Chesapeake Bay TMDL Here to Stay

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The U.S. Supreme Court has declined to consider an appeal challenging EPA's Chesapeake Bay Total Daily Maximum Load (TMDL), thereby bringing to an end the contentious years-long litigation over its legality. The Court's decision late last month effectively upholds a July 6, 2015 decision by the U.S. Court of Appeals for the Third Circuit affirming EPA's authority under the Clean Water Act to develop a TMDL for the entire Chesapeake Bay watershed.

The Bay TMDL was issued in 2010. It's essentially a "pollution diet" designed to reduce discharges of nitrogen, phosphorus and sediment to the Bay, all of which have been shown to adversely affect water quality in the 64,000 square mile watershed. The American Farm Bureau Federation (AFBF), National Association of Homebuilders, and many others filed suit challenging EPA's authority to issue such a sweeping plan. They lost in the district court and in the Third Circuit, so their last hope was that the Supreme Court would hear their appeal

In their briefs to the Supreme Court, these parties argued that EPA usurped state authority in establishing waste load allocations, compliance deadlines, and other key criteria. They also said the TMDL imposed inflexible waste load allocations over small geographic areas and that the states were better suited in deciding how water quality goals should be attained based on local economic and social impacts. Finally, they argued that EPA made significant miscalculations in the TMDL by failing to consider overall load from a variety of sources and sectors.

It did them no good. Despite potentially conflicting rulings from the Ninth and Tenth Circuits, the Supreme Court denied AFBF's petition for appeal on February 29. That means the Bay TMDL remains on course and arguably will be used as a blueprint by EPA for other large watersheds it concludes are impaired.

[Briefs filed in American Farm Bureau v. EPA (U.S. Sup. Ct.)](#)

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