

111TH CONGRESS
1ST SESSION

H. R. 3852

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2009

Mr. CUMMINGS (for himself, Mr. CONNOLLY of Virginia, Mr. VAN HOLLEN, Mr. SARBANES, Mr. MORAN of Virginia, Ms. EDWARDS of Maryland, Ms. NORTON, Mr. SCOTT of Virginia, Mr. HOYER, Mr. OBERSTAR, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay 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 of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Chesapeake Bay and the tributary wa-
9 ters of the Chesapeake Bay are natural resources of

1 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 the Chesapeake Bay Wa-
5 tershed, the Chesapeake Bay Commission, and var-
6 ious local government, scientific, and citizen advisory
7 boards have worked through the Chesapeake Bay
8 Program of the Environmental Protection Agency to
9 develop an unparalleled body of scientific informa-
10 tion and cooperative partnerships to advance the
11 Chesapeake Bay restoration effort;

12 (3) despite significant efforts by Federal, State,
13 and local governments and other interested parties,
14 water pollution in the Chesapeake Bay prevents the
15 attainment of existing State water quality standards
16 and the ecological goals of the Federal Water Pollu-
17 tion Control Act (33 U.S.C. 1251 et seq.);

18 (4) the Chesapeake Bay Program partnership
19 has developed a rich body of environmental data
20 based on an extensive network of monitors, which
21 provide a critical measure of success in attainment
22 of the goals of the restoration effort;

23 (5) the Chesapeake Bay Program partnership
24 has also developed some of the world's foremost

1 water quality and ecosystem computer models, which
2 are invaluable planning tools for resource managers;

3 (6) the major pollutants affecting the water
4 quality of the Chesapeake Bay and related tidal wa-
5 ters are nitrogen, phosphorus, and sediment;

6 (7) the largest developed land use in the Chesa-
7 peake Bay watershed, and the largest single-sector
8 source of nitrogen, phosphorus, and sediment pollu-
9 tion, is agriculture;

10 (8) successful implementation of conservation
11 practices have resulted in significant reductions in
12 pollutant loads from the agricultural sector;

13 (9) to speed continued progress in the agricul-
14 tural sector, the Federal Government and State gov-
15 ernments have initiated a number of agricultural
16 conservation programs, including the Chesapeake
17 Bay watershed initiative under section 1240Q of the
18 Food Security Act of 1985 (16 U.S.C. 3839bb-4);

19 (10) atmospheric deposition of nitrogen oxides
20 and ammonia on the Chesapeake Bay watershed
21 contributes as much as $\frac{1}{3}$ of the nitrogen pollution
22 in the Chesapeake Bay;

23 (11) for years, a steady stream of technology
24 development and increasingly stringent permit re-
25 quirements have resulted in a steady decline in the

1 nitrogen and phosphorus pollution derived from
2 wastewater treatment plants in the Chesapeake Bay
3 watershed;

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

9 (13) during the period beginning in 1990 and
10 ending in 2000, impervious cover, the hardened sur-
11 faces through which water cannot penetrate, in-
12 creased by nearly 250,000 acres, about 41 percent,
13 or the size of 5 Districts of Columbia;

14 (14) during that period, the population of the
15 Chesapeake Bay watershed grew by just 8 percent;

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

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

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

1 (18) States, local governments, developers, and
2 nonprofit organizations have developed numerous
3 low-impact development techniques since the late
4 1990s, which use natural area protection, enviro-
5 transpiration, infiltration, and pervious surfaces to
6 reduce stormwater runoff and associated sediment
7 and nutrient pollution;

8 (19) many of those techniques are less expen-
9 sive than traditional stormwater management tech-
10 niques, yet can achieve equivalent reduction in nutri-
11 ents and sediment or can reduce the need for con-
12 struction of traditional stormwater management
13 techniques;

14 (20) the decline of key aquatic habitats and
15 species has resulted in a loss of the important water
16 quality benefits that the habitats and species tradi-
17 tionally provided;

18 (21) native oysters, the numbers of which have
19 declined precipitously in the Chesapeake Bay in sig-
20 nificant part because of diseases brought into the
21 watershed by nonnative oysters, are natural filters
22 that once effectively filtered a volume of water equiv-
23 alent to that of the entire Chesapeake Bay in a mat-
24 ter of days;

1 (22) although less well-understood, menhaden,
2 a species of fish found in the Chesapeake Bay, also
3 provide important filtering capacity as well as a
4 number of other key ecosystem functions;

5 (23) wetlands are a vital part of any major eco-
6 system;

7 (24) studies have demonstrated that nontidal
8 wetlands near the Chesapeake Bay removed as much
9 as 89 percent of the nitrogen and 80 percent of the
10 phosphorus that entered the wetlands through up-
11 land runoff and precipitation;

12 (25) riparian forests remove as much as 90 per-
13 cent of nitrogen and phosphorus that would other-
14 wise enter the water;

15 (26) the loss of riparian forests and wetlands in
16 the Chesapeake Bay has resulted in diminished
17 water quality, among other effects;

18 (27) in certain locations in the Chesapeake
19 Bay, nutria, a nonnative species, has caused exten-
20 sive destruction of key wetlands; and

21 (28) in spite of the achievements of the Ches-
22 apeake Bay Program partnership and increasing
23 knowledge about ecosystem functions, the restora-
24 tion of the Chesapeake Bay will require increased

1 accountability and equity in reducing pollutant levels
2 and other impediments to water quality.

3 **SEC. 3. CHESAPEAKE BAY PROGRAM.**

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

6 **“SEC. 117. CHESAPEAKE BAY PROGRAM.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) ADMINISTRATIVE COST.—The term ‘ad-
9 ministrative cost’ means the cost of salaries and
10 fringe benefits incurred in administering a grant
11 under this section.

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

14 “(3) BASELINE.—The term ‘baseline’ means
15 the basic standard or level used for measuring (as
16 applicable)—

17 “(A) the nutrient control requirements
18 credit sellers must achieve before becoming eli-
19 gible to generate saleable nutrient credits; or

20 “(B) the nutrient load reductions required
21 of individual dischargers to meet water quality
22 standards or goals under a TMDL or watershed
23 implementation plan.

24 “(4) BASIN COMMISSIONS.—The term ‘basin
25 commissions’ means—

1 “(A) the Interstate Commission on the Po-
2 tomac River Basin established under the inter-
3 state compact consented to and approved by
4 Congress under the Joint Resolution of July
5 11, 1940 (54 Stat. 748, chapter 579), and Pub-
6 lic Law 91–407 (84 Stat. 856); and

7 “(B) the Susquehanna River Basin Com-
8 mission established under the interstate com-
9 pact consented to and approved by Congress
10 under Public Law 91–575 (84 Stat. 1509), and
11 Public Law 99–468 (100 Stat. 1193).

