

**IN THE  
COURT OF APPEALS OF MARYLAND**

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September Term, 2018

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No. 5

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MARYLAND DEPARTMENT OF THE ENVIRONMENT,

*Appellant/Cross-Appellee,*

v.

COUNTY COMMISSIONERS OF CARROLL COUNTY,

*Appellee/Cross-Appellant.*

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On Appeal from the Circuit Court for Carroll County  
(Thomas F. Stansfield, Judge)

Pursuant to a Writ of Certiorari to the Court of Special Appeals of Maryland

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**BRIEF OF AMICUS CURIAE  
THE CHESAPEAKE BAY FOUNDATION, INC.  
IN SUPPORT OF APPELLANT/CROSS-APPELLEE**

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## INTRODUCTION

*Amicus curiae*, the Chesapeake Bay Foundation, Inc. (“CBF”), hereby submits the following brief pursuant to Maryland Rule 8-511(b).

CBF has long been involved in the development of municipal separate storm sewer system discharge permits in Maryland, and has worked for years to strengthen MS4 permits across the state. In 2013, MDE issued draft permits for Phase I medium and large counties in Maryland. CBF commented extensively on these permits, and expressed concern that the MS4 permits did not comply with water quality standards or include numeric benchmarks for pollutant reduction. Instead the final MS4 permits required twenty percent restoration of the counties’ impervious surface with no benchmarks for completion.

After issuing the final MS4 permits for a number of jurisdictions, CBF and many other environmental organizations challenged the permits in Circuit Courts across the state. CBF filed suit in Anne Arundel Circuit Court to challenge the Anne Arundel County MS4 permit. Other organizations challenged the Baltimore City, Baltimore County, and Prince George’s County MS4 permits in Circuit Court as well. CBF also filed an *Amicus Curiae* Brief in the litigation over Montgomery County’s MS4 permits. The various cases were all consolidated and argued before the Court of Appeals in November 2015, and the Court upheld the permits as valid under the Clean Water Act in *Maryland Department of the Environment v. Anacostia Riverkeeper*, 447 Md. 88 (2016).

CBF still takes issue with the current MS4 permits and their approach towards meeting pollution reduction goals. However, and most importantly, CBF does not want to see these permits weakened anymore, especially over issues as fundamental as the jurisdictional reach of the MS4 permit. While CBF may disagree on the approach adopted by MDE to regulate stormwater in the MS4 permit, we are in staunch agreement that the permit should apply jurisdiction wide. This *amicus curiae* brief will offer a broader policy perspective on why it is critical to regulate stormwater on at a jurisdiction scale, and why this key element of the MS4 permits should not be undermined.

### **STATEMENT OF THE CASE**

The Maryland Department of the Environment (“MDE”) and Carroll County (“the County”) have both appealed the decision of the Circuit Court for Carroll County to reverse MDE’s renewal of the County’s municipal separate storm sewer system discharge permit (“MS4 permit). MDE issued the MS4 permit pursuant to the federal Clean Water Act and section 9-323 of the Environment Article to regulate discharges to and from the County’s municipal separate storm sewer system. The Circuit Court determined that the MS4 permit was greater in scope than the federal NPDES permit because the permit terms were outside of MDE’s authority. (E. 41.)

This case originated when Carroll County filed a petition for review of the final MS4 permit on January 27, 2015. The case was stayed at the request of the parties pending the outcome of litigation related to substantially similar MS4 permits issued to Anne Arundel County, Baltimore City, Baltimore County, Montgomery County, and

Prince George's County. *See Maryland Dept. of Env't v. Anacostia Riverkeeper*, 447 Md. 88 (2016) [hereinafter *Anacostia Riverkeeper*]. Following the Court of Appeals of Maryland's decision to uphold the MS4 permits as valid, this matter was brought back before the court for a judicial review hearing on March 9, 2017. (E. 1.) The Circuit Court issued an order on June 26, 2017, remanding the permit to MDE to revise the MS4 permit in accordance with the opinion. (E. 41.) MDE timely noted its appeal on July 26, 2017, and on August 2, 2107, the County timely noted a cross-appeal.

### **QUESTIONS PRESENTED**

1. Does MDE have the authority to use the impervious surface area of the entire County as the baseline for the permit's requirements, when the Clean Water Act authorizes MDE to issue permits on a jurisdiction wide basis, and when the requirements are consistent with the strategies approved in the Chesapeake Bay total maximum daily load for reducing stormwater runoff?
2. Did MDE properly deny the County's request to use water quality trading to comply with the permit when there is no trading policy or regulations in place?

