified on the

1 currently applicable lists of waters impaired by ni-  
2 trogen, phosphorus, and sediment of Chesapeake  
3 Bay States under section 303(d) of the Federal  
4 Water Pollution Control Act (33 U.S.C. 1313(d));

5 (8) the Chesapeake Basin Program partnership  
6 has developed a rich body of environmental data  
7 based on an extensive network of monitors, which  
8 provide a critical measure of success in attainment  
9 of the goals of the restoration effort;

10 (9) the Chesapeake Basin Program partnership  
11 has also developed some of the world's foremost  
12 water quality and ecosystem computer models, which  
13 are invaluable planning tools for resource managers;

14 (10) the major pollutants affecting the water  
15 quality of the Chesapeake Bay and related tidal wa-  
16 ters are nitrogen, phosphorus, and sediment;

17 (11) the largest developed land use in the  
18 Chesapeake Basin, and 1 of the largest single-sector  
19 source of nitrogen, phosphorus, and sediment pollu-  
20 tion, is agriculture;

21 (12) conservation practices have resulted in sig-  
22 nificant reductions in pollution loads from the agri-  
23 cultural sector;

24 (13) to speed continued progress in the agricul-  
25 tural sector, the Federal Government and State gov-

1 ernments have initiated a number of agricultural  
2 conservation programs, including the Chesapeake  
3 Bay watershed initiative under section 1240Q of the  
4 Food Security Act of 1985 (16 U.S.C. 3839bb-4);

5 (14) atmospheric deposition of nitrogen oxides  
6 and ammonia on the Chesapeake Basin contributes  
7 as much as  $\frac{1}{3}$  of the nitrogen pollution in the  
8 Chesapeake Bay;

9 (15) the Clean Air Act (42 U.S.C. 7401 et seq.)  
10 has proven to be an effective tool in reducing a num-  
11 ber of air pollutants, including air pollutants that re-  
12 sult in the deposition of nitrogen in the waters and  
13 landscape of the Chesapeake Basin;

14 (16) final regulations under the Clean Air Act  
15 (42 U.S.C. 7401 et seq.) relating to stationary, local  
16 area, and mobile sources of air pollution are ex-  
17 pected to result in continuous reductions in the dep-  
18 osition of nitrogen in the Chesapeake Basin that im-  
19 proves air and water quality;

20 (17) for years, a steady stream of technology  
21 development, increasingly stringent permit require-  
22 ments, and multibillion dollar investment at waste-  
23 water treatment plants in the Chesapeake Basin  
24 States have resulted in a steady decline in the nitro-

1 gen and phosphorus pollution derived from waste-  
2 water treatment plants in the Chesapeake Basin;

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

8 (19) during the period beginning in 1990 and  
9 ending in 2000, impervious cover, the hardened sur-  
10 faces through which water cannot penetrate, in-  
11 creased more rapidly than population growth;

12 (20) during that period, the watershed popu-  
13 lation of the Chesapeake Basin grew by an average  
14 of 10 percent;

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

18 (22) continuing at that rate, the population will  
19 increase to nearly 20,000,000 by 2030;

20 (23) overall, approximately 58 percent of the  
21 watershed of the Chesapeake Bay is undeveloped  
22 and mostly forested, but as many as 100 hundred  
23 acres of forest are lost to development each day;

24 (24) States, local governments, developers, and  
25 nonprofit organizations have developed numerous

1 low-impact development techniques since the late  
2 1990s, which use natural area protection, infiltra-  
3 tion, and pervious surfaces to reduce stormwater  
4 runoff and associated sediment and nutrient pollu-  
5 tion;

6 (25) urban and suburban redevelopment—

7 (A) are additional techniques for reducing  
8 stormwater impacts; and

9 (B) generate less total stormwater runoff  
10 and less runoff per housing unit because those  
11 techniques—

12 (i) help absorb the demand for new  
13 homes and businesses;

14 (ii) use less land area; and

15 (iii) do not displace currently natural,  
16 agricultural, or open space land uses that  
17 act as stormwater filters;

18 (26) many of those techniques are less expen-  
19 sive than traditional stormwater pollution control  
20 management techniques;

21 (27) the decline of key aquatic habitats and  
22 species has resulted in a loss of the important water  
23 quality benefits that the habitats and species tradi-  
24 tionally provided;

1           (28) native oysters, the numbers of which have  
2 declined precipitously in the Chesapeake Bay in sig-  
3 nificant part because of diseases brought into the  
4 watershed by nonnative oysters, are natural filters  
5 that once effectively filtered a volume of water equiv-  
6 alent to that of the entire Chesapeake Bay in a mat-  
7 ter of days;

8           (29) although less well-understood, menhaden,  
9 a species of fish found in the Chesapeake Bay, also  
10 provide important filtering capacity as well as a  
11 number of other key ecosystem functions;

12           (30) wetlands and floodplains are vital parts of  
13 the Chesapeake Basin ecosystem, and wetlands in  
14 the headwaters of a watershed, through their water  
15 hold capabilities, can substantially reduce flood  
16 peaks and downstream erosion;

17           (31) studies have demonstrated that nontidal  
18 wetlands near the Chesapeake Bay removed as much  
19 as 89 percent of the nitrogen and 80 percent of the  
20 phosphorus that entered the wetlands through up-  
21 land runoff, groundwater, and precipitation;

22           (32) riparian forests remove as much as 90 per-  
23 cent of nitrogen and phosphorus that would other-  
24 wise enter the water;



1           (33) the loss of forests and wetlands in the  
2 Chesapeake Basin has resulted in diminished water  
3 quality, loss of underwater bay grasses, and a de-  
4 cline in the quantity of fish, wildlife, and other  
5 aquatic species, among other effects;

6           (34)(A) the Chesapeake Basin supports more  
7 than 3,600 plant and animal species, including wa-  
8 terfowl, and commercially and recreationally impor-  
9 tant fisheries; and

10          (B) restoration and protection of those living  
11 resources—

12           (i) is important for ecological health, recre-  
13 ation, and tourism; and

14           (ii) provides diverse economic benefits for  
15 local communities;

16          (35)(A) less than 2 percent of the 11,700 miles  
17 of shoreline of the tidal Chesapeake Bay is accessible  
18 to the public;

19          (B) with the population of the Chesapeake  
20 Basin increasing and development converting land to  
21 roads and subdivisions, that accessibility is decreas-  
22 ing;

23          (C) there exists a similar access gap to nontidal  
24 rivers and streams throughout the Chesapeake  
25 Basin; and

1 (D) it is critical to increase and enhance public  
2 access opportunities for fishing, hunting, boating,  
3 and other recreational pursuits as part of com-  
4 prehensive ecosystem restoration efforts;

5 (36) in certain locations in the Chesapeake  
6 Basin, nutria, a nonnative species, have caused ex-  
7 tensive destruction of key wetlands;

8 (37) activities relating to commercial shipping  
9 and recreational boating can adversely influence  
10 water quality;

11 (38) the Chesapeake Bay is a multibillion dollar  
12 economic force for the mid-Atlantic region;

13 (39) the Federal Water Pollution Control Act  
14 (33 U.S.C. 1251 et seq.) provides for State leader-  
15 ship in protecting and restoring United States wa-  
16 ters, with the Environmental Protection Agency pro-  
17 viding guidance, technical and financial assistance,  
18 and oversight;

19 (40) the Department of Agriculture—

20 (A) has developed a rich body of approved  
21 conservation practices for farms and ranch-  
22 lands;

23 (B) provides critical technical assistance to  
24 producers; and

1 (C) continues to play a critical role in sus-  
2 taining the agricultural economy of the nation  
3 while also improving the stewardship of the  
4 lands and waters of the United States; and

5 (41) in spite of the achievements of the Chesa-  
6 peake Basin Program partnership and increasing  
7 knowledge about ecosystem functions, the restora-  
8 tion of the Chesapeake Bay will require significantly  
9 stronger tools to manage pollution levels and other  
10 impediments to water quality.

11 **SEC. 3. CHESAPEAKE BASIN PROGRAM.**

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

14 **“SEC. 117. CHESAPEAKE BASIN PROGRAM.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) ADMINISTRATIVE COST.—The term ‘ad-  
17 ministrative cost’ means the cost of salaries and  
18 fringe benefits incurred in administering a grant  
19 under this section.

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

22 “(3) BASELINE.—The term ‘baseline’—

23 “(A) means the basic standard or level of  
24 the nutrient control requirements a credit seller

1 shall achieve to be eligible to generate saleable  
2 nutrient credits; and

3 “(B) consists of the nutrient load reduc-  
4 tions required of individual sources to meet  
5 water quality standards and load or waste load  
6 allocations under all applicable total maximum  
7 daily loads and watershed implementation  
8 plans.

9 “(4) BASIN COMMISSIONS.—The term ‘basin  
10 commissions’ means—

11 “(A) the Interstate Commission on the Po-  
12 tomac River Basin established under the inter-  
13 state compact consented to and approved by  
14 Congress under the Joint Resolution of July  
15 11, 1940 (54 Stat. 748, chapter 579) and Pub-  
16 lic Law 91–407 (84 Stat. 856); and

17 “(B) the Susquehanna River Basin Com-  
18 mission established under the interstate com-  
19 pact consented to and approved by Congress  
20 under Public Law 91–575 (84 Stat. 1509) and  
21 Public Law 99–468 (100 Stat. 1193).

22 “(5) CHESAPEAKE BASIN.—The term ‘Chesa-  
23 peake Basin’ means—

24 “(A) the Chesapeake Bay; and

1           “(B) the area consisting of 19 tributary  
2           basins within the Chesapeake Basin States  
3           through which precipitation drains into the  
4           Chesapeake Bay.

5           “(6) CHESAPEAKE BASIN ECOSYSTEM.—The  
6           term ‘Chesapeake Basin ecosystem’ means the eco-  
7           system of the Chesapeake Basin.

8           “(7) CHESAPEAKE BASIN PROGRAM.—The term  
9           ‘Chesapeake Basin Program’ means the program,  
10          formerly known as the ‘Chesapeake Bay Program’,  
11          directed by the Chesapeake Executive Council in ac-  
12          cordance with the Chesapeake Bay Agreement (in-  
13          cluding any successor programs).