12 “(5) CHESAPEAKE BAY AGREEMENT.—The
13 term ‘Chesapeake Bay Agreement’ means the for-
14 mal, voluntary agreements executed to achieve the
15 goal of restoring and protecting the Chesapeake Bay
16 ecosystem and the living resources of the Chesa-
17 peake Bay ecosystem and signed by the Chesapeake
18 Executive Council.

19 “(6) CHESAPEAKE BAY ECOSYSTEM.—The term
20 ‘Chesapeake Bay ecosystem’ means the ecosystem of
21 the Chesapeake Bay watershed.

22 “(7) CHESAPEAKE BAY PROGRAM.—The term
23 ‘Chesapeake Bay Program’ means the program di-
24 rected by the Chesapeake Executive Council in ac-
25 cordance with the Chesapeake Bay Agreement.

1 “(8) CHESAPEAKE BAY STATE.—The term
2 ‘Chesapeake Bay State’ means any of—

3 “(A) the States of Delaware, Maryland,
4 New York, or West Virginia;

5 “(B) the Commonwealths of Pennsylvania
6 or Virginia; or

7 “(C) the District of Columbia.

8 “(9) CHESAPEAKE BAY WATERSHED.—The
9 term ‘Chesapeake Bay watershed’ means the Ches-
10 apeake Bay and the area consisting of 19 tributary
11 basins within the Chesapeake Bay States through
12 which precipitation drains into the Chesapeake Bay.

13 “(10) CHESAPEAKE EXECUTIVE COUNCIL.—The
14 term ‘Chesapeake Executive Council’ means the sig-
15 natories to the Chesapeake Bay Agreement.

16 “(11) CLEANING AGENT.—The term ‘cleaning
17 agent’ means a laundry detergent, dishwashing com-
18 pound, household cleaner, metal cleaner, degreasing
19 compound, commercial cleaner, industrial cleaner,
20 phosphate compound, or other substance that is in-
21 tended to be used for cleaning purposes.

22 “(12) DIRECTOR.—The term ‘Director’ means
23 the Director of the Chesapeake Bay Program Office
24 of the Environmental Protection Agency.

1 “(13) LOCAL GOVERNMENT.—The term ‘local
2 government’ means any county, city, or other gen-
3 eral purpose political subdivision of a State with ju-
4 risdiction over land use.

5 “(14) 95TH PERCENTILE PRECIPITATION
6 EVENT.—The term ‘95th percentile precipitation
7 event’ means a precipitation event whose precipita-
8 tion total is greater than or equal to 95 percent of
9 all 24-hour storm events on an annual basis.

10 “(15) POINT-OF-REGULATION.—The term
11 ‘point-of-regulation’ means any entity that—

12 “(A) is subject to a limitation on pollution
13 or other regulation under this Act; and

14 “(B) has sufficient technical capacity and
15 legal authority to meet the obligations of the
16 entity under this Act.

17 “(16) TMDL.—

18 “(A) IN GENERAL.—The term ‘TMDL’
19 means the total maximum daily load that the
20 Administrator establishes or approves for nitro-
21 gen, phosphorus, and sediment loading to the
22 waters in the Chesapeake Bay and tidal tribu-
23 taries identified on the list of a Chesapeake Bay
24 State under section 303(d).

1 “(B) INCLUSIONS.—The term ‘TMDL’
2 may include nitrogen, phosphorus, and sedi-
3 ment allocations in temporal units of greater
4 than daily duration if applicable allocations—

5 “(i) are demonstrated to achieve
6 water quality standards; and

7 “(ii) do not lead to exceedances of
8 other applicable water quality standards
9 for local receiving waters.

10 “(17) TRIBUTARY BASIN.—The term ‘tributary
11 basin’ means an area of land or body of water
12 that—

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

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

17 “(b) CONTINUATION OF CHESAPEAKE BAY PRO-
18 GRAM.—

19 “(1) IN GENERAL.—In cooperation with the
20 Chesapeake Executive Council (and as a member of
21 the Council), the Administrator shall continue the
22 Chesapeake Bay Program.

23 “(2) PROGRAM OFFICE.—

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

4 “(B) FUNCTION.—The Chesapeake Bay
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 Bay
11 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 Bay 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 Bay 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 Bay.

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 nonprofit organizations, State and local
2 governments, institutions of higher education, basin
3 commissions, and interstate agencies to carry out
4 this section, subject to such terms and conditions as
5 the Administrator considers appropriate.

6 “(2) FEDERAL SHARE.—

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

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

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

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

4 “(e) IMPLEMENTATION AND MONITORING
5 GRANTS.—

6 “(1) IN GENERAL.—On the request of the chief
7 executive of a Chesapeake Bay State, the Adminis-
8 trator—

9 “(A) shall make an implementation grant
10 to the Chesapeake Bay State, or a designee of
11 the Chesapeake Bay State (such as a soil con-
12 servation district, nonprofit organization, local
13 government, institution of higher education,
14 basin commission, or interstate agency) for the
15 purpose of implementing an approved watershed
16 implementation plan under subsection (j) and
17 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; and

21 “(B) may make a monitoring grant to—

22 “(i) a Chesapeake Bay State, or a
23 designee of a Chesapeake Bay State (such
24 as a soil conservation district, nonprofit or-
25 ganization, local government, institution of

1 higher education, basin commission, or
2 interstate agency), for the purpose of mon-
3 itoring the ecosystem of freshwater tribu-
4 taries to the Chesapeake Bay; or

5 “(ii) the States of Delaware or Mary-
6 land, the Commonwealth of Virginia, the
7 District of Columbia, or a designee (such
8 as a soil conservation district, nonprofit or-
9 ganization, local government, institution of
10 higher education, basin commission, or
11 interstate agency) for the purpose of moni-
12 toring the Chesapeake Bay, including the
13 tidal waters of the Chesapeake Bay.

14 “(2) ADMINISTRATION.—In making implemen-
15 tation grants to each of the Chesapeake Bay States
16 for a fiscal year under this subsection, the Adminis-
17 trator shall ensure that not less than—

18 “(A) 10 percent of the funds available to
19 make such grants are made to the States of
20 Delaware, New York, and West Virginia; and

21 “(B) 20 percent of the funds available to
22 make such grants are made to Chesapeake Bay
23 States for the sole purpose of providing tech-
24 nical assistance to agricultural producers and
25 foresters to access conservation programs and

1 other resources devoted to improvements in
2 water quality in the Chesapeake Bay and the
3 tributaries of the Chesapeake Bay.