### **STATEMENT OF FACTS**

#### **Applicable Legal Framework: Clean Water Act**

The goal of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve this goal, the Act prohibits the discharge of pollutants into navigable waters without a permit. The National Pollutant Discharge Elimination System (NPDES)

permitting program authorizes the discharge of pollutants from point sources under certain circumstances.

Under the Clean Water Act, states must assign a use to a water body, such as recreation, fishing, or drinking water supply. Once the state has designated a use, the state then develops criteria to protect those uses, which are referred to as water quality standards. The water quality standards represent how clean the water needs to be in order to support the designated uses. After developing the water quality standards, the states establish effluent limitations to be applied in NPDES permits, because “effluent limitations restrict the discharge of pollutants.” *Anacostia Riverkeeper*, 447 Md. at 102 (citing 33 U.S.C. § 1362(11)). Therefore, NPDES permits must contain “(1) effluent limitations that reflect the pollution reduction achievable by using [the best] technologically practicable controls and (2) any more stringent pollutant release limitations necessary for the waterway receiving the pollutant to meet ‘water quality standards.’” *Piney Run Pres. Ass’n v. County Comm’rs of Carroll County*, 268 F.3d 255, 265 (4<sup>th</sup> Cir. 2001) (quoting *American Paper Inst. Inc. v. United States E.P.A.*, 996 F.2d 346, 349 (D.C. Cir. 1993); *see also* 33 U.S.C. § 1311(b)(1)).

### **Applicable Legal Framework: Maryland Law**

The EPA has the authority to delegate NPDES permitting authority to the states. 33 U.S.C. § 1342(b). Maryland received permitting authority in 1989, and the state codified its own pollution control laws that mimic the federal Clean Water Act scheme. Maryland law prohibits the discharge of any pollutant to the waters of the state unless authorized by a permit. MD. CODE. ANN., ENVIR. §§ 9-322; 9-323. MDE may issue a

discharge permit “if the Department finds that the discharge meets... all applicable State and federal water quality standards and effluent limitations.” MD. CODE. ANN. ENVIR. § 9-324(a)(1). Maryland case law dictates that a discharge permit must meet the water quality standards of the receiving waterbody. *See Northwest Land Corp. v. Maryland Dept. of Env’t*, 104 Md. App. 471, 479 (1995).

### **The Chesapeake Bay TMDL**

Section 303(d) of the Clean Water Act requires states to identify waters within their boundaries where the technology-based effluent limitations in NPDES permits are not strong enough to ensure that the water quality standards for the state’s waters are being met. 33 U.S.C. § 1313(d). Often called the Impaired Waters list, once a water body is deemed impaired, the state must establish a total maximum daily load (“TMDL”) for every pollutant preventing the water body from achieving the water quality standards. 33 U.S.C. § 1313(d)(1)(C). A TMDL is the maximum amount of any pollutant that a water body can receive and still meet water quality standards. A TMDL is the sum of individual waste load allocations for point sources (which includes municipal storm sewer outfalls), load allocations for nonpoint sources (like farmland), and natural background pollution. 40 C.F.R § 130.2(i).

The Chesapeake Bay was listed as impaired in 1998 by Maryland, Virginia, and the District of Columbia. Chesapeake Bay Program, Background: Chesapeake Bay TMDL (Total Maximum Daily Load) 1, [https://www.chesapeakebay.net/documents/5372/tmdl\\_2008.pdf](https://www.chesapeakebay.net/documents/5372/tmdl_2008.pdf) (last visited May 8, 2018). The EPA issued the Chesapeake Bay TMDL for nitrogen, phosphorus, and

sediment on December 29, 2010. The Bay TMDL limits loadings in Maryland to 39.09 million pounds of nitrogen per year, 2.72 million pounds of phosphorus per year, and 1,218.10 million pounds of sediment per year. United States Environmental Protection Agency, Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus, and Sediment (Dec. 29, 2010), Executive Summary at 7, available at <http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html> [hereinafter Chesapeake Bay TMDL]. Reducing pollutants from stormwater runoff will be key towards meeting the reduction goals of the TMDL in Maryland. Stormwater pollution contributes 28% of Maryland's total nitrogen load, 28% of the total phosphorous load, and 32% of the total sediment load to the Chesapeake Bay. *Id.* at 4-5–4-6.