14          “(8) CHESAPEAKE BASIN STATE.—The term  
15          ‘Chesapeake Basin State’ means any of—

16                 “(A) the States of Delaware, Maryland,  
17                 New York, Pennsylvania, Virginia, and West  
18                 Virginia; or

19                 “(B) the District of Columbia.

20          “(9) CHESAPEAKE BAY AGREEMENT.—The  
21          term ‘Chesapeake Bay Agreement’ means the for-  
22          mal, voluntary agreements executed to achieve the  
23          goal of restoring and protecting the Chesapeake  
24          Basin ecosystem and the living resources of the

1 Chesapeake Basin ecosystem and signed by the  
2 Chesapeake Executive Council.

3 “(10) CHESAPEAKE BAY TIDAL SEGMENT.—  
4 The term ‘Chesapeake Bay tidal segment’ means  
5 any of the 92 tidal segments that—

6 “(A) make up the Chesapeake Bay; and

7 “(B) are identified by a Chesapeake Basin  
8 State pursuant to section 303(d).

9 “(11) CHESAPEAKE BAY TMDL.—

10 “(A) IN GENERAL.—The term ‘Chesapeake  
11 Bay TMDL’ means the total maximum daily  
12 load (including any revision) established or ap-  
13 proved by the Administrator for nitrogen, phos-  
14 phorus, and sediment loading to the waters in  
15 the Chesapeake Bay and the Chesapeake Bay  
16 tidal segments.

17 “(B) INCLUSIONS.—The term ‘Chesapeake  
18 Bay TMDL’ includes nitrogen, phosphorus, and  
19 sediment discharges in temporal units of great-  
20 er-than-daily duration, if the allocations—

21 “(i) are demonstrated to achieve  
22 water quality standards; and

23 “(ii) do not lead to violations of other  
24 applicable water quality standards for local  
25 receiving waters.

1           “(12) CHESAPEAKE EXECUTIVE COUNCIL.—The  
2 term ‘Chesapeake Executive Council’ means the sig-  
3 natories to the Chesapeake Bay Agreement.

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

10           “(14) CREDIT.—The term ‘credit’ means a unit  
11 provided for 1 pound per year of nitrogen, phos-  
12 phorus, or sediment that is—

13                   “(A) delivered to the tidal portion of the  
14 Chesapeake Bay; and

15                   “(B) eligible to be sold under the trading  
16 programs established by this section.

17           “(15) DIRECTOR.—The term ‘director’ means  
18 the Director of the Chesapeake Basin Program Of-  
19 fice of the Environmental Protection Agency.

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

1           “(17) **MENHADEN.**—The term ‘menhaden’  
2 means members of stocks or populations of the spe-  
3 cies *Brevoortia tyrannus*.

4           “(18) **NUTRIA.**—The term ‘nutria’ means the  
5 species *Myocaster coypus*.

6           “(19) **OFFSET.**—The term ‘offset’ means a re-  
7 duction of loading of nitrogen, phosphorous, or sedi-  
8 ment, as applicable, in a manner that ensures that  
9 the net loading reaching the Chesapeake Bay and  
10 the Chesapeake Bay tidal segments from a source—

11                   “(A) does not increase; or

12                   “(B) is reduced.

13           “(20) **SIGNATORY JURISDICTION.**—The term  
14 ‘signatory jurisdiction’ means a jurisdiction of a sig-  
15 natory to the Chesapeake Bay Agreement.

16           “(21) **TRIBUTARY BASIN.**—The term ‘tributary  
17 basin’ means an area of land or body of water  
18 that—

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

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

23           “(b) **RENAMING AND CONTINUATION OF CHESA-  
24 PEAKE BAY PROGRAM.**—



1           “(1) IN GENERAL.—In cooperation with the  
2 Chesapeake Executive Council (and as a member of  
3 the Council), the Administrator shall—

4           “(A) rename the Chesapeake Bay Pro-  
5 gram, as in existence on the date of enactment  
6 of the Chesapeake Clean Water and Ecosystem  
7 Restoration Act, as the ‘Chesapeake Basin Pro-  
8 gram’; and

9           “(B) continue to carry out the Chesapeake  
10 Basin Program.

11           “(2) MEETINGS.—

12           “(A) IN GENERAL.—The Chesapeake Ex-  
13 ecutive Council shall meet not less frequently  
14 than once each year.

15           “(B) OPEN TO PUBLIC.—

16           “(i) IN GENERAL.—Subject to clause  
17 (ii), a meeting of the Chesapeake Execu-  
18 tive Council shall be held open to the pub-  
19 lic.

20           “(ii) EXCEPTION.—The Chesapeake  
21 Executive Council may hold executive ses-  
22 sions that are closed to the public.

23           “(3) PROGRAM OFFICE.—

1           “(A) IN GENERAL.—The Administrator  
2 shall maintain in the Environmental Protection  
3 Agency a Chesapeake Basin Program Office.

4           “(B) FUNCTION.—The Chesapeake Basin  
5 Program Office shall provide support to the  
6 Chesapeake Executive Council by—

7           “(i) implementing and coordinating  
8 science, research, modeling, support serv-  
9 ices, monitoring, data collection, and other  
10 activities that support the Chesapeake  
11 Basin Program;

12           “(ii) developing and making available,  
13 through publications, technical assistance,  
14 and other appropriate means, information  
15 pertaining to the environmental quality  
16 and living resources of the Chesapeake  
17 Basin ecosystem;

18           “(iii) in cooperation with appropriate  
19 Federal, State, and local authorities, as-  
20 sisting the signatories to the Chesapeake  
21 Bay Agreement in developing and imple-  
22 menting specific action plans to carry out  
23 the responsibilities of the signatories to the  
24 Chesapeake Bay Agreement;

1           “(iv) coordinating the actions of the  
2           Environmental Protection Agency with the  
3           actions of the appropriate officials of other  
4           Federal agencies and State and local au-  
5           thorities in developing strategies to—

6                   “(I) improve the water quality  
7                   and living resources in the Chesa-  
8                   peake Basin ecosystem; and

9                   “(II) obtain the support of the  
10                  appropriate officials of the agencies  
11                  and authorities in achieving the objec-  
12                  tives of the Chesapeake Bay Agree-  
13                  ment; and

14                  “(v) implementing outreach programs  
15                  for public information, education, and par-  
16                  ticipation to foster stewardship of the re-  
17                  sources of the Chesapeake Basin.

18           “(c) INTERAGENCY AGREEMENTS.—The Adminis-  
19           trator may enter into an interagency agreement with a  
20           Federal agency to carry out this section.

21           “(d) TECHNICAL ASSISTANCE AND ASSISTANCE  
22           GRANTS.—

23                   “(1) IN GENERAL.—In cooperation with the  
24                   Chesapeake Executive Council, the Administrator  
25                   may provide technical assistance, and assistance

1 grants, to soil conservation districts, nonprofit orga-  
2 nizations, State and local governments, interstate  
3 commissions within the Chesapeake Basin, and insti-  
4 tutions of higher education to carry out this section,  
5 subject to such terms and conditions as the Adminis-  
6 trator considers appropriate.

7 “(2) FEDERAL SHARE.—

8 “(A) IN GENERAL.—Except as provided in  
9 subparagraph (B), the Federal share of an as-  
10 sistance grant provided under paragraph (1)  
11 shall be determined by the Administrator in ac-  
12 cordance with guidance issued by the Adminis-  
13 trator.

14 “(B) CHESAPEAKE BASIN STEWARDSHIP  
15 GRANTS PROGRAM.—The Federal share of an  
16 assistance grant provided under paragraph (1)  
17 to carry out an implementing activity under  
18 subsection (h)(2) shall not exceed 75 percent of  
19 eligible project costs, as determined by the Ad-  
20 ministrator.

21 “(3) NON-FEDERAL SHARE.—An assistance  
22 grant under paragraph (1) shall be provided on the  
23 condition that non-Federal sources provide the re-  
24 mainder of eligible project costs, as determined by  
25 the Administrator.

1           “(4) ADMINISTRATIVE COSTS.—Administrative  
2 costs shall not exceed 10 percent of the annual grant  
3 award.

4           “(e) IMPLEMENTATION, MONITORING, AND CENTERS  
5 OF EXCELLENCE GRANTS.—

6           “(1) GRANTS.—

7           “(A) IMPLEMENTATION GRANTS.—The Ad-  
8 ministrators shall make an implementation grant  
9 to the Chesapeake Basin State, or a designee of  
10 a Chesapeake Basin State (including a soil con-  
11 servation district, nonprofit organization, local  
12 government, institution of higher education,  
13 interstate basin commission, or interstate agen-  
14 cy), for the purposes of implementing an ap-  
15 proved watershed implementation plan of the  
16 Chesapeake Basin State under subsection (j)  
17 and achieving the goals established under the  
18 Chesapeake Bay Agreement, subject to such  
19 terms and conditions as the Administrator con-  
20 siders to be appropriate.

21           “(B) MONITORING GRANTS.—The Admin-  
22 istrator may make a monitoring grant to—

23           “(i) a Chesapeake Basin State, des-  
24 ignee of a Chesapeake Basin State, soil  
25 conservation district, nonprofit organiza-

1           tion, local government, institution of high-  
2           er education, or interstate Chesapeake  
3           Basin commission for the purpose of moni-  
4           toring the ecosystem of freshwater tribu-  
5           taries to the Chesapeake Bay; or

6           “(ii) any of the States of Delaware,  
7           Maryland, or Virginia (or a designee), the  
8           District of Columbia (or a designee), non-  
9           profit organization, local government, insti-  
10          tution of higher education, or interstate  
11          agency for the purpose of monitoring the  
12          Chesapeake Bay, including the tidal waters  
13          of the Chesapeake Bay.