4 “(3) PROPOSALS.—

5 “(A) IMPLEMENTATION GRANTS.—

6 “(i) IN GENERAL.—A Chesapeake
7 Bay State may apply for a grant under
8 this subsection for a fiscal year by submit-
9 ting to the Administrator a comprehensive
10 proposal to implement programs and
11 achieve the goals established under the
12 Chesapeake Bay Agreement.

13 “(ii) IMPLEMENTATION GRANT CON-
14 TENTS.—A proposal under clause (i) shall
15 include—

16 “(I) a description of proposed ac-
17 tions that the Chesapeake Bay State
18 commits to take within a specified
19 time period that are designed—

20 “(aa) to achieve and main-
21 tain all applicable water quality
22 standards, including standards
23 necessary to support the aquatic
24 living resources of the Chesa-

1 peake Bay and related tributaries
2 and to protect human health;

3 “(bb) to restore, enhance,
4 and protect the fish, shellfish,
5 wildlife, and other living re-
6 sources of the Chesapeake Bay
7 and related tributaries, habitats
8 of those species and resources,
9 and ecological relationships to
10 sustain all fisheries and provide
11 for a balanced ecosystem;

12 “(cc) to restore, enhance,
13 and protect those habitats and
14 natural areas that are vital to the
15 survival and diversity of the liv-
16 ing resources of the Chesapeake
17 Bay and related tributaries;

18 “(dd) to develop, promote,
19 and achieve sound land use prac-
20 tices that protect and restore wa-
21 tershed resources and water qual-
22 ity, reduce or maintain reduced
23 pollutant loadings for the Chesa-
24 peake Bay and related tribu-

1 taries, and restore and preserve
2 aquatic living resources;

3 “(ee) to promote individual
4 stewardship and assist individ-
5 uals, community-based organiza-
6 tions, businesses, local govern-
7 ments, and schools to undertake
8 initiatives to achieve the goals
9 and commitments of the Ches-
10 peake Bay Agreement; or

11 “(ff) to provide technical as-
12 sistance to agricultural pro-
13 ducers, foresters, and other eligi-
14 ble entities through technical in-
15 frastructure, including activities,
16 processes, tools, and agency func-
17 tions needed to support delivery
18 of technical services, such as
19 technical standards, resource in-
20 ventories, training, data, tech-
21 nology, monitoring, and effects
22 analyses;

23 “(II) a commitment to dedicate
24 not less than 20 percent of a grant to
25 a Chesapeake Bay State under this

1 subsection to support technical assist-
2 ance for agricultural and forestry land
3 or nutrient management practices
4 that protect and restore watershed re-
5 sources and water quality, reduce or
6 maintain reduced pollutant loadings
7 for the Chesapeake Bay and related
8 tributaries, and restore and preserve
9 aquatic living resources; and

10 “(III) the estimated cost of the
11 actions proposed to be taken during
12 the fiscal year.

13 “(B) MONITORING GRANTS.—

14 “(i) IN GENERAL.—A Chesapeake
15 Bay State may apply for a grant under
16 this subsection for a fiscal year by submit-
17 ting to the Administrator a comprehensive
18 proposal to monitor freshwater or estua-
19 rine ecosystems, including water quality.

20 “(ii) MONITORING GRANT CON-
21 TENTS.—A proposal under this subpara-
22 graph shall include—

23 “(I) a description of the proposed
24 monitoring system;

1 “(II) certification by the Director
2 that such a monitoring system in-
3 cludes such parameters as the Direc-
4 tor determines necessary to assess
5 progress toward achieving the goals of
6 this section; and

7 “(III) the estimated cost of the
8 monitoring proposed to be conducted
9 during the fiscal year.

10 “(iii) CONCURRENCES.—The Adminis-
11 trator shall—

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

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

1 “(iv) CONSULTATION.—The Adminis-
2 trator shall consult with—

3 “(I) the basin commissions and
4 the Chesapeake Bay States regarding
5 the design and implementation of the
6 freshwater monitoring systems estab-
7 lished under this subsection, giving
8 particular attention to the measure-
9 ment of the water quality effectiveness
10 of agricultural conservation program
11 implementation (including geospatial
12 agricultural conservation program
13 data), including activities carried out
14 pursuant to the Chesapeake Bay Wa-
15 tershed Initiative under section 1240Q
16 of the Food Security Act of 1985 (16
17 U.S.C. 3839bb-4);

18 “(II) Old Dominion University,
19 the Virginia Institute of Marine
20 Science, the University of Maryland
21 Center for Environmental Science,
22 and the Chesapeake Bay States re-
23 garding the estuarine monitoring sys-
24 tems established under this sub-
25 section;

1 “(III) the Chesapeake Bay Pro-
2 gram Scientific and Technical Advi-
3 sory Committee regarding inde-
4 pendent review of monitoring designs
5 giving particular attention to inte-
6 grated freshwater and estuarine moni-
7 toring strategies; and

8 “(IV) Federal departments and
9 agencies regarding cooperation in im-
10 plementing monitoring programs.

11 “(f) FEDERAL FACILITIES AND ACTION PLAN.—

12 “(1) SUBWATERSHED PLANNING AND RESTORA-
13 TION.—A Federal agency that owns or operates a
14 facility (as defined by the Administrator) or carries
15 our activities within the Chesapeake Bay watershed
16 shall participate in regional and subwatershed plan-
17 ning and restoration programs.

18 “(2) COMPLIANCE WITH AGREEMENT.—The
19 head of each Federal agency that owns or occupies
20 real property or carries out activities in the Chesa-
21 peake Bay watershed shall ensure that the property,
22 actions taken by the agency with respect to the
23 property, and the activities of the agency comply
24 with the Chesapeake Bay Agreement, the Federal

1 Agencies Chesapeake Ecosystem Unified Plan, and
2 any subsequent agreements and plans.

3 “(3) FOREST COVER AT FEDERAL FACILI-
4 TIES.—Not later than January 1, 2012, the Admin-
5 istrator shall coordinate with the heads of each Fed-
6 eral agency that owns or operates a facility (as de-
7 fined by the Administrator) within the Chesapeake
8 Bay watershed to develop plans to maximize forest
9 cover at the facility through the preservation of ex-
10 isting forest cover and the development of reforest-
11 ation plans with respect to a facility that has been
12 disturbed or developed in the past.

