The 92 Chesapeake Bay segment watersheds.

On December 29, 2010, EPA finalized a plan to reduce nutrient pollution in Chesapeake Bay by implementing a Total Maximum Daily Load (TMDL) budget using its Clean Water Act authority. That plan will require a 25% reduction in nitrogen, a 24% reduction in phosphorus and a 20% reduction in sediment throughout the watershed. This includes reductions in Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and DC. These reductions will come from stricter limits at wastewater treatment plants along with reductions in agricultural nutrient runoff. EPA has also committed to reducing nitrogen deposition in the watershed by using its Clean Air Act authority.

Not surprisingly, the American Farm Bureau Federation (AFBF), joined by a variety of national agriculture groups, quickly sued. AFBF President Bob Stallman:

> We all want a clean and healthy Chesapeake Bay. This lawsuit is about how we get there. Farm Bureau believes EPA's 'diet' for the Chesapeake is dangerous and unlawful.

AFBF's claim is basically that EPA overstepped its authority in its oversight of the states' TMDL plans because the state implementation plans for the TMDL are, in AFBF's opinion, not subject to EPA approval or modification. (InsideEPA has a summary.)

Now Chesapeake Bay Foundation (CBF), with a coalition of environmental group with a regional interest in Chesapeake Bay, have joined the litigation. CBF President Will Baker summarized the stakes:

> Just as the Bay is making progress in its long fight to survive, these big money industry lobbyists are trying to derail the process. Why? A simple profit motive. They want the rest of us to suffer dirty and dangerous water so they can maximize their corn, hog, and poultry profit.

Jim Curtin, an EPA attorney working on the Bay TMDL, believes that EPA has prior

precedent on its side. The 9th Circuit upheld a multistate dioxin TMDL established in 1990. And here, like in that 1990 TMDL, the states requested that EPA intervene.

Disclaimer: I once interned with Chesapeake Bay Foundation.