### **The Carroll County MS4 Permit**

Carroll County covers 453 square miles, with approximately 1,005 major stormwater outfalls. (E. 331.) The stormwater from these outfalls drains into the Upper Potomac River and Patapsco River basins, two of the Chesapeake Bay's ten major tributary basins in the state of Maryland. (E. 331.) Carroll County has experienced rapid growth in the past two decades, with the population increasing from 123,372 to over 167,000 in 2010. (E. 331.)

The current permit at issue in this case is the fourth generation of the Carroll County MS4 Permit. The County applied for the permit in September, 2009, and from 2009 to 2014 MDE and the EPA developed the draft permit. (E. 10.) The EPA initially objected to early drafts of the permit. (E. 132.) New language was added to the permit to require the twenty-percent-restoration requirement to assuage the EPA's objections to the

permit and comply with the Chesapeake Bay TMDL. (E. 10.) In June 2014, MDE issued its Tentative Determination to issue the Carroll County MS4 permit, and on December 29, 2014, MDE issued its Notice of Final Determination to issue the permit. (E. 10–11).

### **STANDARD OF REVIEW**

On appeal, this Court reviews the final decision of the administrative agency at issue in the case and not the decision of the circuit court. *Okoro v. Md. Dep't of the Env't*, 223 Md. App. 198, 205–06 (2015). The review is limited to “deciding if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and if the administrative decision is premised upon an erroneous conclusion of law.” *Id.* at 206 (citing *John A. v. Bd. of Educ. of Howard Cnty.*, 400 Md. 363 381 (2007)). A degree of deference is owed to the agency, and “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be give considerable weight by reviewing courts.” *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 69 (1999).

### **ARGUMENT**

Stormwater runoff remains a growing source of pollution in the Chesapeake Bay watershed, and the MS4 permits are the only avenue the state of Maryland and municipalities have to reduce pollution entering the Bay. *See Chesapeake Progress, 2017 and 2025 Watershed Implementation Plans (WIPs)*, <http://www.chesapeakeprogress.com/clean-water/watershed-implementation-plans> (last visited May 2, 2018). Stormwater runoff becomes polluted when rain collects oil,

fertilizers, pet waste, pesticides, toxic metals, and other pollutants from impervious surfaces and washes these pollutants into local waterways, eroding streambanks along the way. Chesapeake Bay Foundation, *Polluted Runoff: How Investing in Runoff Pollution Control Systems Improves the Chesapeake Bay Region's Ecology, Economy, and Health* 1, 5 (2014). When polluted runoff enters our waterways, it can trigger high bacteria levels that cause beach closings and no-swimming advisories, and restrictions on oyster and shellfish harvesting. *Id.* at 2. The nitrogen and phosphorus from polluted stormwater runoff contributes to the excess nutrients in the Bay, causing algal blooms and depleting dissolved oxygen in the water. *Id.* at 6. As Maryland has continued to develop, increasing impervious area has led to an increase in polluted stormwater runoff, continuing to exacerbate the Bay's pollution problems. *Id.* at 5. These MS4 permits have become all the more important in the state's efforts to reduce pollution from the stormwater sector in Maryland. Maryland Department of the Environment properly applied the permit terms to the whole county in the MS4 permit, as a part of a comprehensive statewide approach to addressing stormwater pollution. Furthermore, Carroll County is well on its way to meeting the current permit terms—without nutrient trading. This Court should therefore reverse the decision of the Circuit Court of Carroll County and affirm MDE's issuance of the permit.

**I. MDE WAS WELL WITHIN ITS AUTHORITY UNDER THE CLEAN WATER ACT TO ISSUE A JURISDICTION-WIDE PERMIT TO REGULATE STORMWATER IN CARROLL COUNTY.**

Municipal separate storm water systems are designed to collect and convey stormwater to protect property from flooding during rain or snow. MS4s “often cover many square miles and comprise numerous, geographically scattered and sometimes uncharted sources of pollution, including streets, catch basins, gutters, man-made channels, and storm drains.” *Nat. Res. Def. Council v. Cnty. of L.A.*, 725 F.3d 1194, 1208–09 (9<sup>th</sup> Cir. 2013). MS4s were initially excluded from the NPDES permitting program, but Congress amended the Clean Water Act in 1987 in recognition of “the environmental threat posed by stormwater runoff.” *See Nat. Res. Def. Council v. EPA*, 966 F.2d 1292, 1296 (9<sup>th</sup> Cir. 1992). Following the 1987 amendments, municipal stormwater systems must obtain a NPDES permit if the MS4 serves a population over 250,000, a population between 100,000 and 250,000, or if the Administrator or the State “determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” 33 U.S.C. § 1342(p)(2). The MS4 permit “may be issued on a system- or *jurisdiction-wide basis*” and “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.” 33 U.S.C. § 1342(p)(3)(iii) (emphasis added).