14          “(C)       CENTERS       OF       EXCELLENCE  
15          GRANTS.—The Administrator, in consultation  
16          with the Secretary of Agriculture, may make  
17          grants to institutions of higher education, con-  
18          sortia of such institutions, or public, non-affili-  
19          ated nonprofit organizations for the purpose of  
20          establishing and supporting centers of excel-  
21          lence for water quality and agricultural prac-  
22          tices—

23               “(i) to develop new technologies and  
24               innovative policies and practices for agri-

1 cultural producers to reduce nitrogen,  
2 phosphorous, and sediment pollution;

3 “(ii) to quantify the expected load re-  
4 ductions of those pollutants to be achieved  
5 in the Chesapeake Basin through the im-  
6 plementation of those technologies, policies,  
7 and practices; and

8 “(iii) to provide to the Administrator  
9 and the Secretary recommendations for—

10 “(I) the deployment of those  
11 technologies, policies, and practices  
12 among agricultural producers; and

13 “(II) the application of those  
14 technologies, policies, and practices in  
15 Chesapeake Basin computer models.

16 “(2) ADMINISTRATION.—

17 “(A) IN GENERAL.—Subject to subpara-  
18 graph (C), in making implementation grants to  
19 each of the Chesapeake Basin States for a fis-  
20 cal year under this subsection, the Adminis-  
21 trator shall ensure that not less than—

22 “(i) 10 percent of the funds available  
23 to make such grants are made to the  
24 States of Delaware, New York, and West  
25 Virginia (or designees of those States); and

1                   “(ii) 20 percent of the funds available  
2                   to make such grants are made to States  
3                   (or designees of the States) for the sole  
4                   purpose of providing technical assistance to  
5                   agricultural producers and forest owners to  
6                   access conservation programs and other re-  
7                   sources devoted to improvements in, and  
8                   protection of, water quality in the Chesa-  
9                   peake Bay and the tributaries of the  
10                  Chesapeake Bay, in accordance with sub-  
11                  paragraph (B).

12                  “(B) TECHNICAL ASSISTANCE.—A State  
13                  (or designees of a State) may use any soil con-  
14                  servation district, nonprofit organization, pri-  
15                  vate sector vendor, or other appropriately quali-  
16                  fied provider to deliver technical assistance to  
17                  agricultural producers and forest owners under  
18                  subparagraph (A)(ii).

19                  “(C) NONAPPLICABILITY TO DC.—This  
20                  paragraph shall not apply to any implementa-  
21                  tion grant provided to the District of Columbia.

22                  “(3) PROPOSALS.—

23                  “(A) IMPLEMENTATION GRANTS.—

24                  “(i) IN GENERAL.—A Chesapeake  
25                  Basin State described in paragraph (1)



1 may apply for a grant under this sub-  
2 section for a fiscal year by submitting to  
3 the Administrator a comprehensive pro-  
4 posal to implement programs and achieve  
5 the goals established under the Chesapeake  
6 Bay Agreement.

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

10 “(I) a description of the proposed  
11 actions that the Chesapeake Basin  
12 State commits to take within a speci-  
13 fied time period, including 1 or more  
14 of actions that are designed—

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

22 “(bb) to restore, enhance,  
23 and protect the finfish, shellfish,  
24 waterfowl, and other living re-  
25 sources, habitats of those species

1 and resources, and ecological re-  
2 lationships to sustain all fisheries  
3 and provide for a balanced eco-  
4 system;

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

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

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

27

1 and commitments of the Chesapeake Bay Agreement; or

2  
3 “(ff) to provide technical assistance to agricultural producers, forest owners, and other  
4 eligible entities, through technical infrastructure, including activities, processes, tools, and agency  
5 functions needed to support delivery of technical services, such as  
6 technical standards, resource inventories, training, data, technology, monitoring, and effects  
7 analyses;

8  
9 “(II) except with respect to any  
10 implementation grant proposal by the  
11 District of Columbia, a commitment  
12 to dedicate not less than 20 percent of  
13 the grant funding for the Chesapeake  
14 Bay under this subsection to support  
15 technical assistance for agricultural  
16 and forest land or nutrient management practices that protect and re-  
17 store watershed resources and water  
18 quality, reduce or maintain reduced  
19  
20  
21  
22  
23  
24  
25

1 pollutant loadings for the Chesapeake  
2 Bay and related tributaries, and re-  
3 store and preserve aquatic living re-  
4 sources; and

5 “(III) the estimated cost of the  
6 actions proposed to be taken during  
7 the year.

8 “(B) MONITORING GRANTS.—

9 “(i) IN GENERAL.—A Chesapeake  
10 Basin State described in paragraph (1) (or  
11 a designee) may apply for a grant under  
12 this subsection for a fiscal year by submit-  
13 ting to the Administrator a comprehensive  
14 proposal to monitor freshwater or estua-  
15 rine ecosystems, including water quality.

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

19 “(I) a description of the proposed  
20 monitoring system;

21 “(II) certification by the Chesa-  
22 peake Basin Program Director that  
23 such a monitoring system includes  
24 such parameters as the Chesapeake  
25 Basin Program Director determines to

1 be necessary to assess progress to-  
2 ward achieving the goals of the Ches-  
3 peake Clean Water and Ecosystem  
4 Restoration Act; and

5 “(III) the estimated cost of the  
6 monitoring proposed to be conducted  
7 during the year.

8 “(iii) CONCURRENCES.—The Adminis-  
9 trator shall—

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

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

23 “(iv) CONSULTATION.—The Adminis-  
24 trator shall—



1 in subwatersheds that have high  
2 levels of impervious surfaces;

3 “(II) with regard to the estuarine  
4 monitoring system, consult with insti-  
5 tutions of higher education with ex-  
6 pertise in estuarine systems and the  
7 Chesapeake Basin States regarding  
8 the monitoring systems established  
9 under this subsection;

10 “(III) consult with the Chesa-  
11 peake Basin Program Scientific and  
12 Technical Advisory Committee regard-  
13 ing independent review of monitoring  
14 designs giving particular attention to  
15 integrated freshwater and estuarine  
16 monitoring strategies; and

17 “(IV) consult with Federal de-  
18 partments and agencies, including the  
19 Department of Agriculture, regarding  
20 cooperation in implementing moni-  
21 toring programs.

22 “(f) FEDERAL FACILITIES COORDINATION.—

23 “(1) SUBWATERSHED PLANNING AND RESTORA-  
24 TION.—A Federal agency that owns or operates a  
25 facility (as defined by the Administrator) within the

1 Chesapeake Basin shall participate in regional and  
2 subwatershed planning and restoration programs.

3 “(2) COMPLIANCE WITH AGREEMENTS AND  
4 PLANS.—The head of each Federal agency that owns  
5 or occupies real property in the Chesapeake Basin  
6 shall ensure that the property, and actions taken by  
7 the agency with respect to the property, comply  
8 with—

9 “(A) the Chesapeake Bay Agreement;

10 “(B) the Federal Agencies Chesapeake  
11 Ecosystem Unified Plan;

12 “(C) the Chesapeake Basin action plan de-  
13 veloped in accordance with subparagraph  
14 (g)(1)(A); and

15 “(D) any subsequent agreements and  
16 plans.

17 “(3) FOREST COVER AT FEDERAL FACILI-  
18 TIES.—Not later than January 1, 2012, the Admin-  
19 istrator, with the advice of the Chief of the Forest  
20 Service, shall coordinate with the head of each Fed-  
21 eral agency that owns or operates a facility within  
22 the Chesapeake Basin (as determined by the Admin-  
23 istrator) to develop plans to maximize forest cover at  
24 the facility through—



1           “(A) the preservation of existing forest  
2 cover; or

3           “(B) with respect to a facility that has  
4 been previously disturbed or developed, the de-  
5 velopment of a reforestation plan.

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 Basin 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 Basin ecosystem;

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

1                   “(iii) distinguishes between the health  
2                   of the Chesapeake Basin ecosystem and  
3                   the 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 tributaries; 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 Basin-  
16                   wide database containing comprehensive data on im-  
17                   plementation of conservation management practices  
18                   in the Chesapeake Basin that—

19                   “(A) includes baseline conservation man-  
20                   agement practice implementation data, includ-  
21                   ing, to the maximum extent feasible, all publicly  
22                   and privately funded conservation practices, as  
23                   of the effective date of the Chesapeake Clean  
24                   Water and Ecosystem Restoration Act;

1           “(B) includes data on subsequent con-  
2           servation management practice implementation  
3           projects funded by, or reported to, the Depart-  
4           ment of Agriculture, the appropriate depart-  
5           ment of any Chesapeake Basin State, a local  
6           soil and water conservation district, or any  
7           similar institution;

8           “(C) except with respect to data associated  
9           with a permit or recorded in the trading reg-  
10          istry, as provided in subsection (k)(6)(B)(viii),  
11          presents the required data to the Administrator  
12          in statistical or aggregate form without identi-  
13          fying any—

14                 “(i) individual owner, operator, or  
15                 producer; or

16                 “(ii) specific data gathering site;

17          “(D) is made available to the public not  
18          later than December 31, 2010; and

19                 “(E) is updated not less frequently than  
20                 once every 2 years.

21          “(h) CHESAPEAKE BASIN PROGRAM.—

22                 “(1) MANAGEMENT STRATEGIES.—The Admin-  
23          istrator, in coordination with other members of the  
24          Chesapeake Executive Council, shall ensure that  
25          management plans are developed and implemented

1 by Chesapeake Basin States to achieve and main-  
2 tain—

3 “(A) for each of the Chesapeake Basin  
4 States—

5 “(i) the nutrient goals of the Chesa-  
6 peake Bay Agreement for the quantity of  
7 nitrogen and phosphorus entering the  
8 Chesapeake Bay and the tidal tributaries  
9 of the Chesapeake Bay; and

10 “(ii) the water quality requirements  
11 necessary to restore living resources in the  
12 Chesapeake Bay and the tidal tributaries  
13 of the Chesapeake Bay; and

14 “(B) for the signatory States—

15 “(i) the Chesapeake Bay Basinwide  
16 Toxins Reduction and Prevention Strategy  
17 goal of reducing or eliminating the input of  
18 chemical contaminants from all control-  
19 lable sources to levels that result in no  
20 toxic or bioaccumulative impact on the liv-  
21 ing resources of the Chesapeake Basin eco-  
22 system or on human health;

23 “(ii) habitat restoration, protection,  
24 creation, and enhancement goals estab-  
25 lished by Chesapeake Bay Agreement for

1 wetland, riparian forests, and other types  
2 of habitat associated with the Chesapeake  
3 Basin ecosystem; and

4 “(iii) the restoration, protection, cre-  
5 ation, and enhancement goals established  
6 by the Chesapeake Bay Agreement for liv-  
7 ing resources associated with the Chesa-  
8 peake Basin ecosystem.

