

# S. 1816 Chesapeake Clean Water and Ecosystem Restoration Act of 2009

COG staff summary of key points as introduced (before mark-up)  
11/5/2009

## Background

- Introduced Oct. 20, 2009, by Sen. Ben Cardin (MD).
- Its House counterpart, H.R. 3852, is sponsored by Rep. Elijah Cummings (MD).

## Summary

- The bill would amend section 117 of the Clean Water Act, which governs the EPA Chesapeake Bay Program.
- Overall, the bill would codify the Bay TMDL development and implementation process into federal law, including such details as deadlines, the content of the state's watershed implementation plans and the process by which EPA reviews and approves or disapproves of those plans.
- In some aspects, it expands EPA powers compared to what currently exists within the Clean Water Act and, in other aspects, it makes explicit powers that have not been specifically defined before.

*(For example, in the event of finding that a state is not achieving implementation of its milestones, the bill provides EPA with the authority to set new regulations "notwithstanding any other provisions of this act.")*

- It also increases the ability of citizens or third-party groups to sue EPA and the states for the failure to meet their TMDL/WIP obligations.

## Key provisions

### Section 2. Findings

- This section still has the same language for two findings on which COG commented:
  - Describes runoff from urban and suburban development as "the only major source of pollution in the watershed that is increasing."
  - Notes of LID practices that they tend to be "less expensive than traditional pollution stormwater control management techniques."

### Section 117 (i) Total Maximum Daily Load

- Delineates the specific content of the Bay-wide TMDL process.

- Establishes the following deadlines:
  - Dec. 31, 2010, for EPA to issue a Bay-wide series of TMDLs.
  - May 12, 2011, for the states to submit watershed implementation plans (WIPs) designed to achieve the water quality standards under the TMDLs.
- Requires that the TMDL allow no net increase of pollutant loads from impervious surfaces, concentrated animal feeding operations (CAFOs), transportation systems and septic systems.

*(Note: The latter provision would appear to conflict with the way in which EPA and the states are currently developing the TMDL, which would allow states to adjust their WLAs and LAs among the different sources and potentially allow increased pollution from a particular source if the increase is balanced by reductions from other sources.)*

#### Section 117 (j) Actions by States

- Delineates the specific content of the state WIPs, including setting of targets on a biennial basis (e.g. the current milestones).
- Establishes the following deadlines:
  - May 12, 2017, for the states to achieve 60 percent of the implementation under their WIPs.
  - May 12, 2025, for the states to achieve 100 percent of the implementation under their WIPs.
- Requires progress reports every two years.
- Requires achievement of certain standards (federal benchmarks) under the stormwater permitting program. States must assure EPA that for any new development or redevelopment site above certain thresholds, the owner will:
  - Maintain or restore predevelopment hydrology for temperature, rate, volume and duration of flow to the maximum extent technically feasible.
  - If not possible to do this, the owner could provide “compensation” both in and outside “jurisdictional boundaries” of permit.
  - Final details to be determined by EPA by December 2012.

*(Note: the stormwater language in H. R. 3852, derived from a bill introduced by Rep. Gerry Connolly (VA), is somewhat different. It would affect only new development sites and, on those, require that stormwater controls must “infiltrate,” “evapotranspire,” or “harvest and use on site” the volume of the 95th percentile storm.)*

#### Section 117 (k) Actions by EPA Administrator

- Delineates the specific content of a review and approval process for the state WIPs.
- Spells out the consequences of a state failure to submit its WIP, submit its biennial report, or meet its 2-year implementation milestones. These include:

- Withholding Clean Water Act funding.
- Taking over administration of the state program for implementing the WIP, enforcing permits and promulgating new point source and nonpoint source regulations as necessary.
- Requiring 2:1 offsets for any new discharges.

### **Section 117 (q) Authorization of Appropriations**

- The bill would authorize funding in the following categories:
  - Implementation Grants: \$80 million annually.
  - Monitoring Grants: \$5 million annually each for freshwater and estuarine.
  - MS4 Planning grants for municipalities: \$10 million.
  - MS4 Implementation grants for municipalities: \$1.5 billion.
  - Nutria Eradication Grants: \$4 million annually.

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

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