



Court Upholds Chesapeake Bay TMDL

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The U.S. Court of Appeals for the Third Circuit has upheld federal pollution restrictions for the Chesapeake Bay Watershed over objections by agricultural and construction trade associations and 21 states (including South Carolina). EPA's Total Maximum Daily Load ("TMDL") issued in December 2010 calls for a reduction of nutrients and sediment discharged to the Bay through a combination of federal and state requirements, including requirements applicable to nonpoint discharges, e.g., sheet flow and run-off. The challengers argued that while EPA had authority to regulate *point* source discharges of pollutants, the Clean Water Act does not authorize EPA to regulate *nonpoint* source discharges of pollutants or make decisions about land use and zoning as a way to regulate those nonpoint discharges. The challengers said EPA was encroaching on state land-use decisions and on each state's traditional right to decide how best to achieve federal water quality requirements. They also argued that EPA did not have authority to require multiple states to coordinate restrictions on discharges to the Bay watershed.

In upholding the lower court's decision, the Third Circuit acknowledged that addressing the Bay is a complex problem with both winners and losers. It said, "The winners are environmental groups, the states that border the Bay, tourists, fishermen, municipal waste water treatment works, and urban centers. The losers are rural counties with farming operations, nonpoint source polluters, the agricultural industry and those states that would prefer a lighter touch from the EPA."

Although no decision has been made by petitioners on whether to appeal, one thing seems clear: EPA will be emboldened by the ruling to establish similar TMDLs to address nonpoint source pollution in other parts of the country. States adjacent to the Gulf of Mexico may be next.

American Farm Bureau Federation v. EPA, No. 13-4079 (July 6, 2015).

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