

S.____ Chesapeake Bay Ecosystem Restoration Act Discussion Draft

September 1, 2009

The bill amends section 117 of the Clean Water Act, which governs the EPA Chesapeake Bay Program. Key provisions of the discussion draft are –

The legislation gives the states of the Chesapeake Bay strong new tools to restore the Bay and for the first time sets a firm deadline of 2020 for all restoration efforts to be in place. Unlike earlier, missed deadlines, this one will become a legally binding part of the Clean Water Act.

The bill also significantly **expands federal grants**. The Bay Restoration bill **authorizes a new \$1.5 billion grants program to control urban/suburban polluted stormwater**, the only pollution sector that is still growing. Grants to the states, small watershed organizations, and for comprehensive monitoring programs are all newly created or expanded in the draft bill.

The bill **codifies President Obama's Chesapeake Bay Executive Order**, which requires annual Federal Action Plans across all federal departments to restore the Bay.

Other Provisions: makes the ban on **Asian oysters** statutory; continues and expands the **nutria** eradication program on the Delmarva; places a moratorium on the **menhaden** reduction fishery; and allows for **citizen suits**.

The basic structure of the Bay Program (a federal-state partnership governed by the Executive Council and administered by EPA's Chesapeake Bay Program Office in Annapolis) **is retained**.

SECTION-BY-SECTION

SECTION 1. SHORT TITLE.

This Act may be cited as the Chesapeake Bay Ecosystem Restoration Act of 2009.

SEC. 2. FINDINGS.

SEC. 3. DEFINITIONS [*replaces current subsection 117(a)*]

[current subsection 117(b) “Continuation of the Chesapeake Bay Program” and subsection 117(c) “Interagency Agreements” are both unchanged].

SEC. 4. ASSISTANCE GRANTS.

Current subsection 117(d)(2)(B) is amended by renaming the “Small Watershed Grants Program” the “CHESAPEAKE BAY STEWARDSHIP GRANTS PROGRAM.”

SEC. 5. IMPLEMENTATION AND MONITORING GRANTS.

Current Section 117(e) is replaced with a new section on implementation and monitoring grants. Headwater states (DE, NY and WV) are made eligible for implementation grants for the first time. The monitoring program is broken into two parts: one for freshwater and one for estuarine. USGS and NOAA along with the River Basin Commissions are given roles in planning the monitoring programs. States implement the monitoring programs, supported by grants.

SEC. 6. FEDERAL ANNUAL ACTION PLAN AND PROGRESS REPORT.

Current Section 117 (f) “Federal Facilities and Budget Coordination” is deleted and replaced with “Federal Annual Action Plan and Progress Report.” This codifies the actions in President Obama’s Executive Order of May 12, 2009.

SEC. 7. CHESAPEAKE BAY PROGRAM.

Current Section 117(g) provides for the Management Strategies and Small Watershed Grants Program. The only changes are that the Small Watershed Grants Program name is updated to CHESAPEAKE BAY STEWARDSHIP GRANTS PROGRAM and the program is expanded to include activities now covered by the “large watershed grants” program. These changes simply reflect current practice.

SEC. 8. WATER QUALITY PROTECTION MEASURES—TMDLS.

Current Section 117 (h) regarding a “Study of the Chesapeake Bay Program” is deleted and replaced with language that requires EPA to establish a Total Maximum Daily Load (TMDL) for the Bay no later than December 31, 2010.

SEC. 9. WATER QUALITY PROTECTION MEASURES—ACTIONS BY STATES.

Current Section 117 (i) regarding a “Special Study of Living Resource Response” is deleted and replaced with a four-part section outlining specific state actions.

- (1) TRIBUTARY IMPLEMENTATION PLANS. To implement the TMDL.
- (2) ISSUANCE OF PERMITS.

(3) MUNICIPAL SEPARATE STORMWATER SEWER SYSTEM PERMITS.

(4) PHOSPHATE BAN.

SEC. 10. WATER QUALITY PROTECTION MEASURES—FEDERAL ACTIONS.

Current Section 117 (j) “Authorization of Appropriations” is moved to a new Section (o). Sections (j) through (n) are new.

(j) Outlines a series of actions EPA must take to improve water quality. They include:

(1) Establish minimum criteria for the State Tributary Implementation Plans.

(2) Establish a process for approval/disapproval of plans and for up-dating plans

(3) Provide for federal tributary implementation plans and loss of state funds if states fail to act

(4) Establish a nitrogen and phosphorus trading program

(5) Establish watershed permits

(6) Establish guidance and model ordinances for managing stormwater runoff in municipal settings as well as a grants program for municipalities to meet the requirements

(7) Report to Congress on commercial products that impact water quality

SEC. 11. ADDITIONAL WATER QUALITY PROTECTION MEASURES.

Other additions to Section 117:

(k) Prohibition on Introduction of Asian Oysters.

(l) Chesapeake Nutria Eradication Program.

(m) Prohibition on Commercial Harvesting of Menhaden.

(n) Effect on Other Requirements.—

(1) All other Clean Water Act provisions remain in effect

(2) Citizen suit provisions are authorized for violations by states or EPA

(o) Authorization of Appropriations.—

(1) Implementation Grants: \$80 million annually

(2) Monitoring Grants: \$5 million annually each for freshwater and estuarine

(3) MS4 Planning grants for municipalities: \$10 million

(4) MS4 Implementation grants for municipalities: \$1.5 billion

(5) Nutria Eradication Grants: \$4 million annually