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To Save Chesapeake Bay, Congress Must Create Enforceable Penalties for States that Fail to Meet Targets, Says CPR Report

EPA Must Also Be Given Legal Authority to Enforce Controls on Nonpoint Pollution Sources Through TMDL Program

(Washington) -- Congress should empower the Environmental Protection Agency to impose penalties on states in the Chesapeake Bay watershed region that do not meet new 2-year pollution reduction targets, a new report by the Center for Progressive Reform (CPR) recommends. The report says that voluntary pollution-reduction targets have proven a failure, demonstrating the need for a concerted approach with consequences for jurisdictions that do not reduce their pollution into the Chesapeake Bay watershed.

"Chesapeake Bay cleanup has languished for years because each state in the region can act as if it's someone else's problem. What we're proposing today is a genuine system of accountability that recognizes that the states need, at long last, to be compelled to meet pollution reduction targets," said Rena Steinzor, President of the Center for Progressive Reform. "President Obama's Executive Order on protecting the Bay will help, but unless Congress takes action, even its new commitments are vulnerable to the Chesapeake Bay Program's culture of avoiding the most difficult and effective choices in favor of tinkering around the margins."

The CPR report, *Reauthorizing the Chesapeake Bay Program: Exchanging Promises for Results*, calls on Congress to reauthorize the Chesapeake Bay Program with the following changes:

- Establish and fund an Independent Evaluator for the Program designed to ensure that state and federal jurisdictional partners keep their commitments and deliver results;
- Set a statutory deadline of 2020 for Bay restoration, requiring that EPA has the non-discretionary duty to ensure that the Bay meet water quality standards by that time;
- Require Bay jurisdictions to establish five sets of two-year milestones outlining the interim reduction requirements necessary to achieve the statutory deadline by 2020;
- Require that substantial progress is made toward meeting the two-year milestones, defined as meeting 20 percent of the total load reduction requirements;
- Require the EPA Administrator to make a formal finding within 60 days after a two-year milestone deadline has passed, declaring whether the targets have been met.

The CPR report calls on Congress to authorize the EPA Administrator to take the following steps when jurisdictions fail to meet the milestones:

- Prohibit the issuance of new “point source” pollution permits (permits for known pollution sources);
- Withdraw Nonpoint Source Management Program funding (Section 319 funding) and other financial assistance from jurisdictional partners and give it to the Bay Program to implement “nonpoint source” management programs.

The CPR report also proposes revamping the Total Maximum Daily Load (TMDL) program for the Bay, which is not currently enforceable. A TMDL is a "pollution budget" representing the combined amount of pollution from both point and nonpoint sources that a waterway can accept without exceeding water quality standards. Non-point sources, such as run-off from farms laden with manure, pesticides and fertilizer, have for years evaded regulatory scrutiny. The Clean Water Act does not expressly require that identified controls of nonpoint pollution sources designed to meet a TMDL be put into action. In other words, the EPA is required to spend millions of dollars developing a TMDL plan without the legal authority to ensure that such a plan is actually implemented with respect to the largest sources of pollution in the Bay, nonpoint sources.

CPR's report therefore recommends that Congress:

- Reauthorize the Bay Program to require each jurisdiction in the Bay watershed to develop an implementation plan for the Bay-wide TMDL by the December 2010 TMDL deadline;
- Require that the Bay-wide TMDL be translated into stricter permit limits and mandatory nonpoint source controls within five years of EPA's approval of the permits and controls;
- Provide EPA with express authority to require that implementation plans accompanying the Bay-wide TMDL will greatly increase the EPA and the Independent Evaluator's ability to track whether necessary pollution reduction measures are being implemented.

The full CPR report is available at:

<http://www.progressivereform.org/articles/chesbayfinal.pdf>

The Center for Progressive Reform (www.progressivereform.org) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org and read CPRBlog at www.progressivereform.org/cprblog.

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