



Supreme Court Rejects Chesapeake Bay TMDL Challenge March 2016

In July 2015, a three-judge panel of the United States Court of Appeals for the Third Circuit issued its ruling in *American Farm Bureau Federation v. U.S. EPA*, affirming the U.S. District Court's 2013 decision and again upholding EPA's TMDL for the Chesapeake Bay Watershed. This appeal was brought by the American Farm Bureau Federation, other agricultural trade associations, and the National Association of Home Builders (collectively, "Farm Bureau") representing nonpoint sources (NPS) interested in altering the CWA TMDL Program. This ruling affirming the District Court once again meets the big picture objectives of the Intervenor-Defendant Municipal Water Associations addressed in this litigation – specifically, it: (1) preserves the TMDL "watershed approach" under which NPS share responsibility with point sources (PS) for contributing to required clean water efforts under the TMDL Program; and (2) protects the Municipal Water Associations' Members' nutrient allocations at risk in the event of the loss of the watershed approach and of adequate NPS participation.

On November 6, Farm Bureau filed a Petition for a Writ of Certiorari with the U.S. Supreme Court, asking the high court to review the Third Circuit's ruling on the Bay TMDL. In its petition, Farm Bureau states that the ruling must be overturned, as it "opens the door for a dramatic expansion of federal power." On February 29, 2016, the Supreme Court rejected the petition to review the Third Circuit decision. This decision rejecting the Farm Bureau's petition puts an end to the challenge of the TMDL, and represents a significant win for the watershed approach.