MDE has the authority to apply controls in MS4 permits to the entire County. The Clean Water Act expressly states that MS4 permits can be issued on a system- or jurisdiction-wide basis. 33 U.S.C. § 1342(p)(3)(B)(i). MS4 permits do not function the same way a traditional NPDES permit does because stormwater runoff enters multiple bodies of water from a series of different point sources such as outfalls, pipes, drainage ditches, and so forth. Congress expressly recognized this fact when it created the MS4 permit provisions of the Clean Water Act and built flexibility into the MS4 permitting scheme. Congress gave the permitting authority “broad discretion to issue permits ‘on a system-wide or jurisdiction-wide basis,’ rather than requiring cities and counties to obtain separate permits for millions of individual stormwater discharge points. This increased flexibility is crucial in easing the burden of issuing stormwater permits for both permitting authorities and permittees.” *Nat. Res. Def. Council v. Cnty. of L.A.*, 725 F.3d 1194, 1209 (9th Cir. 2013) (citing 40 C.F.R. § 122.26(a)(1)(v)).

The Clean Water Act itself envisions MS4 permits applying to entire jurisdictions, like a county or municipality. This broad jurisdictional application is especially important for a state like Maryland with regional pollution reduction goals to achieve. The Chesapeake Bay TMDL is “a historic and comprehensive ‘pollution diet’ with rigorous accountability measures to initiate sweeping actions to restore clean water in the Chesapeake Bay and the region’s streams, creeks, and rivers.” Chesapeake Bay TMDL, at ES-1. Achieving the goals of this comprehensive pollution diet will require a comprehensive approach. By applying the requirements of these MS4 permits to the entirety of the county, Maryland has adopted a comprehensive approach—authorized

expressly in the Clean Water Act—to abate stormwater pollution in Carroll County and throughout the state. It was therefore appropriate and lawful for MDE to issue the MS4 permit with terms that applied county-wide.

**II. REGULATING STORMWATER ON A COUNTY-WIDE BASIS HELPS ACHIEVE THE POLLUTION REDUCTION GOALS OF THE CHESAPEAKE BAY TMDL FOR THE STORMWATER SECTOR.**

**A. Reducing the volume of stormwater entering the MS4 is the most effective way of reducing nutrient and sediment pollution entering waterbodies.**

Stormwater runoff remains a persistent problem for the restoration of the Chesapeake Bay. Of the major sectors of pollution required to make reductions under the TMDL, urban and suburban stormwater runoff is the only major source of nitrogen that is steadily *increasing*. Chesapeake Progress, *2017 and 2025 Watershed Implementation Plans (WIPs)*, <http://www.chesapeakeprogress.com/clean-water/watershed-implementation-plans> (last visited May 2, 2018). From 2009 to 2017, nitrogen pollution loads have increased in Maryland from stormwater runoff from 9,533,000 pounds per year to 9,797,000 pounds per year, and this trend is mirrored for the entire Chesapeake Bay watershed. *Id.* For perspective, the 2017 pollution target for stormwater in Maryland was 8,178,000 pounds of nitrogen per year. *Id.* The state is far from achieving that goal.

The MS4 permit program is the only avenue municipalities and the state of Maryland have to address this growing source of pollution. In fact, in its Phase I and Phase II watershed implementation plans (WIPs), Maryland has consistently called for the reduction of pollutants from the stormwater sector. And Maryland recognizes that the majority of the reductions from the stormwater sector will come through the MS4 permits

“through the treatment of land that was developed in the past with little or no stormwater controls.” Maryland Department of the Environment, Maryland’s Phase II Watershed Implementation Plan for the Chesapeake Bay Watershed, Executive Summary at iii (Oct. 26, 2012).

