



The Clean Water Blueprint for the Chesapeake Under Attack

Some of the nation's most powerful legal and political forces are trying to stop a widely accepted Clean Water Blueprint for the Chesapeake.

The Clean Water Blueprint to Bring Back the Bay

On December 29, 2010, EPA issued a final science-based pollution-reduction target (legally known as a Total Maximum Daily Load or TMDL) for the Chesapeake watershed. If met, the pollution-reduction target will reduce nutrient and sediment pollution from the entire 64,000-square-mile Chesapeake Bay watershed. This follows years of litigation, advocacy, voluntary agreements, Congressional action, Executive Branch action, and cooperative technical work, including a 2010 settlement agreement to CBF's suit against EPA that set specific deadlines for the TMDL and requires two-year timelines and the imposition of consequences for failure.

EPA's action is by far the largest and most complex undertaking out of the more than 44,000 pollution-reduction targets developed since the 1972 passage of the Clean Water Act. Yet far more important than its size and complexity, the target is accompanied by detailed "Watershed Implementation Plans" from each of the six Chesapeake Bay watershed states (and the District of Columbia). Together, these efforts—the Clean Water Blueprint for the Chesapeake—constitute the best chance in the last 50 years to truly bring the Bay back to ecological balance. *The Baltimore Sun* (March 17, 2011) editorialized that this is "the most hopeful effort towards cleaning up the estuary in a generation."

Big Ag's Strategy to Stop Bay Restoration

Predictably, the reaction of national agricultural advocacy groups and industry associations was quick. Only 12 days after the release of the final pollution-reduction target and the states' Watershed Implementation Plans, the American Farm Bureau Federation and the Pennsylvania Farm Bureau filed suit in U.S. District Court to try to stop the pollution-reduction target. They were subsequently joined by six agricultural industry groups—including the Fertilizer Institute, the National Pork Producers Council, and the National Corn Growers Association. A similar suit was filed by the National Association of Home Builders in

June 2011. Their legal complaint is based on narrow technical issues, but their intent to permanently block the pollution-reduction target could not be more transparent.

The industry groups' lawsuit is only part of their strategy to delay, hobble, or kill the pollution-reduction target. The same set of agricultural industry trade associations is also collaborating with former House Agriculture Committee Chairman Bob Goodlatte and other senior members of the House Agriculture Committee to stop the pollution-reduction target by rewriting federal law. In February 2011, the House of Representatives passed the "Goodlatte Amendment" to stop all federal funds to implement the TMDL. CBF's advocacy ensured that the amendment died in the Senate. Congressman Goodlatte's second attempt to stop TMDL funding ran out of time later in the 2011. In March 2012, Congressman Goodlatte and another senior member of the House Agriculture Committee introduced comprehensive legislation to permanently end the EPA's authority to enforce the TMDL. This legislation is currently pending in the House.

Big Ag's Fear of Accountability

Why are the agricultural industry groups reacting with such forcefulness? The reasons are clear. Agricultural runoff, except for that directly related to Concentrated Animal Feeding Operations, has been exempt from the Clean Water Act since agricultural interests convinced Congress to amend the Act in 1987. The Clean Water Blueprint for the Chesapeake—the science-based pollution-reduction target and states' Watershed Implementation Plans—represent a threat to that absolute exemption, as the states' Watershed Implementation Plans increase permissible state-level regulation of agricultural runoff to meet the TMDL's nonpoint-source allocations.

Both industry officials and others understand that this is a critical moment in the history of the Clean Water Act. Just after the American Farm Bureau lawsuit was filed, a senior USDA official told a huge audience of farmers and government officials that the "Chesapeake Bay is ground zero for what may happen to agriculture and regulation." Referring to important and supportive legislation introduced in the 110th Congress to reinforce the Bay pollution-reduction target, Oklahoma Senator Jim

Inhofe said, “I cannot be supportive of a massive federal expansion of EPA’s authority, which poses serious consequences for agriculture, local development, and which could pave the way for this approach in other Great Water Bodies, like the Great Lakes and the Gulf of Mexico.” Subsequently, at least 63 national and regional agricultural industry groups wrote to every member of Congress opposing the legislation.

Tulane Law School professor Oliver Houck, the nation’s leading expert on the Clean Water Act’s TMDL program, wrote in a March 2011 law review article, “The dominant causes of pollution today are not regulated at any level: They are nonpoint sources, and they believe they are God, for good reasons.” After 20 pages of detailed history of the TMDL program and specifically the current battle over the pollution-reduction target, he concluded with a rhetorical flourish, “The die is now cast. We may restore the Chesapeake or we may not, but at least, at last, in this one place, for at least this moment, we can say that we really tried.”

The Clean Water Blueprint is Smart Public Policy

The Chesapeake Bay pollution-reduction target and the states’ Watershed Implementation Plans are about the restoration of the iconic Chesapeake Bay, a national treasure, but it is also about whether federal-state cooperation to define and implement pollution-reduction targets can succeed. If the Clean Water

Blueprint for the Chesapeake is overturned by corporate interests—either working through the courts or Congress—we will see our rivers, streams, lakes, bays, estuaries, and coastal areas further polluted for many more years to come.

The American Farm Bureau Federation, the nation’s agricultural industry associations, and the National Association of Home Builders are spending significant money and political capital to stop the Clean Water Blueprint dead in its tracks. These organizations’ resources and political clout—measured in terms of money, lobbyists, political contributions, and reliable supporters in the House and Senate—are huge. They are likely to keep trying to stop the pollution-reduction target until they either win or are told by Congressional leaders to give it up.

Congressman Goodlatte, Senator Inhofe, and other representatives with close ties to agricultural industry will almost certainly continue to work against the TMDL in Congress. The agricultural industry’s aggressive response is a measure of how desperate it is to maintain the sweet deal it has now: more than \$20 billion a year in federal subsidies, and little or no accountability for controlling pollution running into the nation’s waterways. The result is a diminished quality of life for all Americans. Attempts to overturn the Clean Water Blueprint for the Chesapeake Bay and its rivers and streams must not succeed. 🐦