9 “(2) CHESAPEAKE BASIN STEWARDSHIP  
10 GRANTS PROGRAM.—The Administrator, in coopera-  
11 tion with the Chesapeake Executive Council, shall—

12 “(A) establish a Chesapeake Basin Stew-  
13 ardship Grants Program; and

14 “(B) in carrying out that program—

15 “(i) offer technical assistance and as-  
16 sistance grants under subsection (d) to  
17 States (or designees of States), local gov-  
18 ernments, soil conservation districts, insti-  
19 tutions of higher education, nonprofit orga-  
20 nizations, and private entities in the  
21 Chesapeake Basin region to implement—

22 “(I) cooperative watershed strate-  
23 gies that address the water quality,  
24 habitat, and living resource needs in  
25 the Chesapeake Basin;

1                   “(II) locally based protection and  
2 restoration programs or projects with-  
3 in a watershed that complement the  
4 State watershed implementation  
5 plans, including the creation, restora-  
6 tion, or enhancement of habitat asso-  
7 ciated with the Chesapeake Basin eco-  
8 system;

9                   “(III) activities for increased  
10 spawning and other habitat for migra-  
11 tory fish by removing barriers or con-  
12 structing fish passage devices, restor-  
13 ing streams with high habitat poten-  
14 tial for cold water fisheries such as  
15 native brook trout, or other habitat  
16 enhancements for fish and waterfowl;

17                   “(IV) activities for increased rec-  
18 reational access to the Chesapeake  
19 Bay and the tidal rivers and fresh-  
20 water tributaries of the Chesapeake  
21 Bay; and

22                   “(V) innovative nitrogen, phos-  
23 phorus, or sediment reduction efforts;  
24 and



1 permit under section 402 is not re-  
2 quired;

3 “(III) a margin of safety so as to  
4 ensure that the Chesapeake Bay  
5 TMDL does not exceed any applicable  
6 water quality standard;

7 “(IV) a provision to allocate or  
8 offset new or increased loading of ni-  
9 trogen, phosphorous, or sediment, as  
10 applicable, from source categories in a  
11 manner that ensures that—

12 “(aa) the net loading of ni-  
13 trogen, phosphorous, or sediment  
14 reaching the Chesapeake Bay  
15 and the Chesapeake Bay tidal  
16 segments—

17 “(AA) does not in-  
18 crease; or

19 “(BB) is reduced; and

20 “(bb) any offset does not re-  
21 sult in an excursion from any ap-  
22 plicable water quality standard;  
23 and



1                   “(V) a reasonable assurance that  
2                   the allocations described in this clause  
3                   will be met.

4                   “(C) BASIS.—The Chesapeake Bay TMDL  
5 shall be based on—

6                   “(i) scientific data;

7                   “(ii) technical feasibility and effective-  
8 ness; and

9                   “(iii) principles of equity among geo-  
10 graphic regions, sources, and source cat-  
11 egories.

12                   “(2) PERMITS.—

13                   “(A) IN GENERAL.—Effective beginning on  
14 January 1, 2011, each new or reissued permit  
15 under subsection (j)(2)(A), subsection  
16 (k)(5)(E)(i), or section 402 issued by the Ad-  
17 ministrator or by a Chesapeake Basin State au-  
18 thorized to administer a permit program shall  
19 include appropriate effluent limits consistent  
20 with all applicable wasteload allocations in the  
21 Chesapeake Bay TMDL.

22                   “(B) EXPIRED PERMITS.—Effective begin-  
23 ning on January 1, 2011, not later than 60  
24 days after the date of expiration of the permit,  
25 all Chesapeake Basin States shall submit to the

1 Administrator a copy of any expiring permit for  
2 the discharge of nitrogen, phosphorus, or sedi-  
3 ment into the Chesapeake Basin that allows for  
4 an extension for longer than 5 years pursuant  
5 to a State law similar to section 558(c) of title  
6 5, United States Code.

7 “(C) REVIEW.—The Administrator shall  
8 have the opportunity to review and object to the  
9 continuance of such permits in accordance with  
10 the process set forth in section 402(d).

11 “(j) ACTIONS BY STATES.—

12 “(1) WATERSHED IMPLEMENTATION PLANS.—

13 “(A) PLANS.—

14 “(i) IN GENERAL.—Not later than  
15 November 1, 2011, each Chesapeake Basin  
16 State, after providing for reasonable notice  
17 and 1 or more public hearings, shall adopt  
18 and submit to the Administrator for ap-  
19 proval a watershed implementation plan  
20 for the Chesapeake Basin State portion of  
21 the Chesapeake Bay TMDL.

22 “(ii) TARGETS.—The watershed im-  
23 plementation plan shall, consistent with  
24 the Chesapeake Bay TMDL, establish re-  
25 duction targets, key actions, and schedules

1 for reducing, to levels that will attain  
2 water quality standards, the loads of nitro-  
3 gen, phosphorus, and sediment, including  
4 pollution from—

5 “(I) point sources, including  
6 point source stormwater discharges;  
7 and

8 “(II) nonpoint sources.

9 “(iii) POLLUTION LIMITATIONS.—

10 “(I) IN GENERAL.—The pollution  
11 limitations —

12 “(aa) during the period be-  
13 ginning on the date of enactment  
14 of the Chesapeake Clean Water  
15 and Ecosystem Restoration Act  
16 and ending on the date of estab-  
17 lishment of the Chesapeake Bay  
18 TMDL, shall be the nitrogen,  
19 phosphorous, and sediment cap  
20 loads identified in the tributary  
21 cap load agreement numbered  
22 EPA 903-R-03-007, dated De-  
23 cember 2003, and entitled ‘Set-  
24 ting and Allocating the Chesa-  
25 peake Bay Basin Nutrient and

1 Sediment Loads: The Collaborative Process, Technical Tools  
2 and Innovative Approaches’; and  
3  
4 “(bb) effective beginning on  
5 the date of establishment of the  
6 Chesapeake Bay TMDL, shall be  
7 the nitrogen, phosphorus, and  
8 sediment load and wasteload allo-  
9 cations contained in the Ches-  
10 peake Bay TMDL.

11 “(II) STRINGENCY.—A water-  
12 shed implementation plan shall be de-  
13 signed to attain, at a minimum, the  
14 pollution limitations described in sub-  
15 clause (I).

16 “(iv) PLAN REQUIREMENTS.—Each  
17 watershed implementation plan shall—

18 “(I) include State-adopted man-  
19 agement measures, including rules or  
20 regulations, permits, consent decrees,  
21 and other enforceable or otherwise  
22 binding measures, to require and  
23 achieve reductions from point and  
24 nonpoint pollution sources;

1                   “(II) include programs to achieve  
2                   voluntary reductions from pollution  
3                   sources, including an estimate of the  
4                   funding commitments necessary to im-  
5                   plement the programs and a plan for  
6                   working to secure the funding;

7                   “(III) include any additional re-  
8                   quirements or actions that the Chesa-  
9                   peake Basin State determines to be  
10                  necessary to attain the pollution limi-  
11                  tations by the deadline established in  
12                  this paragraph;

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

1                   “(V) include a schedule for im-  
2                   plementation that—

3                   “(aa) is divided into 2-year  
4                   periods, along with computer  
5                   modeling to demonstrate the pro-  
6                   jected reductions in nitrogen,  
7                   phosphorus, and sediment loads  
8                   associated with each 2-year pe-  
9                   riod; and

10                   “(bb) demonstrates reason-  
11                   able additional progress toward  
12                   achievement of the goals de-  
13                   scribed in—

14                   “(AA)            subclause  
15                   (VIII)(aa); and

16                   “(BB) clauses (i) and  
17                   (ii) of subparagraph (B);

18                   “(VI) include the stipulation of  
19                   alternate actions as contingencies;

20                   “(VII) account for how the  
21                   Chesapeake Basin State will address  
22                   additional loadings from growth  
23                   through reserved allocations, offsets,  
24                   planned future controls, implementa-

1                   tion of new technologies, or other ac-  
2                   tions;

3                   “(VIII)     provide     assurances  
4                   that—

5                   “(aa) if compared to an esti-  
6                   mated 2008 baseline based on  
7                   modeled loads, the initial plan  
8                   shall be designed to achieve, not  
9                   later than May 31, 2017, at least  
10                  60 percent of the nutrient and  
11                  sediment reduction requirements  
12                  described in clause (iii)(I)(bb);

13                  “(bb) the Chesapeake Basin  
14                  State will have adequate per-  
15                  sonnel and funding (or a plan to  
16                  secure the funding), and author-  
17                  ity under State (and, as appro-  
18                  priate, local) law to carry out the  
19                  implementation plan, and is not  
20                  prohibited by any provision of  
21                  Federal or State law from car-  
22                  rying out the implementation  
23                  plan; and

24                  “(cc) to the extent that a  
25                  Chesapeake Basin State has re-

1                    lied on a local government for the  
2                    implementation of any plan pro-  
3                    vision, the Chesapeake Basin  
4                    State has the responsibility for  
5                    ensuring adequate implementa-  
6                    tion of the provision;

7                    “(IX) include adequate provisions  
8                    for public participation; and

9                    “(X) upon the approval of the  
10                   Administrator, be made available to  
11                   the public on the Internet.

12                   “(B) IMPLEMENTATION.—

13                   “(i) IN GENERAL.—In implementing a  
14                   watershed implementation plan, each  
15                   Chesapeake Basin State shall follow a  
16                   strategy developed by the Administrator  
17                   for the implementation of adaptive man-  
18                   agement principles to ensure full imple-  
19                   mentation of all plan elements by not later  
20                   than May 12, 2025, including—

21                   “(I) biennial evaluations of State  
22                   actions;

23                   “(II) progress made toward im-  
24                   plementation;



1                   “(III) determinations of nec-  
2                   essary modifications to future actions  
3                   in order to achieve objectives includ-  
4                   ing achievement of water quality  
5                   standards; and

6                   “(IV) appropriate provisions to  
7                   adapt to climate changes.