One of the main ways to reduce the volume of stormwater entering a waterbody is to reduce the impervious surface cover of the surrounding land. Impervious cover can be used as a surrogate to measure stormwater loading, and “[e]fforts to reduce stormwater flow will automatically achieve reductions in pollutant loading. Moreover, flow itself is responsible for additional erosion and sedimentation that adversely impacts surface water quality.” (E. 157.) Traditional runoff reduction practices designed to treat 1 inch of rainfall—including environmental site design practices, and structural practices such as infiltration practices, bio-retention filters, and dry swales—remove 57% of nitrogen from stormwater runoff. (E. 192, 194.) Alternative best management practices, which includes restoring urban impervious surfaces to pervious surfaces and restoring impervious surfaces to forests, have a 13% efficiency per acre and 71% efficiency per acre for total nitrogen removal, respectively. (E. 183.) Upstream runoff reduction practices, like reducing impervious surface cover, consistently remove even more nitrogen, phosphorus, and sediment per inch of rainfall than stormwater treatment practices. (E. 194.)

**B. The MS4 permits were relied on in the development of the Chesapeake Bay TMDL and identified in the Watershed Implementation Plans as a key strategy for reducing stormwater pollution.**

Restoring impervious surfaces to abate stormwater runoff has long been a part of the Bay restoration equation, and is a “key strategy in restoring the Chesapeake Bay.” *Anacostia Riverkeeper*, 447 Md. at 127. Counties have been on notice since the development of the Bay TMDL that they would have to reduce impervious cover through the MS4 permits in order to meet the load allocations for urban stormwater runoff.

During the development and adoption of the Chesapeake Bay TMDL, the EPA relied on the watershed implementation plans prepared by the states, and required the states to provide reasonable assurances that the states could achieve the ambitious goals of the TMDL. In Maryland’s WIP, the state identifies “renew[ing MS4] permits to require Nutrient and Sediment reductions equivalent to stormwater treatment on 30% of the impervious surface that does not have adequate stormwater controls for MD’s largest counties” as one of the key strategies for reducing pollutant loads from the urban stormwater sector. Maryland’s Phase I Watershed Implementation Plan for the Chesapeake Bay Total Maximum Daily Load ES-15 (Dec. 3, 2010). The EPA relied on the requirements identified in the WIPs, which included impervious surface restoration at the county level that would be executed through the MS4 permits, as a key element of the reasonable assurances Maryland made to the EPA to illustrate how the state would meet the goals of the Bay TMDL. *Anacostia Riverkeeper*, 447 Md. at 127–28. This requirement extends to the county as a whole, and it was in MDE’s authority to include jurisdiction-wide permit terms.

Additionally, the jurisdiction-wide restoration requirement is in *all* of Maryland's Phase I MS4 Permits for large and medium jurisdictions. As this Court stated in *Anacostia Riverkeeper*, “the State conceived of this strategy as an effective state-wide method of improving the Chesapeake Bay” and the court found the decision to include the restoration requirement—which applied to Montgomery County as a whole—supported by substantial evidence and not arbitrary and capricious. 447 Md. at 129–30. While CBF advocated for *stronger* permit terms during the initial round of litigation over the 2014 MS4 Permits, this Court approved of the jurisdiction-wide application of the terms. The current efforts by Carroll County to undermine this previously-litigated permit condition are unfounded.

**C. Carroll County fully complied with the earlier MS4 permit terms, and has nearly completed the requirements for its current permit.**

Carroll County covers 289,677 acres, with approximately 1,005 major stormwater outfalls. (E. 331.) According to the 2014 NPDES MS4 Report, the County had approximately 15,000 impervious acres, but only 10,718 acres fell within the total unincorporated county impervious area. (E. 388–90.) Over 4,000 acres were already treated through environmental site design, which left a total of 6,715 impervious acres. Under the prior permit, Carroll County had to treat 10% of the 6,715 acres, or 672 acres, and the County treated 688 acres. Carroll County, 2017 NPDES MS4 Annual Report 10 (2017).

After complying with the first permit terms, the County began working towards “addressing the next 20 percent treatment requirement which was anticipated to be part of

the next generation permit.” Carroll County 2017 NPDES MS4 Annual Report at 10. Carroll County joined with 8 municipalities to form the Phase I jurisdiction for the 2014 permit, which increased the total impervious acres to 8,070 acres. *Id.* The current permit terms require Carroll County to treat 1,614 acres. *Id.* As of 2017, the County has *already treated* 1,369 acres. *Id.* at 10, 51–53. The County has completed 85% of the work required by the permit it is arguing over in this protracted litigation. And the County already has projects under construction or in design for 2018 and 2019 that will treat 595.29 acres, surpassing the permit requirements. *Id.* at 10, 53. Clearly Carroll County is more than capable of inventorying and restoring impervious surfaces at the county level, through a variety of techniques (i.e. retrofitting, tree planting, grass and forest buffers, ESD practices for new construction). *Id.* at 51–53. Given that the County has proven its ability to meet the permit terms, and the state’s authority to impose these requirements as discussed below, this Court should reverse the lower court’s decision that applying the permit terms county-wide is outside the scope of MDE’s authority.