13 “(4) FEDERAL ANNUAL ACTION PLAN AND
14 PROGRESS REPORT.—The Administrator, in accord-
15 ance with Executive Order 12508 entitled ‘Chesa-
16 peake Bay Protection and Restoration’ and signed
17 on May 12, 2009 (74 Fed. Reg. 23099), shall—

18 “(A) make available to the public, not later
19 than March 31 of each year—

20 “(i) a Chesapeake Bay action plan de-
21 scribing, in the greatest practicable degree
22 of detail, how Federal funding proposed in
23 the annual budget of the United States
24 submitted by the President to Congress
25 will be used to protect and restore the

1 Chesapeake Bay during the upcoming fis-
2 cal year; and

3 “(ii) an annual progress report that—

4 “(I) assesses the key ecological
5 attributes that reflect the health of
6 the Chesapeake Bay ecosystem;

7 “(II) reviews indicators of envi-
8 ronmental conditions in the Chesa-
9 peake Bay;

10 “(III) distinguishes between the
11 health of the Chesapeake Bay eco-
12 system and the results of management
13 measures;

14 “(IV) assesses implementation of
15 the action plan during the preceding
16 fiscal year;

17 “(V) recommends steps to im-
18 prove progress in restoring and pro-
19 tecting the Chesapeake Bay; and

20 “(VI) describes how Federal
21 funding and actions will be coordi-
22 nated with the actions of States, basin
23 commissions, and others;

24 “(B) create and maintain, with the concur-
25 rence of the Secretary of Agriculture, a Chesa-

1 peake Bay-wide database containing com-
2 prehensive data on implementation of conserva-
3 tion management practices in the Chesapeake
4 Bay watershed that—

5 “(i) includes baseline conservation
6 management practice implementation data
7 as of the effective date of the Chesapeake
8 Clean Water and Ecosystem Restoration
9 Act of 2009;

10 “(ii) includes data on subsequent con-
11 servation management practice implemen-
12 tation projects funded by or reported to
13 the Administrator or the Secretary;

14 “(iii) presents the required data in
15 statistical or aggregate form without iden-
16 tifying any—

17 “(I) individual owner, operator,
18 or producer; or

19 “(II) specific data gathering site;
20 and

21 “(iv) is made available to the public
22 not later than December 31, 2010.

23 “(g) CHESAPEAKE BAY PROGRAM.—

24 “(1) MANAGEMENT STRATEGIES.—The Admin-
25 istrator, in coordination with other members of the

1 Chesapeake Executive Council, shall ensure that
2 management plans are developed and implemented
3 by Chesapeake Bay States to achieve and main-
4 tain—

5 “(A) the nutrient goals of the Chesapeake
6 Bay Agreement for the quantity of nitrogen and
7 phosphorus entering the Chesapeake Bay and
8 the watershed of the Chesapeake Bay;

9 “(B) the water quality requirements nec-
10 essary to restore living resources in the Chesa-
11 peake Bay ecosystem;

12 “(C) the Chesapeake Bay Basinwide Tox-
13 ins Reduction and Prevention Strategy goal of
14 reducing or eliminating the input of chemical
15 contaminants from all controllable sources to
16 levels that result in no toxic or bioaccumulative
17 impact on the living resources of the Chesa-
18 peake Bay ecosystem or on human health;

19 “(D) habitat restoration, protection, cre-
20 ation, and enhancement goals established by
21 Chesapeake Bay States for wetlands, riparian
22 forests, and other types of habitat associated
23 with the Chesapeake Bay ecosystem; and

24 “(E) the restoration, protection, creation,
25 and enhancement goals established by the

1 Chesapeake Bay States for living resources as-
2 sociated with the Chesapeake Bay ecosystem.

3 “(2) CHESAPEAKE BAY STEWARDSHIP GRANTS
4 PROGRAM.—The Administrator, in cooperation with
5 the Chesapeake Executive Council, shall—

6 “(A) establish a Chesapeake Bay Steward-
7 ship Grants Program; and

8 “(B) in carrying out that program—

9 “(i) offer technical assistance and as-
10 sistance grants under subsection (d) to im-
11 plement—

12 “(I) cooperative watershed strate-
13 gies that address the water quality,
14 habitat, and living resource needs in
15 the Chesapeake Bay ecosystem;

16 “(II) locally based protection and
17 restoration programs or projects with-
18 in a watershed that complement the
19 State watershed implementation
20 plans, including the creation, restora-
21 tion, or enhancement of habitat asso-
22 ciated with the Chesapeake Bay eco-
23 system; and

1 “(III) innovative nitrogen, phos-
2 phorus, or sediment reduction efforts;
3 and

4 “(ii) give preference to cooperative
5 projects that involve local governments.

6 “(h) TOTAL MAXIMUM DAILY LOAD.—

7 “(1) TMDL.—

8 “(A) ESTABLISHMENT.—Not later than
9 December 31, 2010, the Administrator shall es-
10 tablish a Chesapeake Bay-wide TMDL.

11 “(B) REQUIREMENTS.—The Administrator
12 shall not establish or approve a TMDL de-
13 scribed in subparagraph (A) unless the TMDL
14 is developed in accordance with the require-
15 ments of section 303(d)(1)(C) of this Act, and
16 includes—

17 “(i) wasteload allocations for nitrogen,
18 phosphorus, and sediment necessary to im-
19 plement the applicable water quality stand-
20 ards in the Chesapeake Bay watershed and
21 achieve those standards in the Chesapeake
22 Bay and tidal tributaries;

23 “(ii) enforceable or otherwise binding
24 load allocations for all nonpoint sources,
25 including atmospheric deposition, agricul-

1 tural runoff, and stormwater sources for
2 which a permit under section 402 is not
3 required; and

4 “(iii) a requirement for no net in-
5 crease of nitrogen, phosphorus, and sedi-
6 ment loads above the pollutant limitations
7 necessary to meet water quality standards
8 for the Chesapeake Bay and tidal tribu-
9 taries, including no net projected increased
10 pollutant levels from—

11 “(I) new or increased impervious
12 surfaces;

13 “(II) concentrated animal feeding
14 operations;

15 “(III) transportation systems;
16 and

17 “(IV) septic systems.

18 “(2) PERMITS.—

19 “(A) IN GENERAL.—Effective beginning on
20 January 1, 2011, a new or reissued permit
21 issued by the Administrator under section
22 402(a) or a State authorized to administer a
23 permit program under section 402(b) shall in-
24 clude limits consistent with all applicable

1 wasteload allocations in the Chesapeake Bay
2 TMDL.

3 “(B) PERMITS.—

4 “(i) IN GENERAL.—Effective begin-
5 ning on January 1, 2011, each Chesapeake
6 Bay State shall submit to the Adminis-
7 trator copies of any permit for discharges
8 of nitrogen, phosphorus, or sediment into
9 the Chesapeake Bay watershed that is al-
10 lowed to continue beyond 5 years pursuant
11 to a State law analogous to section 558(c)
12 of title 5, United States Code, not later
13 than 60 days after the expiration date of
14 the permit.