8                   “(ii) DEADLINE.—Not later than May  
9                   12, 2025, each Chesapeake Basin State  
10                  shall—

11                  “(I) fully implement the water-  
12                  shed implementation plan of the  
13                  State; and

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

19                  “(C) PROGRESS REPORTS.—Not later than  
20                  May 12, 2014, and biennially thereafter, each  
21                  Chesapeake Basin State shall submit to the Ad-  
22                  ministrators a progress report that, with respect  
23                  to the 2-year period covered by the report—

24                  “(i) includes a listing of all manage-  
25                  ment measures that were to be imple-

1 mented in accordance with the approved  
2 watershed implementation plan of the  
3 Chesapeake Basin State, including a de-  
4 scription of the extent to which those  
5 measures have been fully implemented;

6 “(ii) includes a listing of all the man-  
7 agement measures described in clause (i)  
8 that the Chesapeake Basin State has failed  
9 to fully implement in accordance with the  
10 approved watershed implementation plan  
11 of the Chesapeake Basin State;

12 “(iii) includes monitored and collected  
13 water quality data;

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

21 “(v) demonstrates reasonable addi-  
22 tional progress made by the State toward  
23 achievement of the requirements and dead-  
24 lines described in subparagraph

1 (A)(iv)(VIII)(aa) and clauses (i) and (ii) of  
2 subparagraph (B);

3 “(vi) includes, for the subsequent 2-  
4 year period, implementation goals and  
5 Chesapeake Basin Program computer mod-  
6 eling data detailing the projected pollution  
7 reductions to be achieved if the Chesa-  
8 peake Basin State fully implements the  
9 subsequent round of management meas-  
10 ures;

11 “(vii) identifies compliance informa-  
12 tion, including violations, actions taken by  
13 the Chesapeake Basin State to address the  
14 violations, and dates, if any, on which com-  
15 pliance was achieved; and

16 “(viii) specifies any revisions to the  
17 watershed implementation plan submitted  
18 under this paragraph that the Chesapeake  
19 Basin State determines are necessary to  
20 attain the applicable pollutant limitations  
21 for nitrogen, phosphorus, and sediments.

22 “(2) ISSUANCE OF PERMITS.—

23 “(A) IN GENERAL.—Notwithstanding any  
24 other provision of this Act (including any exclu-  
25 sion or exception contained in a definition

1 under section 502), after providing appropriate  
2 opportunities for public comment, for the pur-  
3 pose of achieving the nitrogen, phosphorus, and  
4 sediment reductions required under a watershed  
5 implementation plan, a Chesapeake Basin  
6 State, or, if the State is not authorized to ad-  
7 minister the permit program under section 402,  
8 the Administrator, may impose limitations or  
9 other controls, including permit requirements,  
10 on any discharge or runoff from a pollution  
11 source, including point and nonpoint sources,  
12 located within the Chesapeake Basin State that  
13 the program administrator determines to be  
14 necessary.

15 “(B) ENFORCEMENT.—The Chesapeake  
16 Basin States and the Administrator shall en-  
17 force any permits issued in accordance with the  
18 watershed implementation plan in the same  
19 manner as permits issued under section 402 are  
20 enforced.

21 “(C) ADDITIONAL ENFORCEMENT STAND-  
22 ARDS.—No Federal enforcement action shall be  
23 brought pursuant to section 309 against an ag-  
24 ricultural producer that is in compliance with  
25 all of the applicable planning and scheduled im-

1            plementation requirements of the following, as  
2            required by Federal, State, or other locally-ap-  
3            plicable law and included as part of a federally  
4            issued or approved State watershed implemen-  
5            tation plan:

6                    “(i) State permits issued pursuant to  
7                    section 402 or a State regulation.

8                    “(ii) A soil conservation plan approved  
9                    by the Federal Government or a State or  
10                   local government, soil conservation district,  
11                   or other applicable agency.

12                   “(iii) A government-approved nutrient  
13                   management plan.

14                   “(iv) A State or locally approved ero-  
15                   sion and sediment control plan.

16                   “(v) Any other applicable requirement  
17                   described in the State watershed imple-  
18                   mentation plan.

19                   “(D) DE MINIMIS EXEMPTIONS.—The Ad-  
20                   ministrator (with respect to the District of Co-  
21                   lumbia) or a Chesapeake Basin State that is  
22                   authorized to administer a permit program  
23                   under section 402, after consultation with  
24                   stakeholders (including wastewater utilities,  
25                   municipalities, developers, agricultural pro-

1           ducers, institutions of higher education, and  
2           other interested parties) shall establish de mini-  
3           mis exemptions for permits issued under this  
4           paragraph.

5           “(3) STORMWATER PERMITS.—

6                   “(A) IN GENERAL.—Effective beginning  
7           January 1, 2013, the Chesapeake Basin State  
8           shall provide assurances to the Administrator  
9           that—

10                           “(i) the owner or operator of any de-  
11                           velopment or redevelopment project pos-  
12                           sessing an impervious footprint that ex-  
13                           ceeds a threshold to be determined by the  
14                           Administrator through rulemaking, will use  
15                           site planning, design, construction, and  
16                           maintenance strategies for the property to  
17                           maintain or restore, to the maximum ex-  
18                           tent technically feasible, the  
19                           predevelopment hydrology of the property  
20                           with regard to the temperature, rate, vol-  
21                           ume, and duration of flow, using onsite in-  
22                           filtration, evapotranspiration, and reuse  
23                           approaches, if feasible; and

24                           “(ii) as a further condition of permit-  
25                           ting such a development or redevelopment,

1 the owner or operator of any development  
2 or redevelopment project possessing an im-  
3 pervious footprint that exceeds a threshold  
4 to be determined by the Administrator  
5 through rulemaking will compensate for  
6 any unavoidable impacts to the  
7 predevelopment hydrology of the property  
8 with regard to the temperature, rate, vol-  
9 ume, and duration of flow, such that—

10 “(I) the compensation within the  
11 affected subwatershed shall provide  
12 in-kind mitigation of function at a  
13 ratio to be determined by the Admin-  
14 istrator through rulemaking; and

15 “(II) the compensation outside  
16 the affected subwatershed shall pro-  
17 vide in-kind mitigation, at a ratio to  
18 be determined by the Administrator  
19 through rulemaking , within the tribu-  
20 tary watershed in which the project is  
21 located.

22 “(B) REGULATIONS.—

23 “(i) IN GENERAL.—Not later than  
24 May 12, 2011, the Administrator shall  
25 promulgate regulations that—

1 “(I) define the term  
2 ‘predevelopment hydrology’ for pur-  
3 poses of subparagraph (A);

4 “(II) establish the thresholds  
5 under subparagraph (A); and

6 “(III) establish the compensation  
7 ratios under subparagraph (A)(ii).

8 “(ii) REQUIREMENT.—In developing  
9 the regulations under clause (i), including  
10 establishing minimum standards for new  
11 development and redevelopment, the Ad-  
12 ministrator shall take into consideration,  
13 based on an evaluation of field science and  
14 practice, factors such as—

15 “(I) the benefit to—

16 “(aa) overall watershed pro-  
17 tection and restoration of redevel-  
18 opment of brownfields or other  
19 previously developed or disturbed  
20 sites; and

21 “(bb) water quality improve-  
22 ment through lot-level  
23 stormwater management.

24 “(C) FAILURE TO PROVIDE ASSUR-  
25 ANCES.—If a Chesapeake Basin State fails to



1 provide the assurances required under subpara-  
2 graph (A), effective beginning on May 12,  
3 2013, the Administrator may withhold funds  
4 otherwise available to the Chesapeake Basin  
5 State under this Act, in accordance with sub-  
6 paragraphs (A) and (B) of subsection (k)(5).

7 “(4) PHOSPHATE BAN.—

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

22 “(B) PROHIBITED QUANTITIES OF PHOS-  
23 PHORUS.—Each Chesapeake Basin State shall  
24 provide to the Administrator, not later than 3  
25 years after the date of enactment of the Chesa-

1           peake Clean Water and Ecosystem Restoration  
2           Act, assurances that, within the jurisdiction, a  
3           person may use, sell, manufacture, or distribute  
4           for use or sale a cleaning agent that contains  
5           greater than 0.0 percent phosphorus by weight,  
6           but does not exceed 8.7 percent phosphorus by  
7           weight, if the cleaning agent is a substance that  
8           the Administrator, by regulation, excludes from  
9           the limitation under subparagraph (A), based  
10          on a finding that compliance with that subpara-  
11          graph would—

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

14                       “(ii) be unreasonable because of the  
15                       lack of an adequate substitute cleaning  
16                       agent.

17                       “(C) FAILURE TO PROVIDE ASSUR-  
18                       ANCES.—If a Chesapeake Basin State fails to  
19                       provide the necessary assurances under sub-  
20                       paragraphs (A) and (B) by not later than 3  
21                       years after the date of enactment of the Ches-  
22                       apeake Clean Water and Ecosystem Restoration  
23                       Act, the Administrator may withhold funds oth-  
24                       erwise available to the Chesapeake Basin State

1 under this Act, in accordance with subpara-  
2 graphs (A) and (B) of subsection (k)(5).

3 “(k) ACTION BY ADMINISTRATOR.—

4 “(1) IN GENERAL.—Not later than 60 days  
5 after the date of enactment of the Chesapeake Clean  
6 Water and Ecosystem Restoration Act, the Adminis-  
7 trator shall establish any minimum criteria that the  
8 Administrator determines to be necessary that any  
9 proposed watershed implementation plan must meet  
10 before the Administrator may approve such a plan.

11 “(2) COMPLETENESS FINDING.—

12 “(A) IN GENERAL.—Not later than 60  
13 days after the date on which the Administrator  
14 receives a new or revised proposed watershed  
15 implementation plan from a Chesapeake Basin  
16 State, the Administrator shall make a complete-  
17 ness determination based on whether the min-  
18 imum criteria for the plan established under  
19 paragraph (1) have been met.

20 “(B) EFFECT OF FINDING OF INCOM-  
21 PLETENESS.—If the Administrator determines  
22 under subparagraph (A) that all or any portion  
23 of a submitted watershed implementation plan  
24 does not meet the minimum completeness cri-  
25 teria established under paragraph (1), the

1 Chesapeake Basin State submitting the plan  
2 shall be treated as not having made the submis-  
3 sion.

4 “(3) APPROVAL AND DISAPPROVAL.—

5 “(A) DEADLINE.—Not later than 90 days  
6 after determining that a watershed implementa-  
7 tion plan meets minimum completeness criteria  
8 in accordance with paragraph (2)(A), the Ad-  
9 ministrator shall approve or disapprove the  
10 plan.

