



The Chesapeake Clean Water and Ecosystem Restoration Act of 2009 *(HR 3852/S 1816)*

FROM THE CHESAPEAKE BAY FOUNDATION

The Chesapeake Bay ecosystem is under tremendous stress due to excessive amounts of nitrogen, phosphorus and sediment pollution. This pollution is responsible for feeding oxygen-deprived dead zones, decreased water clarity, declines in aquatic resources such as blue crabs in the Bay and trout in the region's fresh waters. Stemming this tide of pollution is essential if we hope to restore the Chesapeake Bay and its network of rivers and streams to their once healthy and productive state. The central challenge is that the Clean Water Act's tools to address nonpoint source pollution (i.e., urban, suburban and agricultural runoff) are weak and state laws and enforcement, to date, have not filled this gap. As a result, despite a long history of formal agreements and other promises, not nearly enough has been done to stem the flow of pollution to the Bay and its rivers. Congress must clarify and strengthen the federal Clean Water Act to give the Environmental Protection Agency (EPA) the tools it needs to clean up waters in the Chesapeake region.

The Solution

On October 20th, Senator Ben Cardin, Chairman of the Senate Environment and Public Works Committee's Water and Wildlife Subcommittee, and three other senators introduced the Chesapeake Clean Water and Ecosystem Restoration Act of 2009. On the same day, Congressman Elijah Cummings, a senior member of the House Transportation and Infrastructure (T&I) Committee, together with ten other House members - including House Majority Leader Steny Hoyer, T&I Committee chair Jim Oberstar, and Water Resources Subcommittee Chair Eddie Bernice Johnson - introduced a nearly identical bill. Their bills seek to amend the federal Clean Water Act to ensure that the six states of the Bay watershed and the District of Columbia develop and implement detailed plans to reduce pollution sufficiently to achieve the Bay-wide pollution reduction targets for nitrogen, phosphorus, and sediment by 2025.

The bills:

- Would codify the Bay-wide pollution budget or "Total Maximum Daily Load" (TMDL) for nitrogen, phosphorus and sediment that EPA is in the process of developing for the Bay. By December 31, 2010, nitrogen, phosphorus, and sediment pollution caps for all sources of pollution will be allocated to states and tributary watersheds.
- Give the federal government authority to compel the states to reduce nitrogen, phosphorus, and sediment loads to meet the TMDL allocations, not by expanding the scope of direct federal regulation, but by adopting the Clean Air Act approach, i.e., setting a federal standard and giving the states flexibility in meeting it.
- Require states to submit "watershed implementation plans" to the EPA Administrator by May 2011, explaining how they will achieve their pollution loads from all sources by May 2025. The plan must be designed to achieve at least 60% of the needed pollution reductions by May 2017.
- Require states to submit biennial progress reports, beginning in 2014, detailing:
 - All measures that were to be implemented per the watershed implementation plans
 - A listing of all pollution reduction measures that have not been fully implemented
 - Implementation goals for the subsequent 2-year period

- Any necessary revisions to the plan
- Require EPA to approve the new or revised watershed implementation plan within 90 days of the submission. If a state fails to submit a watershed implementation plan or a biennial report, or fails to correct a previously missed 2-year commitment, the EPA shall:
 - Withhold all or a portion of funds available to the state authorized by the Clean Water Act
 - Develop and administer a federal watershed implementation plan that would:
 - require a 200% offset for all new permitted increases in nitrogen, phosphorus and sediment pollution
 - promulgate any regulations necessary to control pollution to meet the goals of the watershed implementation plans
- Establish an interstate water quality trading program by May 2012 to lower compliance costs, particularly for local municipalities, and facilitate the attainment and maintenance of the required limits. This program will complement, not replace, existing state trading programs.
- Require EPA to develop new federal stormwater standards for development or redevelopment projects beginning in 2013. The House and Senate bills differ in their details.
- Authorize \$ 1.5 billion to help local government pay for projects to reduce stormwater runoff.
- Authorize \$625 million more in other implementation, monitoring, and assistance grants, including the stipulation that not less than \$ 96 million be used for technical assistance for agricultural producers.
- Authorize citizens to bring civil actions against the states and EPA for failure to act.
- Require the EPA Inspector General to periodically evaluate implementation of the Act.

Take Action

Convincing Congress to pass such legislation will not be easy. But it is crucial if we want to restore the Chesapeake Bay and its network of rivers and streams.

Help convince your members of Congress that they must amend the Clean Water Act to clean up our rivers and the Bay. We must stem the tide of pollution.

Here's how you can help:

- 1) Meet directly with your federal Senators and your Congressperson and tell them you support this legislation.
- 2) Make a phone call urging your federal representatives to support HR 3852/S 1816.
- 3) Write a letter urging your federal representatives to update the Clean Water Act.
- 4) Take action in your community.

For more information, go to <http://www.capwiz.com/cbf/home/>