15 “(ii) REVIEW.—The Administrator
16 shall have the opportunity to review and
17 object to the continuance of the permit in
18 accordance with the process described in
19 section 402(d) for permits proposed to be
20 issued by a State.

21 “(i) ACTIONS BY STATES.—

22 “(1) WATERSHED IMPLEMENTATION PLANS.—

23 “(A) PLANS.—

24 “(i) IN GENERAL.—Not later than
25 May 12, 2011, each Chesapeake Bay State

1 shall, after providing for notice and 1 or
2 more public hearings, adopt and submit to
3 the Administrator for approval a watershed
4 implementation plan for the portion of
5 each of the 92 tidal water segments that is
6 subject to the jurisdiction of the Chesapeake
7 Bay State that together comprise
8 the Chesapeake Bay.

9 “(ii) TARGETS.—The watershed im-
10 plementation plan shall establish reduction
11 targets, key actions, and schedules for re-
12 ducing, to levels that will attain water
13 quality standards, the loads of nitrogen,
14 phosphorus, and sediment, including pollu-
15 tion from—

16 “(I) agricultural runoff;

17 “(II) point sources, including
18 point source stormwater discharges;

19 “(III) nonpoint source stormwa-
20 ter runoff; and

21 “(IV) septic systems and other
22 onsite sewage disposal systems.

23 “(iii) POLLUTION LIMITATIONS.—

24 “(I) IN GENERAL.—The tribu-
25 tary pollution limitations shall be the

1 nitrogen, phosphorous, and sediment
2 cap loads identified in the tributary
3 cap load agreement numbered EPA
4 903-R-03-007, dated December
5 2003, and entitled ‘Setting and Allo-
6 cating the Chesapeake Bay Basin Nu-
7 trient and Sediment Loads: The Col-
8 laborative Process, Technical Tools
9 and Innovative Approaches’, or a
10 Chesapeake Bay TMDL established
11 by the Administrator.

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

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

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

1 “(II) include programs to achieve
2 voluntary reductions from pollution
3 sources, including funding commit-
4 ments necessary to implement those
5 programs;

6 “(III) include any additional re-
7 quirements or actions that the Ches-
8 apeake Bay State determines to be nec-
9 essary to attain the pollution limita-
10 tions by the deadline established in
11 this paragraph;

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

1 “(V) include a schedule for im-
2 plementation divided into 2-year peri-
3 ods, along with computer modeling to
4 demonstrate the projected reductions
5 in nitrogen, phosphorus, and sediment
6 loads associated with each 2-year pe-
7 riod;

8 “(VI) include the stipulation of
9 alternate actions as contingencies;

10 “(VII) account for how the
11 Chesapeake Bay State will address
12 additional loadings from growth
13 through offsets or other actions; and

14 “(VIII) provide assurances
15 that—

16 “(aa) if compared to an esti-
17 mated 2008 baseline, the initial
18 plan shall be designed to achieve,
19 not later than May 31, 2017, at
20 least 60 percent of the nitrogen,
21 phosphorous, and sediment limi-
22 tations described in clause
23 (iii)(I);

24 “(bb) the management
25 measures required to achieve a

1 50-percent reduction of nitrogen,
2 phosphorous, and sediment limi-
3 tations shall be in effect upon
4 submission of the plan;

5 “(cc) the Chesapeake Bay
6 State will have adequate per-
7 sonnel, funding, and authority
8 under State (and, as appropriate,
9 local) law to carry out the imple-
10 mentation plan and is not prohib-
11 ited by any provision of Federal
12 or State law from carrying out
13 the implementation plan; and

14 “(dd) in a case in which a
15 Chesapeake Bay State has relied
16 on a local government for the im-
17 plementation of any plan provi-
18 sion, the Chesapeake Bay State
19 has the responsibility for ensur-
20 ing adequate implementation of
21 the provision.

22 “(B) IMPLEMENTATION.—

23 “(i) IN GENERAL.—In implementing a
24 watershed implementation plan, each
25 Chesapeake Bay State shall follow a strat-

1 egy developed by the Administrator for the
2 implementation of adaptive management
3 principles to ensure full implementation of
4 all plan elements by not later than May
5 12, 2025, including—

6 “(I) biennial evaluations of State
7 actions;

8 “(II) progress made toward im-
9 plementation;

10 “(III) determinations of nec-
11 essary modifications to future actions
12 in order to achieve objectives; and

13 “(IV) appropriate provisions to
14 adapt to climate changes.

15 “(ii) DEADLINE.—Not later than May
16 12, 2025, each Chesapeake Bay State
17 shall—

18 “(I) fully implement the water-
19 shed implementation plan of the
20 State; and

21 “(II) have in place all the mecha-
22 nisms outlined in the plan that are
23 necessary to attain the applicable pol-
24 lutant limitations for nitrogen, phos-
25 phorus, and sediment.

1 “(C) PROGRESS REPORTS.—Not later than
2 May 12, 2014, and biennially thereafter, each
3 Chesapeake Bay State shall submit to the Ad-
4 ministrators a progress report that, with respect
5 to the 2-year period covered by the report—

6 “(i) includes a listing of all manage-
7 ment measures that were to be imple-
8 mented in accordance with the approved
9 watershed implementation plan of the
10 Chesapeake Bay State, including a descrip-
11 tion of the extent to which those measures
12 have been fully implemented;

13 “(ii) includes a listing of all the man-
14 agement measures described in clause (i)
15 that the Chesapeake Bay State has failed
16 to fully implement in accordance with the
17 approved watershed implementation plan
18 of the Chesapeake Bay State;

19 “(iii) includes monitored and collected
20 water quality data;

21 “(iv) includes Chesapeake Bay Pro-
22 gram computer modeling data that detail
23 the nitrogen, phosphorus, and sediment
24 load reductions projected to be achieved as
25 a result of the implementation of the man-

1 agement measures and mechanisms carried
2 out by the Chesapeake Bay State;

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

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

15 “(vii) specifies any revisions to the
16 watershed implementation plan submitted
17 under this paragraph that the Chesapeake
18 Bay State determines are necessary to at-
19 tain the applicable pollutant limitations for
20 nitrogen, phosphorus, and sediment.

21 “(2) ISSUANCE OF PERMITS.—

22 “(A) IN GENERAL.—Notwithstanding any
23 other provision of this Act (including any exclu-
24 sion or exception contained in a definition
25 under section 502), for the purpose of achieving

1 the nitrogen, phosphorus, and sediment reduc-
2 tions required under a watershed implementa-
3 tion plan, a Chesapeake Bay State may issue a
4 permit in accordance with section 402 for any
5 pollution source the Chesapeake Bay State de-
6 termines to be necessary.

