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## TMDL/Clean Water Act: 22 State Attorneys General (Including Arkansas' Attorney General) Petition United States Supreme Court to Reverse Third Circuit Court of Appeals Chesapeake Decision

### Arkansas Environmental, Energy, and Water Law Blog

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Arkansas Attorney General Leslie Rutledge issued a news release stating she has joined a group of 22 state attorneys general challenging a Third Circuit Court of Appeals decision that upheld the United States Environmental Protection Agency ("EPA") total maximum daily load ("TMDL") for the Chesapeake Bay. *American Farm Bureau, et al. v. EPA*.

A waterbody can only assimilate a finite amount or "load" of various pollutants before it will fail to attain the applicable WQS. This pollutant loading limit is referred to as the total maximum daily load or "TMDL". EPA defines a TMDL in part as "a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant ..." 40 C.F.R. § 130.2(h).

The attorneys general filed a Petition for Writ of *Certiorari* ("Petition") challenging EPA's authority to establish a multi-state TMDL for the Chesapeake Bay.

The American Farm Bureau and a number of other organizations had previously challenged the EPA TMDL in federal district court. The federal district court rejected the challenge and the Third Circuit Court of Appeals upheld the lower court's decision.

The Chesapeake TMDL establishes maximum nitrogen, phosphorous and sediment limits for the Chesapeake Bay.

Opponents of the TMDL argue that EPA has preempted the states' authority and is engaging in unlawful local land use/development regulation. A response by other organizations is that the Chesapeake TMDL states and EPA cooperated to develop the standards with each of the affected states crafting its own implementation plan.

The case is viewed as having potential national ramifications for implementation of the Clean Water Act in various areas of the country.

[Click here to download a copy of the Arkansas Attorney General's news release which links to the Petition.](#)