11 “(B) FULL AND PARTIAL APPROVAL AND  
12 DISAPPROVAL.—In carrying out this paragraph,  
13 the Administrator shall—

14 “(i) approve a watershed implementa-  
15 tion plan if the Administrator determines  
16 that the plan meets all applicable require-  
17 ments under subsection (j)(1); and

18 “(ii) approve the plan in part and dis-  
19 approve the plan in part if only a portion  
20 of the watershed implementation plan  
21 meets those requirements.

22 “(C) CONDITIONAL APPROVAL.—The Ad-  
23 ministrator shall—

24 “(i) conditionally approve the original  
25 or a revised watershed implementation

1 plan based on a commitment of the Chesapeake Basin State submitting the plan to  
2 adopt specific enforceable management  
3 measures by not later than 1 year after the  
4 date of approval of the plan revision; but

5  
6 “(ii) treat a conditional approval as a  
7 disapproval under this paragraph if the  
8 Chesapeake Basin State fails to comply  
9 with the commitment of the Chesapeake  
10 Basin State.

11 “(D) FULL APPROVAL REQUIRED.—An  
12 original or revised watershed implementation  
13 plan shall not be treated as meeting the re-  
14 quirements of this section until the Adminis-  
15 trator approves the entire original or revised  
16 plan.

17 “(E) CORRECTIONS.—In any case in which  
18 the Administrator determines that the action of  
19 the Administrator approving, disapproving, or  
20 conditionally approving any original or revised  
21 State watershed implementation plan was in  
22 error, the Administrator shall—

23 “(i) in the same manner as the ap-  
24 proval, disapproval, conditional approval,  
25 or promulgation, revise the action of the

1 Administrator, as appropriate, without re-  
2 quiring any further submission from the  
3 Chesapeake Basin State; and

4 “(ii) make the determination of the  
5 Administrator, and the basis for that de-  
6 termination, available to the public.

7 “(F) EFFECTIVE DATE.—The provisions of  
8 a State watershed implementation plan shall  
9 take effect upon the date of approval of the  
10 plan.

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

16 “(A) shall notify the Chesapeake Basin  
17 State of, and require the Chesapeake Basin  
18 State to revise the plan to correct the inadequa-  
19 cies;

20 “(B) may establish reasonable deadlines  
21 (not to exceed 180 days after the date on which  
22 the Administrator provides the notification) for  
23 the submission of a revised watershed imple-  
24 mentation plan;

1           “(C) shall make the findings of the Admin-  
2           istrator under paragraph (3) and notice pro-  
3           vided under subparagraph (A) public;

4           “(D) shall require as an element of any re-  
5           vised plan by the Chesapeake Basin State that  
6           the State adhere to the requirements applicable  
7           under the original watershed implementation  
8           plan, except that the Administrator may adjust  
9           any dates (other than attainment dates) appli-  
10          cable under those requirements, as appropriate;  
11          and

12          “(E) shall disapprove any revised plan sub-  
13          mitted by a Chesapeake Basin State that fails  
14          to adhere to the requirements described in sub-  
15          paragraph (D).

16          “(5) FEDERAL IMPLEMENTATION.—If a Chesa-  
17          peake Basin State fails to submit a required revised  
18          watershed implementation plan, submit a biennial  
19          report, correct a previously missed 2-year commit-  
20          ment made in a watershed implementation plan, or  
21          remedy a disapproval of a watershed implementation  
22          plan, the Administrator shall, by not later than 30  
23          days after the date of the failure and after issuing  
24          a notice to the State and providing a period of not

1 less than 1 year during which the failure may be  
2 corrected—

3 “(A) notwithstanding sections 601(a) and  
4 603(g), reserve up to 75 percent of the amount  
5 of the capitalization grant to the Chesapeake  
6 Basin State for a water pollution control revolv-  
7 ing fund under section 603 for activities that  
8 are—

9 “(i) selected by the Administrator;  
10 and

11 “(ii) consistent with the watershed im-  
12 plementation plans described in subpara-  
13 graphs (B) and (C);

14 “(B) withhold all funds otherwise available  
15 to the Chesapeake Basin State (or a designee)  
16 under this Act, except for the funds available  
17 under title VI;

18 “(C) develop and administer a watershed  
19 implementation plan for the Chesapeake Basin  
20 State until the Chesapeake Basin State has  
21 remedied the plan, reports, or achievements to  
22 the satisfaction of the Administrator;

23 “(D) in addition to requiring compliance  
24 with all other statutory and regulatory require-  
25 ments, require that all permits issued under



1 subsection (j)(2)(A) or section 402 for new or  
2 expanding discharges of nitrogen, phosphorus,  
3 or sediment shall acquire offsets that exceed, by  
4 at least 100 percent, the quantities of nitrogen,  
5 phosphorus, or sediment that would be dis-  
6 charged under the permit, taking into account  
7 attenuation, equivalency, and uncertainty; and

8 “(E) for the purposes of developing and  
9 implementing a watershed implementation plan  
10 under subparagraph (C)—

11 “(i) notwithstanding any other provi-  
12 sion of this Act (including any exclusion or  
13 exception contained in a definition under  
14 section 502), promulgate such regulations,  
15 including limitations on discharges from  
16 any pollution source (including any  
17 nonpoint source), or issue such permits to  
18 point sources and permits or other limita-  
19 tions on nonpoint sources as the Adminis-  
20 trator determines to be necessary to con-  
21 trol pollution sufficiently to meet the pollu-  
22 tion reductions required by the watershed  
23 implementation plan; and

24 “(ii) enforce against any point source  
25 or nonpoint source any limitation estab-

1                   lished, or permit issued, in accordance with  
2                   the watershed implementation plan in the  
3                   same manner as permits issued under sec-  
4                   tion 402 are enforced.

5                   “(6) NITROGEN AND PHOSPHORUS TRADING  
6 PROGRAM.—

7                   “(A) ESTABLISHMENT.—Not later than  
8                   May 12, 2012, the Administrator, in coopera-  
9                   tion with each Chesapeake Basin State, shall  
10                  establish, by regulation, an interstate nitrogen  
11                  and phosphorus trading program for the Chesa-  
12                  peake Basin for the generation, trading, and  
13                  use of nitrogen and phosphorus credits to facili-  
14                  tate the attainment and maintenance of the  
15                  Chesapeake Bay TMDL for nitrogen and phos-  
16                  phorus.

17                  “(B) TRADING SYSTEM.—The trading pro-  
18                  gram established under this subsection shall, at  
19                  a minimum—

20                         “(i) define and standardize nitrogen  
21                         and phosphorus credits and establish pro-  
22                         cedures or standards for ensuring equiva-  
23                         lent water quality benefits for all credits;

24                         “(ii) establish procedures or standards  
25                         for certifying, verifying, and enforcing ni-

1 nitrogen and phosphorus credits to ensure  
2 that credit-generating practices from both  
3 point sources and nonpoint sources are  
4 achieving actual reductions in nitrogen and  
5 phosphorus, including provisions for allow-  
6 ing the use of third parties to verify and  
7 certify credits sold within and across State  
8 lines;

9 “(iii) establish procedures or stand-  
10 ards for generating, quantifying, trading,  
11 and applying credits to meet regulatory re-  
12 quirements and allow for trading to occur  
13 between and across point source or  
14 nonpoint sources, including a requirement  
15 that purchasers of credits that propose to  
16 satisfy all or part of the obligation to re-  
17 duce nitrogen and phosphorus through the  
18 use of credits shall compensate, through  
19 further limitations on the discharges of the  
20 purchaser or through a new trade, for any  
21 deficiency in those reductions that results  
22 from the failure of a credit seller to carry  
23 out any activity that was to generate the  
24 credits;

1           “(iv) establish baseline requirements  
2           that a credit seller shall meet before be-  
3           coming eligible to generate saleable credits,  
4           which shall be at least as stringent as ap-  
5           plicable water quality standards, total max-  
6           imum daily loads, and watershed imple-  
7           mentation plans;

8           “(v) ensure that credits and trade re-  
9           quirements are incorporated, directly or by  
10          reference, into enforceable permit require-  
11          ments under the national pollutant dis-  
12          charge elimination system established  
13          under section 402 or the system of the ap-  
14          plicable State permitting authority for all  
15          credit purchasers covered by the permits;

16          “(vi) ensure that private contracts be-  
17          tween credit buyers and credit sellers con-  
18          tain adequate provisions to ensure enforce-  
19          ability under applicable law;

20          “(vii) establish procedures or stand-  
21          ards to ensure public transparency for all  
22          nutrient trading activities, including the  
23          establishment of a publicly available trad-  
24          ing registry, which shall include—

1                   “(I) the information used in the  
2                   certification and verification process;  
3                   and

4                   “(II) recorded trading trans-  
5                   actions (such as the establishment,  
6                   sale, amounts, and use of credits);

7                   “(viii) in addition to requiring compli-  
8                   ance with all other statutory and regu-  
9                   latory requirements, ensure that, in any  
10                  case in which a segment of the Chesapeake  
11                  Basin is impaired with respect to the nu-  
12                  trient being traded and a total maximum  
13                  daily load for that segment has not yet  
14                  been implemented for the impairment—

15                  “(I) trades are required to result  
16                  in progress toward or the attainment  
17                  of water quality standards in that seg-  
18                  ment; and

19                  “(II) sources in that segment  
20                  may not rely on credits produced out-  
21                  side of the segment;

22                  “(ix) require that the application of  
23                  credits to meet regulatory requirements  
24                  under this section not cause or contribute  
25                  to exceedances of water quality standards,

1 total maximum daily loads, or wasteload or  
2 load allocations for affected receiving wa-  
3 ters, including avoidance of localized im-  
4 pacts;

5 “(x) except as part of a consent  
6 agreement, consent judgment, or enforce-  
7 ment order, prohibit the purchase of cred-  
8 its from any entity that is in significant  
9 noncompliance with an enforceable permit  
10 issued under section 402;

11 “(xi) consider and incorporate, to the  
12 extent consistent with the minimum re-  
13 quirements of this Act, as determined by  
14 the Administrator, in consultation with the  
15 Secretary of Agriculture, elements of State  
16 trading programs in existence on the date  
17 of enactment of the Chesapeake Clean  
18 Water and Ecosystem Restoration Act;

19 “(xii) allow for, as appropriate, the  
20 aggregation and banking of credits by  
21 third parties; and

22 “(xiii) provide for appropriate tem-  
23 poral consistency between the time period  
24 during which the credit is generated and

1 the time period during which the credit is  
2 used.