7 “(B) ENFORCEMENT.—The Administrator
8 shall enforce any permits issued in accordance
9 with the watershed implementation plan in the
10 same manner as other permits issued under
11 section 402 are enforced.

12 “(3) REDUCTION OF POLLUTION FROM IMPER-
13 VIOUS SURFACES.—

14 “(A) IN GENERAL.—Not later than Janu-
15 ary 1, 2013, each unit of local government
16 within the Chesapeake Bay watershed that dis-
17 charges stormwater through a storm sewer sys-
18 tem, regardless of storm sewer system owner-
19 ship and without regard to the size of the popu-
20 lation, shall obtain and comply with a permit
21 under section 402(p).

22 “(B) REQUIREMENTS.—A permit under
23 section 402(p) for a unit of local government
24 within the Chesapeake Bay watershed shall in-
25 clude requirements to ensure that a project to

1 develop land within the jurisdiction of such unit
2 of local government that affects land that is
3 more than 1 acre in size and that is less than
4 5 percent covered by impervious surfaces prior
5 to the project is carried out in a manner that
6 not less than the volume of the 95th percentile
7 precipitation event shall infiltrate, evapotranspi-
8 rate from, or be harvested and used on such
9 site after the project is completed.

10 “(4) PHOSPHATE BAN.—

11 “(A) PHOSPHORUS IN CLEANING
12 AGENTS.—Each Chesapeake Bay State shall
13 provide to the Administrator, not later than 3
14 years after the date of enactment of the Ches-
15 apeake Clean Water and Ecosystem Restoration
16 Act of 2009, assurances that within the juris-
17 diction, except as provided in subparagraph
18 (B), a person may not use, sell, manufacture,
19 or distribute for use or sale any cleaning agent
20 that contains more than 0.0 percent phosphorus
21 by weight, expressed as elemental phosphorus,
22 except for a quantity not exceeding 0.5 percent
23 phosphorus that is incidental to the manufac-
24 ture of the cleaning agent.

1 “(B) PROHIBITED QUANTITIES OF PHOS-
2 PHORUS.—Each Chesapeake Bay State shall
3 provide to the Administrator, not later than 3
4 years after the date of enactment of the Ches-
5 apeake Clean Water and Ecosystem Restoration
6 Act of 2009, assurances that within the juris-
7 diction a person may use, sell, manufacture, or
8 distribute for use or sale a cleaning agent that
9 contains greater than 0.0 percent phosphorus
10 by weight, but does not exceed 8.7 percent
11 phosphorus by weight, if the cleaning agent is
12 a substance that the Administrator, by regula-
13 tion, excludes from the limitation under sub-
14 paragraph (A), based on a finding that compli-
15 ance with that subparagraph would—

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

18 “(ii) be unreasonable because of the
19 lack of an adequate substitute cleaning
20 agent.

21 “(j) ACTION BY ADMINISTRATOR.—

22 “(1) IN GENERAL.—Not later than 60 days
23 after the date of enactment of the Chesapeake Clean
24 Water and Ecosystem Restoration Act of 2009, the
25 Administrator shall establish minimum criteria that

1 any proposed watershed implementation plan must
2 meet before the Administrator may approve such a
3 plan.

4 “(2) COMPLETENESS FINDING.—

5 “(A) IN GENERAL.—Not later than 60
6 days after the date on which the Administrator
7 receives a new or revised proposed watershed
8 implementation plan from a Chesapeake Bay
9 State, the Administrator shall determine wheth-
10 er the minimum criteria for the plan established
11 under paragraph (1) have been met.

12 “(B) EFFECT OF FINDING OF INCOM-
13 PLETENESS.—If the Administrator determines
14 under subparagraph (A) that all or any portion
15 of a submitted watershed implementation plan
16 does not meet the minimum criteria established
17 under paragraph (1), the Chesapeake Bay State
18 submitting the plan shall be treated as not hav-
19 ing made the submission.

20 “(3) APPROVAL AND DISAPPROVAL.—

21 “(A) DEADLINE.—Not later than 90 days
22 after determining that a watershed implementa-
23 tion plan meets minimum criteria in accordance
24 with paragraph (2)(A), the Administrator shall
25 approve or disapprove the plan.

1 “(B) FULL AND PARTIAL APPROVAL AND
2 DISAPPROVAL.—In carrying out this paragraph,
3 the Administrator—

4 “(i) shall approve a watershed imple-
5 mentation plan if the plan meets all appli-
6 cable requirements under this section; and

7 “(ii) may approve the plan in part
8 and disapprove the plan in part if only a
9 portion of the plan meets those require-
10 ments.

11 “(C) CONDITIONAL APPROVAL.—The Ad-
12 ministrator—

13 “(i) may conditionally approve a re-
14 vised watershed implementation plan based
15 on a commitment of the Chesapeake Bay
16 State submitting the plan to adopt specific
17 enforceable management measures by not
18 later than 1 year after the date of approval
19 of the plan revision; but

20 “(ii) shall treat a conditional approval
21 as a disapproval under this paragraph if
22 the Chesapeake Bay State fails to comply
23 with the commitment of the Chesapeake
24 Bay State.

1 “(D) FULL APPROVAL REQUIRED.—A new
2 or revised watershed implementation plan shall
3 not be treated as meeting the requirements of
4 this section until the Administrator approves
5 the entire new or revised plan.

6 “(E) CORRECTIONS.—In any case in which
7 the Administrator determines that the action of
8 the Administrator approving, disapproving, con-
9 ditionally approving, or promulgating any new
10 or revised watershed implementation plan was
11 in error, the Administrator—

12 “(i) may, in the same manner as the
13 approval, disapproval, conditional approval,
14 or promulgation, revise the action of the
15 Administrator, as appropriate, without re-
16 quiring any further submission from the
17 Chesapeake Bay State; and

18 “(ii) shall make the determination of
19 the Administrator, and the basis for that
20 determination, available to the public.

21 “(F) EFFECTIVE DATE.—The provisions of
22 a State watershed implementation plan shall
23 take effect upon the date of approval of the
24 plan.

1 “(4) CALLS FOR PLAN REVISION.—In any case
2 in which the Administrator determines that the wa-
3 tershed implementation plan for any area is inad-
4 equate to attain or maintain applicable pollution lim-
5 itations, the Administrator—

6 “(A) shall notify the Chesapeake Bay
7 State of, and require the Chesapeake Bay State
8 to revise the plan to correct, the inadequacies;

9 “(B) may establish reasonable deadlines
10 (not to exceed 180 days after the date on which
11 the Administrator provides the notification) for
12 the submission of a revised watershed imple-
13 mentation plan;

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

17 “(D) shall require the Chesapeake Bay
18 State to comply with the requirements applica-
19 ble under the initial watershed implementation
20 plan, except that the Administrator may adjust
21 any dates (other than attainment dates) appli-
22 cable under those requirements, as appropriate.