### **III. MDE APPROPRIATELY EXCLUDED NUTRIENT TRADING FROM THE MS4 PERMITS BECAUSE THERE ARE NO ESTABLISHED REGULATIONS IN PLACE FOR STORMWATER NUTRIENT TRADING.**

It was well within MDE’s authority to exclude nutrient trading from the MS4 permits as a means to achieve nutrient reductions. There are currently no established regulations for nutrient trading for stormwater. While nutrient trading may be an appropriate means of complying with traditional NPDES permits under codified regulations, it would be inappropriate to allow nutrient trading in the MS4 permits

without established regulations and guidance given the complexity of MS4 permits. MS4 permits in Maryland cover thousands of outfalls that drain into multiple waterbodies across the state and into the Chesapeake Bay. According to CBF's own study on stormwater trading, one of the critical factors "to successfully introducing nutrient trading in the stormwater sector [is] the existence of a clear regulatory basis for trading." Cy Jones, et. al, Chesapeake Bay Foundation, *Nutrient Trading by Municipal Stormwater Programs in Maryland and Virginia: Three Case Studies*, Working Paper, WORLD RESOURCES INSTITUTE 1 (2017), <http://www.cbf.org/document-library/cbf-reports/nutrient-trading-by-municipal.pdf>. Given that there is no established regulatory basis for trading yet, MDE properly excluded nutrient trading from the MS4 permits.

### CONCLUSION

*Amicus curiae* The Chesapeake Bay Foundation, Inc. have established that the decision to issue the Carroll County's MS4 permit was valid. Therefore, this court should reverse the decision of the Circuit Court for Carroll County, and affirm MDE's issuance of the permit.

Respectfully submitted,



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**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 3,976 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

  
Brittany E. Wright

## TEXT OF PERTINENT PROVISIONS

### 33 USCS § 1251

#### § 1251. Congressional declaration of goals and policy

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- (a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective. The objective of this Act [33 USCS §§ 1251 et seq.] is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act [33 USCS §§ 1251 et seq.]--
- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
  - (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
  - (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
  - (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
  - (5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;
  - (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and
  - (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act [33 USCS §§ 1251 et seq.] to be met through the control of both point and nonpoint sources of pollution.
- (b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act [33 USCS §§ 1251 et seq.]. It is the policy of Congress that the States manage the construction grant program under this Act [33 USCS §§ 1251 et seq.] and implement the permit programs under sections 402 and 404 of this Act [33 USCS §§ 1342, 1344]. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.
- (c) Congressional policy toward Presidential activities with foreign countries. It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be

necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

- (d) Administrator of Environmental Protection Agency to administer 33 USCS §§ 1251 et seq. Except as otherwise expressly provided in this Act [33 USCS §§ 1251 et seq.], the Administrator of the Environmental Protection Agency (hereinafter in this Act called "Administrator") shall administer this Act [33 USCS §§ 1251 et seq.].
- (e) Public participation in development, revision, and enforcement of any regulation, etc. Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act [33 USCS §§ 1251 et seq.] shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.
- (f) Procedures utilized for implementing 33 USCS §§ 1251 et seq. It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act [33 USCS §§ 1251 et seq.] shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.
- (g) Authority of States over water. It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act [33 USCS §§ 1251 et seq.]. It is the further policy of Congress that nothing in this Act [33 USCS §§ 1251 et seq.] shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

## History

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(June 30, 1948, ch 758, Title I, § 101, as added, Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 816; Dec. 27, 1977, P.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575; Feb. 4, 1987, P.L. 100-4, Title III, § 316(b), 101 Stat. 60.)

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## CERTIFICATE OF SERVICE

I HERBY CERTIFY that on this 16th day of May, 2018, two copies of the foregoing proposed *Amicus Curiae* Brief were sent by first-class mail, postage prepaid, to:

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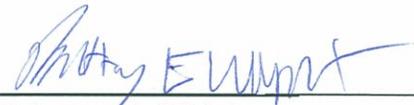
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