3 “(C) FACILITATION OF TRADING.—In  
4 order to attract market participants and facili-  
5 tate the cost-effective achievement of water-  
6 quality goals, the Administrator, in consultation  
7 with the Secretary of Agriculture, shall ensure  
8 that the trading program established under this  
9 paragraph—

10 “(i) includes measures to mitigate  
11 credit buyer risk;

12 “(ii) makes use of the best available  
13 science in order to minimize uncertainty  
14 and related transaction costs to traders by  
15 supporting research and other activities  
16 that increase the scientific understanding  
17 of nonpoint nutrient pollutant loading and  
18 the ability of various structural and non-  
19 structural alternatives to reduce the loads;

20 “(iii) eliminates unnecessary or dupli-  
21 cative administrative processes; and

22 “(iv) incorporates a permitting ap-  
23 proach under the national pollutant dis-  
24 charge elimination system established  
25 under section 402 that—

1                   “(I) allows trading to occur with-  
2                   out requiring the reopening or  
3                   reissuance of the base permits to in-  
4                   corporate individual trades; and

5                   “(II) incorporates any such  
6                   trades, directly through a permit  
7                   amendment or addendum, or indi-  
8                   rectly by any appropriate mechanism,  
9                   as enforceable terms of those permits  
10                  on approval of the credit purchase by  
11                  the permitting authority, in accord-  
12                  ance with the requirements of the  
13                  Chesapeake Basin Program, this Act,  
14                  and regulations promulgated pursuant  
15                  to this Act.

16                  “(D) SEDIMENT TRADING.—

17                  “(i) IN GENERAL.—Not later than  
18                  180 days after the date of enactment of  
19                  the Chesapeake Clean Water and Eco-  
20                  system Restoration Act, the Administrator,  
21                  in consultation with the Secretary of Agri-  
22                  culture, shall convene a task force, to be  
23                  composed of representatives from the  
24                  Chesapeake Basin States and public and  
25                  private entities—



1           “(I) to identify any scientific,  
2           technical, or other issues that would  
3           hinder the rapid deployment of an  
4           interstate sediment trading program;  
5           and

6           “(II) to provide to the Adminis-  
7           trator recommendations to overcome  
8           any of the obstacles to rapid deploy-  
9           ment of such a trading system.

10           “(ii) INTERSTATE SEDIMENT TRADING  
11           PROGRAM.—

12           “(I) ESTABLISHMENT.—Based  
13           on the recommendations of the task  
14           force established under clause (i), the  
15           Administrator, in cooperation with  
16           each Chesapeake Basin State, [may]  
17           establish an interstate sediment trad-  
18           ing program for the Chesapeake  
19           Basin for the generation, trading, and  
20           use of sediment credits to facilitate  
21           the attainment and maintenance of  
22           the Chesapeake Bay TMDL for sedi-  
23           ment.

24           “(II) REQUIREMENT.—The inter-  
25           state sediment trading program estab-

1           lished under subclause (I) [shall] in-  
2           clude, at a minimum, definitions, pro-  
3           cedures, standards, requirements, as-  
4           surances, allowances, prohibitions,  
5           and evaluations comparable to the  
6           interstate nitrogen and phosphorus  
7           trading program established under  
8           subparagraph (A).

9                   “(III) DEADLINE.—Upon a find-  
10           ing of the Administrator, based on the  
11           recommendation of the task force es-  
12           tablished under clause (i), that such a  
13           sediment trading program would sub-  
14           stantially advance the achievement of  
15           Bay water quality objectives and  
16           would be feasible, the interstate trad-  
17           ing program under this clause shall be  
18           established by the later of—

19                           “(aa) May 12, 2014; and

20                           “(bb) the date on which  
21                   each issue described in clause (i)  
22                   can be feasibly overcome.

23                   “(E) EVALUATION OF TRADING.—

24                           “(i) REPORTS.—Not less frequently  
25           than once every 5 years after the date of

1 establishment of the interstate nitrogen  
2 and phosphorus trading program under  
3 this paragraph, the Administrator shall  
4 submit to Congress a report describing the  
5 results of the program with respect to en-  
6 forceability, transparency, achievement of  
7 water quality results, and whether the pro-  
8 gram has resulted in any localized water  
9 pollution problem.

10 “(ii) IMPROVEMENTS.—Based on the  
11 reports under clause (i), the Administrator  
12 shall make improvements to the trading  
13 program under this paragraph to ensure  
14 achievement of the environmental and pro-  
15 grammatic objectives of the program.

16 “(F) EFFECT ON OTHER TRADING SYS-  
17 TEMS.—Nothing in this paragraph affects the  
18 ability of a State to establish or implement an  
19 applicable intrastate trading program.

20 “(7) AUTHORITY RELATING TO DEVELOP-  
21 MENT.—The Administrator shall—

22 “(A) establish, for projects resulting in im-  
23 pervious development, guidance relating to site  
24 planning, design, construction, and maintenance  
25 strategies to ensure that the land maintains

1           predevelopment hydrology with regard to the  
2           temperature, rate, volume, and duration of flow;

3           “(B) establish model ordinances and guide-  
4           lines with respect to the construction of low-im-  
5           pact development infrastructure and non-  
6           structural low-impact development techniques  
7           for use by States, local governments, and pri-  
8           vate entities; and

9           “(C) not later than 180 days after promul-  
10          gation of the regulations under subsection  
11          (j)(3)(B), issue guidance, model ordinances,  
12          and guidelines to carry out this paragraph.

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

15                 “(A) GRANT PROGRAM.—The Adminis-  
16                 trator may provide grants to any local govern-  
17                 ment within the Chesapeake Basin that adopts  
18                 the guidance, ordinances, and guidelines issued  
19                 under paragraph (7).

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

23                         “(i) developing, implementing, and en-  
24                         forcing the guidance, ordinances, and  
25                         guidelines issued under paragraph (7); and

1                   “(ii) implementing projects designed  
2                   to reduce or beneficially reuse stormwater  
3                   discharges.

4                   “(9) CONSUMER AND COMMERCIAL PRODUCT  
5                   REPORT.—Not later than 3 years after the date of  
6                   enactment of the Chesapeake Clean Water and Eco-  
7                   system Restoration Act, the Administrator, in con-  
8                   sultation with the Chesapeake Executive Council,  
9                   shall—

10                   “(A) review consumer and commercial  
11                   products (such as lawn fertilizer), the use of  
12                   which may affect the water quality of the  
13                   Chesapeake Basin or associated tributaries, to  
14                   determine whether further product nutrient  
15                   content restrictions are necessary to restore or  
16                   maintain water quality in the Chesapeake Basin  
17                   and those tributaries; and

18                   “(B) submit to the Committees on Appro-  
19                   priations, Environment and Public Works, and  
20                   Commerce, Science, and Transportation of the  
21                   Senate and the Committees on Appropriations,  
22                   Natural Resources, Energy and Commerce, and  
23                   Transportation and Infrastructure of the House  
24                   of Representatives a product nutrient report de-

1 tailing the findings of the review under sub-  
2 paragraph (A).

3 “(l) PROHIBITION ON INTRODUCTION OF ASIAN OYS-  
4 TERS.—Not later than 2 years after the date of enactment  
5 of the Chesapeake Clean Water and Ecosystem Restora-  
6 tion Act, the Administrator shall promulgate regula-  
7 tions—

8 “(1) to designate the Asian oyster as a ‘biologi-  
9 cal pollutant’ in the Chesapeake Bay and tidal wa-  
10 ters pursuant to section 502;

11 “(2) to prohibit the issuance of permits under  
12 sections 402 and 404 for the discharge of the Asian  
13 oyster into the Chesapeake Bay and Chesapeake  
14 Bay tidal segments; and

15 “(3) to specify conditions under which scientific  
16 research on Asian oysters may be conducted within  
17 the Chesapeake Bay and Chesapeake Bay tidal seg-  
18 ments.

19 “(m) CHESAPEAKE NUTRIA ERADICATION PRO-  
20 GRAM.—

21 “(1) GRANT AUTHORITY.—Subject to the avail-  
22 ability of appropriations, the Secretary of the Inte-  
23 rior (referred to in this subsection as the ‘Sec-  
24 retary’), may provide financial assistance to the

1 States of Delaware, Maryland, and Virginia to carry  
2 out a program to implement measures—

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

4 “(B) to restore marshland damaged by nu-  
5 tria.

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

8 “(A) to eradicate nutria in the Chesapeake  
9 Basin ecosystem; and

10 “(B) to restore marshland damaged by nu-  
11 tria.

12 “(3) ACTIVITIES.—In the States of Delaware,  
13 Maryland, and Virginia, the Secretary shall require  
14 that the program under this subsection consist of  
15 management, research, and public education activi-  
16 ties carried out in accordance with the document  
17 published by the United States Fish and Wildlife  
18 Service entitled ‘Eradication Strategies for Nutria in  
19 the Chesapeake and Delaware Bay Watersheds’,  
20 dated March 2002, or any updates to the document.

21 “(n) STUDY ON THE IMPACTS OF THE COMMERCIAL  
22 HARVESTING OF MENHADEN ON THE WATER QUALITY  
23 OF THE CHESAPEAKE BAY.—

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

1           “(A) FISHERIES COMMISSION.—The term  
2           ‘Fisheries Commission’ means the Atlantic  
3           States Marine Fisheries Commission established  
4           under the interstate compact consented to and  
5           approved by pursuant to the Act of May 4,  
6           1942 (56 Stat. 267, chapter 283) and the Act  
7           of May 19, 1949 (63 Stat. 70, chapter 238).