23 “(5) FEDERAL IMPLEMENTATION.—If a Chesa-
24 peake Bay State fails to submit a watershed imple-
25 mentation plan, to submit a biennial report, or to

1 correct a previously missed 2-year commitment made
2 in a watershed implementation plan, the Adminis-
3 trator shall, after issuing a notice to the State and
4 providing a 90-day period in which the failure may
5 be corrected—

6 “(A) notwithstanding the requirements of
7 sections 601(a) and 603(g) of this Act, reserve
8 up to 75 percent of a Chesapeake Bay State’s
9 capitalization grant for a State water pollution
10 control revolving fund to be available for
11 projects and activities authorized under section
12 603(c) of this Act that are selected by the Ad-
13 ministrator, after a notice to the State, to be
14 carried out within such State;

15 “(B) withhold all funds otherwise available
16 to the Chesapeake Bay State under this Act
17 other than those funds authorized under title
18 VI of this Act;

19 “(C) develop and administer a watershed
20 implementation plan for that Chesapeake Bay
21 State until such time as the Chesapeake Bay
22 State has remedied the plan, reports, or
23 achievements to the satisfaction of the Adminis-
24 trator;

1 “(D) require that all permits issued under
2 section 402 for new or expanding discharges of
3 nitrogen, phosphorus, or sediment acquire off-
4 sets that exceed by 100 percent an amount that
5 would otherwise be required, taking into ac-
6 count attenuation, equivalency, and uncertainty;
7 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 or issue such permits as the Administrator
16 determines to be necessary to control pollu-
17 tion sufficient to meet the water quality
18 goals defined in the watershed implementa-
19 tion plan; and

20 “(ii) enforce any permits issued in ac-
21 cordance with the watershed implementa-
22 tion plan in the same manner as other per-
23 mits issued under section 402 are en-
24 forced.

1 “(6) NITROGEN AND PHOSPHORUS TRADING
2 PROGRAM.—

3 “(A) ESTABLISHMENT.—Not later than
4 May 12, 2012, the Administrator, in coopera-
5 tion with each Chesapeake Bay State, shall es-
6 tablish an interstate nitrogen and phosphorus
7 trading program for the Chesapeake Bay for
8 the generation, trading, and use of nitrogen and
9 phosphorus credits to facilitate the attainment
10 and maintenance of the Chesapeake Bay-wide
11 TMDL for nitrogen and phosphorus.

12 “(B) TRADING SYSTEM.—The trading pro-
13 gram established under this subsection shall, at
14 a minimum—

15 “(i) define and standardize nitrogen
16 and phosphorus credits and establish pro-
17 cedures or standards for ensuring equiva-
18 lent water quality benefits for all credits;

19 “(ii) establish procedures or standards
20 for certifying, verifying, and enforcing ni-
21 trogen and phosphorus credits to ensure
22 that credit-generating practices from both
23 point sources and nonpoint sources are
24 achieving actual reductions in nitrogen and
25 phosphorus;

1 “(iii) establish procedures or stand-
2 ards for generating, quantifying, trading,
3 and applying credits to meet regulatory re-
4 quirements and allow for trading to occur
5 between and across point source or
6 nonpoint dischargers;

7 “(iv) establish baseline requirements
8 that a credit seller must meet before be-
9 coming eligible to generate saleable credits;

10 “(v) establish points-of-regulation at
11 the sub-State level to facilitate trading and
12 promote water quality goals under which—

13 “(I) States may designate point
14 sources as points-of-regulation, but
15 not nonpoint dischargers;

16 “(II) States shall aggregate mul-
17 tiple nonpoint dischargers to serve as
18 points-of-regulation; and

19 “(III) the Administrator shall es-
20 tablish guidelines or standards to en-
21 sure that points-of-regulation shall be
22 generally consistent across States;

23 “(vi) ensure that credits are used in
24 accordance with permit requirements under
25 the national pollutant discharge elimi-

1 nation system established under section
2 402 and trade requirements have been ade-
3 quately incorporated into the permits;

4 “(vii) ensure that private contracts
5 between credit buyers and credit sellers
6 contain adequate provisions to ensure en-
7 forceability under applicable law;

8 “(viii) establish procedures or stand-
9 ards for providing public transparency on
10 nutrient trading activity;

11 “(ix) ensure that, if the local receiving
12 water is impaired for the nutrient being
13 traded but a TMDL has not yet been im-
14 plemented for the impairment—

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

19 “(II) dischargers in the water-
20 shed may not rely on credits produced
21 outside of the watershed;

22 “(x) 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 “(xi) except as part of a consent
6 agreement, prohibit the purchase of credits
7 from any entity that is in significant non-
8 compliance with an enforceable permit
9 issued under section 402;

10 “(xii) consider and incorporate, to the
11 maximum extent practicable, elements of
12 State trading programs in existence as of
13 the date of enactment of the Chesapeake
14 Clean Water and Ecosystem Restoration
15 Act of 2009; and

16 “(xiii) allow for, as appropriate, the
17 aggregation and banking of credits by
18 third parties.

19 “(C) FACILITATION OF TRADING.—In
20 order to attract market participants and facili-
21 tate the cost-effective achievement of water
22 quality goals, the Administrator shall ensure
23 that the trading program established under this
24 paragraph—

1 “(i) includes measures to mitigate
2 credit buyer risk;

3 “(ii) makes use of the best available
4 science in order to minimize uncertainty
5 and related transaction costs to traders,
6 including the Administrator, in consulta-
7 tion with the Secretary of Agriculture, sup-
8 porting research and other activities that
9 increase the scientific understanding of
10 nonpoint nutrient pollutant loading and
11 the ability of various structural and non-
12 structural alternatives to reduce the loads;

13 “(iii) eliminates unnecessary or dupli-
14 cative administrative processes; and

15 “(iv) incorporates a permitting ap-
16 proach under the national pollutant dis-
17 charge elimination system established
18 under section 402 that creates a general
19 approval for trading avoiding the need to
20 reopen or reissue permits to incorporate in-
21 dividual trades.

