

Chesapeake Bay Program Reauthorization

Issue

Congress is considering the reauthorization of the Chesapeake Bay Program. Currently, there are several draft pieces of legislation both from the U.S. Senate and House. Several of the proposals codify the provisions of President Obama's Chesapeake Bay Executive Order, set an enforceable deadline for Chesapeake Bay (Bay) restoration, set deadlines for Bay Total Maximum Daily Load (TMDL) development and implementation, establish citizen right of action (civil suits), and ban activities such as commercial menhaden fishing which are generally controlled by the states.

Background & Timeline

On May 12, 2009, President Barrack Obama signed an Executive Order that recognizes the Chesapeake Bay as a national treasure and calls for the federal government to lead a renewed effort to restore and protect the Bay watershed. The order calls for a multiagency report to be prepared with a draft deadline of September 2009, a draft for public comment released in November 2009, and a final report with recommendations and strategies completed by May 12, 2010. The September 2009 draft report places a significant share of the responsibility for Bay pollution clean-up on agriculture- over 50%! It calls for increased and expanded regulation of agriculture, increased prioritization and targeting of conservation incentives, and improved credit in the Bay model for voluntary measure implemented by farmers. **The Executive Order should not be codified because it will not become final until 2010; it is a precedent setting document with questionable authority.**

Legislative proposals from Congress would also codify deadlines for development and implementation of a TMDL for the Bay and 99 of its tributaries (more than 30 will be in Virginia). The TMDL establishes the maximum load or "cap" of nutrients and sediments that can be discharged to the Bay from any source. Land use plans will be developed, and approved by EPA that limit loading below the cap. No growth will be allowed that causes loadings beyond the cap. This will significantly limit new or beginning agribusiness operations and place similar limits on expansion. It also effectively expands the Bay regulatory programs throughout the watershed without Virginia General Assembly action. While the TMDL development is court ordered, **it should not be codified because it is under development with unknown outcomes and codification would bypass the authority of the Virginia General Assembly.**

The proposed legislation would also codify the "Chesapeake Bay Milestones" or two-year goals or initiatives to achieve Bay restoration established by each state and approved by EPA. In Virginia, proposals for the 2009-2011 2-year milestones include: continued and expanded cost share funding, phytase additives in feed, mandatory nutrient management plans, mandatory fencing of streams, and a number of other measures. **The Chesapeake Bay Milestones should not be codified because they**

are established by each state individually and beyond the current two-year cycle are not yet established.

Establishment of “citizen right of action” or civil suits is included in the proposed legislation. Whether intended to keep EPA engaged in restoration of the Bay or to hold up permits(both general and individual permits) this will bring economic growth to at halt. **Civil suits cannot be codified because they will generate unnecessary suits that are simply intended to stop a project or prolong the issuance of permits.**

The proposed legislation also bans the establishment of Asian oysters, commercial menhaden fishing, and other programs. These are issues generally governed by state agencies through cooperative agreements with other states. **This should not be codified because they are issues that should be determined by the states. Federal intervention will be disruptive to established industries.**

The Reauthorization language also gives very broad and general authority to the EPA Administrator to approve/reject a jurisdiction’s “Comprehensive Plan” for achieving allocated load reductions. This also includes authority to provide federal grants to cover up to 50% of the complete cost. **We support as much flexibility and authority given to the individual states as possible as well as dedicated funding inside any given grant for technical assistance and production research.**

Policy Position

We believe that reauthorization of section 117 of the Clean Water Act is important to continued progress toward the restoration of the Chesapeake Bay; however, we oppose expansion of federal authority by codification of: President Obama’s Chesapeake Bay Executive Order, deadlines for Chesapeake Bay Total Maximum Daily Load development and implementation, and authorization of citizen suits. We also support more transparency inside the Chesapeake Bay Program including scientific peer review process of proposed modeling changes and a stakeholder comment period.