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

10           “(i) means—

11           “(I) the commercial catching,  
12           taking, or harvesting of menhaden,  
13           except when incidental to harvesting  
14           that occurs in the course of commer-  
15           cial or recreational fish-catching ac-  
16           tivities directed at a species other  
17           than menhaden;

18           “(II) the attempted commercial  
19           catching, taking, or harvesting of  
20           menhaden; or

21           “(III) any operation at sea in  
22           support of, or in preparation for, any  
23           activity described in subclause (I) or  
24           (II); and



1                   “(ii) does not include any scientific re-  
2                   search authorized by the Federal Govern-  
3                   ment or by any State Government.

4                   “(2) STUDY.—Not later than 5 years after the  
5                   date of enactment of the Chesapeake Clean Water  
6                   and Ecosystem Restoration Act, building on the re-  
7                   search underway or conducted under the oversight of  
8                   the National Oceanic and Atmospheric Administra-  
9                   tion, the Administrator, in cooperation and consulta-  
10                  tion with the Administrator of the National Oceanic  
11                  and Atmospheric Administration and the Fisheries  
12                  Commission, shall conduct and submit to Congress  
13                  a study for the purposes of determining—

14                   “(A) progress toward understanding the  
15                   structure of the menhaden population of the At-  
16                   lantic Coast of the United States and of the  
17                   Chesapeake Bay;

18                   “(B) the role of the population as filter  
19                   feeders, including the role of the population  
20                   with respect to impacting water clarity, dis-  
21                   solved oxygen levels, and other ecosystem func-  
22                   tions;

23                   “(C) the role of the population as prey spe-  
24                   cies for predatory fish in the Chesapeake Bay  
25                   and in coastal ecosystems;

1           “(D) the impact on the Atlantic coastal  
2 and Chesapeake Basin ecosystems of fishing for  
3 menhaden;

4           “(E) the impact on attainment of the  
5 water quality goals of this Act of commercial  
6 fishing for menhaden; and

7           “(F) the recommendations of the Adminis-  
8 trator, if any, for future sustainable manage-  
9 ment of such fishing and additional research  
10 needed to fully address the progress, roles, and  
11 impacts described in this paragraph.

12           “(o) EFFECT ON OTHER REQUIREMENTS.—

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

17           “(2) VIOLATIONS BY STATES.—

18           “(A) ENFORCEMENT ACTION BY ADMINIS-  
19 TRATOR.—The failure of a Chesapeake Basin  
20 State that adopts a watershed implementation  
21 plan under this section to submit a biennial re-  
22 port, meet or correct a previously missed 2-year  
23 commitment made in a watershed implementa-  
24 tion plan, or implement a watershed implemen-

1           tation plan or permit program under this sec-  
2           tion shall—

3                   “(i) constitute a violation of this Act;

4                   and

5                   “(ii) subject the State to an enforce-  
6                   ment action by the Administrator.

7                   “(B) ENFORCEMENT ACTION BY CITI-  
8                   ZENS.—

9                   “(i) IN GENERAL.—The failure of a  
10                  Chesapeake Basin State that adopts a wa-  
11                  tershed implementation plan under this  
12                  section to meet or correct a previously  
13                  missed 2-year commitment made in a wa-  
14                  tershed implementation plan or implement  
15                  a watershed implementation plan or permit  
16                  program under this section shall subject  
17                  the appropriate State officer to a civil ac-  
18                  tion seeking injunctive relief commenced by  
19                  a citizen on behalf of the citizen.

20                  “(ii) JURISDICTION, VENUE, NOTICE,  
21                  AND LITIGATION COSTS.—

22                  “(I) IN GENERAL.—A citizen  
23                  may commence a civil action on behalf  
24                  of the citizen against a State under  
25                  clause (i), subject to the requirements

1 for notice, venue, and intervention de-  
2 scribed in subsections (b) and (c) of  
3 section 505 for a suit brought under  
4 section 505(a)(1)(A).

5 “(II) JURISDICTION.—Jurisdic-  
6 tion over a suit brought under sub-  
7 clause (I) shall be the district courts,  
8 as described in section 505(a).

9 “(III) LITIGATION COSTS.—The  
10 court may award litigation costs for  
11 suit brought under subclause (I), as  
12 described in section 505(d).

13 “(iii) SAVINGS CLAUSE.—Nothing in  
14 this subsection affects the ability of a cit-  
15 izen to bring an action for civil enforce-  
16 ment on behalf of the citizen under section  
17 505.

18 “(p) EVALUATIONS.—

19 “(1) IN GENERAL.—The Inspectors General of  
20 the Environmental Protection Agency and the De-  
21 partment of Agriculture shall jointly evaluate and  
22 submit to Congress reports describing the implemen-  
23 tation of this section not less frequently than once  
24 every 3 years.

25 “(2) INDEPENDENT REVIEWS.—

1           “(A) IN GENERAL.—The Administrator  
2 shall enter into a contract with the National  
3 Academy of Sciences or the National Academy  
4 of Public Administration under which the Acad-  
5 emy shall conduct 2 reviews of the Chesapeake  
6 Basin restoration efforts under this section.

7           “(B) INCLUSIONS.—Each review under  
8 subparagraph (A) shall include an assessment  
9 of—

10                   “(i) progress made toward meeting  
11 the goals of this section;

12                   “(ii) efforts by Federal, State, and  
13 local governments and the private sector in  
14 implementing this section; and

15                   “(iii) the methodologies (including  
16 computer modeling) and data (including  
17 monitoring data) used to support the im-  
18 plementation of this section.

19           “(C) REPORTS.—The National Academy of  
20 Sciences or the National Academy of Public Ad-  
21 ministration shall submit to the Administrator  
22 a report describing the results of the reviews  
23 under this paragraph, together with rec-  
24 ommendations regarding the reviews (including  
25 any recommendations with respect to efforts of

1 the Environmental Protection Agency or any  
2 other Federal or State agency required to im-  
3 plement applicable water quality standards in  
4 the Chesapeake Basin and achieve those stand-  
5 ards in the Chesapeake Bay and Chesapeake  
6 Bay tidal segments), if any, by not later than—

7 “(i) May 12, 2015, with respect to the  
8 first review required under this paragraph;  
9 and

10 “(ii) May 12, 2020, with respect to  
11 the second review required under this  
12 paragraph.

13 “(q) AUTHORIZATION OF APPROPRIATIONS.—

14 “(1) CHESAPEAKE BASIN PROGRAM OFFICE.—

15 There is authorized to be appropriated to the Ches-  
16 apeake Basin Program Office to carry out subsection  
17 (b)(2) \$20,000,000 for each of fiscal years 2010  
18 through 2015.

19 “(2) IMPLEMENTATION AND MONITORING  
20 GRANTS.—

21 “(A) AUTHORIZATION OF APPROPRIA-  
22 TIONS.—In addition to amounts authorized to  
23 be appropriated or otherwise made available to  
24 carry out this section, there are authorized to  
25 be appropriated to the Administrator—



1 technical assistance to agricultural  
2 producers and forest owners; and

3 “(II) 50 percent, with respect to  
4 all other activities under that sub-  
5 paragraph; and

6 “(ii) under clause (i), (iii), or (iv) of  
7 subparagraph (A) shall not exceed 80 per-  
8 cent.

9 “(3) CHESAPEAKE STEWARDSHIP GRANTS.—

10 There is authorized to be appropriated to carry out  
11 subsection (h)(2) \$15,000,000 for each of fiscal  
12 years 2010 through 2015.

13 “(4) STORM WATER POLLUTION PLANNING AND  
14 IMPLEMENTATION GRANTS.—

15 “(A) AUTHORIZATION OF APPROPRIA-  
16 TIONS.—In addition to amounts authorized or  
17 otherwise made available to carry out this sec-  
18 tion, there are authorized to be appropriated to  
19 the Administrator—

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

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

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



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

4                   “(ii) subsection (k)(8)(B)(ii) may not  
5                   be used to cover more than 75 percent of  
6                   the cost of the project.

7                   “(5) NUTRIA ERADICATION GRANTS.—

8                   “(A) IN GENERAL.—There is authorized to  
9                   be appropriated to the Secretary of the Interior  
10                  to provide financial assistance in the Chesa-  
11                  peake Basin under subsection (m) \$4,000,000  
12                  for each of fiscal years 2010 through 2015.

13                  “(B) COST-SHARING.—

14                  “(i) FEDERAL SHARE.—The Federal  
15                  share of the cost of carrying out the pro-  
16                  gram under subsection (m) may not exceed  
17                  75 percent of the total costs of the pro-  
18                  gram.

19                  “(ii) IN-KIND CONTRIBUTIONS.—The  
20                  non-Federal share of the cost of carrying  
21                  out the program under subsection (m) may  
22                  be provided in the form of in-kind con-  
23                  tributions of materials or services.

24                  “(6) LIMITATION ON ADMINISTRATIVE EX-  
25                  PENSES.—Not more than 10 percent of the annual

1 amount of any grant provided by the Administrator  
2 or Secretary under any program described in para-  
3 graph (1), (2), (3), or (4) may be used for adminis-  
4 trative expenses.

5 “(7) AVAILABILITY.—Amounts authorized to be  
6 appropriated under this subsection shall remain  
7 available until expended.

8 “(r) SEVERABILITY.—A determination that any pro-  
9 visions of this section is invalid, illegal, unenforceable, or  
10 in conflict with any other law shall not affect the validity,  
11 legality, or enforceability of the remaining provisions of  
12 this section.”.

13 **SEC. 4. FEDERAL ENFORCEMENT.**

14 Section 309 of the Federal Water Pollution Control  
15 Act (33 U.S.C. 1319) is amended—

16 (1) in subsection (a)—

17 (A) in paragraph (1), in the first sentence,  
18 by striking “section 402” and inserting “section  
19 117, 402,”;

20 (B) in paragraph (3), by inserting “section  
21 117 or” before “section 402”;

22 (2) in subsection (d), in the first sentence, by  
23 inserting “section 117 or” after “a permit issued  
24 under”; and

25 (3) in subsection (g)—

- 1 (A) in paragraph (1)(A), by inserting “sec-
- 2 tion 117 or” before “section 402”; and
- 3 (B) in paragraph (7), by striking “section
- 4 402” and inserting “section 117, 402.”.