22 “(7) AUTHORITY RELATING TO DEVELOP-
23 MENT.—The Administrator shall—

24 “(A) establish and issue, for any project
25 affecting land that is more than 1 acre in size

1 and that is less than 5 percent covered by im-
2 pervious surfaces prior to such project that pro-
3 poses to increase the overall percentage of im-
4 pervious surfaces, guidance relating to site
5 planning, design, construction, and maintenance
6 strategies to ensure that not less than the vol-
7 ume of the 95th percentile precipitation event
8 shall infiltrate, evapotranspire from, or be
9 harvested and used on such site after the
10 project is completed; and

11 “(B) establish and issue model ordinances
12 and guidelines with respect to the construction
13 of low-impact development infrastructure and
14 nonstructural low-impact development tech-
15 niques for use by States, local governments,
16 and private entities.

17 “(8) ASSISTANCE WITH RESPECT TO
18 STORMWATER DISCHARGES.—

19 “(A) GRANT PROGRAM.—The Adminis-
20 trator may provide grants to any local govern-
21 ment within the Chesapeake Bay watershed
22 that adopts the guidance, ordinances, and
23 guidelines issued under paragraph (7).

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

4 “(i) developing, implementing, and en-
5 forcing the guidance, ordinances, and
6 guidelines issued under paragraph (7); and

7 “(ii) implementing a project that is
8 designed, constructed, and maintained to
9 meet the relative performance standard de-
10 scribed in subsection (i)(3)(B).

11 “(9) CONSUMER AND COMMERCIAL PRODUCT
12 REPORT.—Not later than 3 years after the date of
13 enactment of the Chesapeake Clean Water and Eco-
14 system Restoration Act of 2009, the Administrator,
15 in consultation with the Chesapeake Executive Coun-
16 cil, shall—

17 “(A) review consumer and commercial
18 products, the use of which may affect the water
19 quality of the Chesapeake Bay watershed or as-
20 sociated tributaries, to determine whether fur-
21 ther product nutrient content restrictions are
22 necessary to restore or maintain water quality
23 in the Chesapeake Bay watershed and those
24 tributaries; and

1 “(B) submit to the Committees on Appro-
2 priations, Environment and Public Works, and
3 Commerce, Science, and Transportation of the
4 Senate and the Committees on Appropriations,
5 Natural Resources, Energy and Commerce, and
6 Transportation and Infrastructure of the House
7 of Representatives a report detailing the find-
8 ings of the review under subparagraph (A).

9 “(k) PROHIBITION ON INTRODUCTION OF ASIAN
10 OYSTERS.—Not later than 2 years after the date of enact-
11 ment of the Chesapeake Clean Water and Ecosystem Res-
12 toration Act of 2009, the Administrator shall promulgate
13 regulations—

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

17 “(2) to prohibit the issuance of permits under
18 sections 402 and 404 for the discharge of the Asian
19 oyster into the Chesapeake Bay and tidal waters;
20 and

21 “(3) to specify conditions under which scientific
22 research on Asian oysters may be conducted within
23 the Chesapeake Bay and tidal waters.

24 “(l) EFFECT ON OTHER REQUIREMENTS.—

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

5 “(2) VIOLATIONS BY STATES.—The failure of a
6 State to submit a watershed implementation plan or
7 biennial report, or to correct a previously missed 2-
8 year commitment made in a watershed implementa-
9 tion plan, by the applicable deadline established
10 under this section shall—

11 “(A) constitute a violation of this Act; and

12 “(B) subject the State to—

13 “(i) enforcement action by the Admin-
14 istrator; and

15 “(ii) civil actions commenced pursuant
16 to section 505.

17 “(3) FAILURE OF ADMINISTRATOR TO ACT.—
18 The failure of the Administrator to act under this
19 section shall subject the Administrator to civil ac-
20 tions commenced pursuant to section 505.

21 “(m) EVALUATION BY THE INSPECTOR GENERAL.—
22 The Inspector General of the Environmental Protection
23 Agency shall evaluate the implementation of this section
24 on a periodic basis of not less than once every 3 years.

25 “(n) AUTHORIZATION OF APPROPRIATIONS.—

1 “(1) IMPLEMENTATION AND MONITORING
2 GRANTS.—

3 “(A) AUTHORIZATION OF APPROPRIA-
4 TIONS.—In addition to amounts authorized to
5 be appropriated or otherwise made available to
6 carry out this section, there are authorized to
7 be appropriated to the Administrator—

8 “(i) to provide implementation grants
9 under subsection (e)(3)(A), \$80,000,000
10 for each of fiscal years 2010 through
11 2015, to remain available until expended;

12 “(ii) to carry out a freshwater moni-
13 toring program under subsection (e)(3)(B),
14 \$5,000,000 for each of fiscal years 2010
15 through 2015; and

16 “(iii) to carry out a Chesapeake Bay
17 and tidal water monitoring program under
18 subsection (e)(3)(B), \$5,000,000 for each
19 of fiscal years 2010 through 2015.

20 “(B) COST SHARING.—The Federal share
21 of the cost of a program carried out using
22 funds from a grant provided—

23 “(i) under subparagraph (A)(i) shall
24 not exceed 50 percent; and

1 “(ii) under clause (ii) or (iii) of sub-
2 paragraph (A) shall not exceed 80 percent.

3 “(2) CHESAPEAKE STEWARDSHIP GRANTS.—

4 There is authorized to be appropriated to carry out
5 subsection (g)(2) \$15,000,000 for each of fiscal
6 years 2010 through 2014.

7 “(3) STORMWATER POLLUTION PLANNING AND
8 IMPLEMENTATION GRANTS.—

9 “(A) AUTHORIZATION OF APPROPRIA-
10 TIONS.—In addition to amounts authorized or
11 otherwise made available to carry out this sec-
12 tion, there are authorized to be appropriated to
13 the Administrator—

14 “(i) to carry out subsection
15 (j)(8)(B)(i), \$10,000,000; and

16 “(ii) to carry out subsection
17 (j)(8)(B)(ii), \$1,500,000,000.

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

20 “(i) subsection (j)(8)(B)(i) may not be
21 used to cover more than 80 percent of the
22 cost of the project; and

23 “(ii) subsection (j)(8)(B)(ii) may not
24 be used to cover more than 75 percent of
25 the cost of the project.

1 “(4) LIMITATION ON ADMINISTRATIVE EX-
2 PENSES.—Not more than 10 percent of the annual
3 amount of any grant provided by the Administrator
4 or Secretary under any program described in para-
5 graphs (1), (2), or (3) may be used for administra-
6 tive expenses.

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

10 **SEC. 4. NONPOINT SOURCE MANAGEMENT PROGRAMS.**

11 Section 319(j) of the Federal Water Pollution Control
12 Act (33 U.S.C. 1329) is amended by striking “not to ex-
13 ceed \$70,000,000” and all that follows through the period
14 and inserting “\$500,000,000 for each of the fiscal years
15 2010 through 2015.”.

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