



JUDGE RAMBO RULING: *American Farm Bureau, et al v. EPA, et al.*

SUMMARY:

The Court has affirmed that the pollution limits that EPA established in December 2010 for the Chesapeake Bay and its tributaries are within the Agency's purview and are based on sound science. The Court also found that the Farm Bureau and Homebuilders had ample time to review and comment on the proposed limits. In terms of the Chesapeake Bay, there could be no better outcome. CBF, and our partners, respectfully salute the thoughtful legal decision made by Judge Sylvia H. Rambo, the presiding federal judge in the United States District Court for the Middle District of Pennsylvania.

BACKGROUND:

Less than two weeks after EPA established pollution limits for the Bay and its tributaries, as required by the Clean Water Act for any body of water not meeting specific water quality standards, the American Farm Bureau Federation and the Pennsylvania Farm Bureau filed a complaint in federal court to throw out the limits – known legally in the Clean Water Act as a Total Maximum Daily Load or TMDL. Not long after the original complaint was filed, the two Farm Bureaus were joined by the National Association of Home Builders, the National Chicken Council, the National Corn Growers Association, the National Pork Producers Council, the National Turkey Federation, The Fertilizer Institute, and the U.S. Poultry & Egg Association (collectively “the Farm Bureau Group”). In the case, known as *American Farm Bureau, et al. v. EPA*, the Farm Bureau Group made three complaints: (1) that the pollution limits or TMDL exceeded EPA's authority, (2) that they were based on faulty science, and (3) that the plaintiff did not have adequate time to participate in the comment process.

Five months after the original complaint was filed, CBF filed a motion to intervene in the case in support of EPA and, specifically, the pollution limits. We were joined by five other groups: Citizens for Pennsylvania's Future, Defenders of Wildlife, Jefferson County (WV) Public Service District, Midshore River Keeper Conservancy, and the National Wildlife Federation. Several municipal waste water treatment groups were also allowed to intervene on behalf of EPA. CBF filed a response to the Farm Bureau Group's motion for summary judgment and offered oral arguments in October 2012.

GENERAL FINDINGS:

Judge Rambo soundly rejected all three of the complaints. Her ruling removed any ambiguity concerning what EPA and the states have to do to restore the Bay and its tributaries. Now the six states in the Bay watershed and the District of Columbia have the clear direction that they should continue – even accelerate – the specific plans to meet the pollution limits by 2025 that they have begun to implement in their jurisdictions.

In rejecting all three arguments, the Court has affirmed that the pollution limits EPA established in 2010 are within the Agency's authorities and based on sound science. The decision further affirmed that the challengers had ample time to review and comment on the limits. Judge Rambo's ruling repeatedly noted how the limits and the state implementation plans (together the Chesapeake Clean



Water Blueprint) were developed cooperatively, clarifying that EPA simply allocated pollution limits among water bodies and sources, while the states determined how best to achieve those limits.

SPECIFIC FINDINGS:

In a thorough and meticulous 99 page opinion, the court addressed each of the Farm Bureau Group’s arguments and rejected them all in turn. The common theme in the court’s decision is that the Final TMDL exemplifies cooperative federalism between EPA and the states at every stage of the process:

EPA Has Authority Under the CWA

The court upheld EPA’s authority to issue the TMDL where the states failed to do so. The court rejected the Farm Bureau Group’s claims that EPA had overstepped its authority by “implementing” the TMDL; *i.e.*, issuing specific waste load allocations (WLAs) and load allocations (LAs); backstop measures; establishing a federal timeline for implementing the allocations; and by reserving exclusive authority to revise them. WLAs apply to point sources of pollution and LAs apply to non-point sources. Point sources discharge pollutants from a pipe, ditch or other conveyance like wastewater treatment plants and factories. Non-point source pollution cannot be attributed to a specific location (*i.e.*, urban runoff, cropland, feedlots, lawns and pet and animal waste).

The court found that the job of “implementing” the TMDL must be divided between EPA and the states. Judge Rambo rejected the Farm Bureau’s argument that the inclusion of detailed WLAs, LAs, and sector and individual source allocations in the TMDL is too detailed and should be left to the states to decide. First, the court found nothing in the CWA that prohibits EPA from defining the TMDL in terms of WLAs and LAs. Second, the court went on to acknowledge that most of the individual allocations were provided by the states not EPA, again, in a cooperative effort, rather than one dictated by EPA.

Judge Rambo went on to describe the process of developing state watershed implementation plans (WIPs) as a collaborative process between EPA and the states, not the coercive exercise the Farm Bureau portrayed. In fact, the court found it noteworthy that no state has filed suit challenging the TMDL, let alone alleged that their participation in the TMDL drafting process was the result of coercion.

The court pointed out that “the TMDL supports the use of water quality trading programs that permit point and non-point sources to trade pounds of phosphorus or nitrogen, provided such trading does not result in exceedances of water quality standards and is otherwise consistent with the CWA and applicable regulations.”

45-Day Public Comment Period Was Sufficient

The court found that the 45 day public comment period was sufficient and in fact, only a 30 day period was required. The court noted that further extension of the comment period may have violated the *Fowler v. EPA* settlement agreement between CBF and EPA which required that the Final TMDL be established by December 31, 2010.

The court found that the Farm Bureau either participated or had the opportunity to participate in the drafting process and failed to demonstrate how it was harmed by the 45 day comment period.



EPA's Modeling and Use of Data Were Appropriate

The court found that the modeling undertaken by EPA to estimate sediment and nutrient allocations was appropriate and EPA's selection of the data used in the model was entitled to deference. These are fairly technical arguments where the Farm Bureau Group failed to show it was harmed by EPA's selection of the methods and data it used to develop the TMDL.