



U.S. Department of Justice

Environment and Natural Resources Division

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VIA Messenger

January 2, 2002

Mark J. Langer, Clerk  
United States Court of Appeals  
for the D.C. Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Ave., N.W.  
5th Floor  
Washington, D.C. 20001-2866

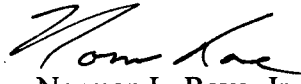
Re: American Farm Bureau Federation, et al. v. Whitman, No. 00-1320 and consolidated cases

Dear Mr. Langer:

Enclosed for filing in the above-captioned case are an original and 4 copies of a Status Report in the above-captioned case.

I also enclose an additional copy that I request that you date-stamp and return to me with our messenger. Thank you for your assistance.

Sincerely,

  
Norman L. Rave, Jr  
Trial Attorney

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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AMERICAN FARM BUREAU	)	
FEDERATION, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 00-1320
	)	and consolidated cases
CHRISTINE TODD WHITMAN,	)	
Administrator, and	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondents.	)	

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**STATUS REPORT**

Pursuant to the Court’s Order of October 12, 2001, respondents United States Environmental Protection Agency and Christine Todd Whitman, Administrator (collectively “EPA”) submit this status report. This case concerns a final rule promulgated by EPA under the Clean Water Act entitled “Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation,” published in the Federal Register at 65 Fed. Reg. 43,586 (July 13, 2000) (“TMDL rule”). On July 16, 2001, EPA moved the Court to hold this case in abeyance, explaining that the Agency intended to delay the effective date of the rule and to engage in a process to reconsider the rule. EPA’s motion was granted by the Court’s Order of October 12.

Following are the actions that EPA has undertaken since filing its motion on July 16:

1. Consistent with representations in its Motion, on August 9, 2001, EPA published in the Federal Register a proposal to delay for 18 months, until April 30, 2003, the effective date of the rule at issue in this case. 66 Fed. Reg. 41,817 (Aug. 9, 2001). EPA proposed the delay to “allow time for reconsideration of specific aspects of the rule.” *Id.* at 41,819. In the notice EPA said it “believes that an 18-month delay of the effective date is the minimum necessary for the Agency to be able to go through a meaningful consultation process, analyze and reconcile the recommendations of the various stakeholders and implement program changes.” *Id.* at 41,819-20. In the same notice EPA also proposed to revise from April 1, 2002 until October 1, 2002, the date on which states are required, pursuant to section 303(d) of the Clean Water Act, to submit their lists of impaired waters for 2002.

2. On October 9, 2001, EPA published a notice in the Federal Register announcing the dates, locations and discussion themes for five “public listening sessions” addressing the Agency’s total maximum daily load (“TMDL”) program and possible revisions to the TMDL rule. 66 Fed. Reg. 51,429 (Oct. 9, 2001). EPA announced that it would “use the information received at these public listening sessions as it considers changes to the regulations which govern the TMDL program . . . and related areas of the NPDES program . . . with a view toward proposing modifications in mid-2002.”

3. Following receipt and evaluation of comments, on October 18, 2001, EPA published in the Federal Register a final rule delaying for 18 months, until April 30, 2003, the effective date of the TMDL rule and delaying until October 1, 2002 the due date for the states’ 2002 submission of section 303(d) lists of impaired waters.

4. On October 22-23, 2001 in Chicago, EPA held the first of five public listening sessions to discuss various aspects of the TMDL program and receive suggestions on possible regulatory and

programmatic changes. The theme of the Chicago meeting was “Implementation of TMDLs Addressing Nonpoint Sources.” Prior to the meeting EPA posted on its website a discussion guide for participants with background information, including the central questions for discussion at the meeting. At the meeting, attendees, who represented a broad cross-section of stakeholder interests, heard presentations from EPA representatives and other members of the meeting’s “listening panel,” and participated in facilitated small-group discussions focused on the meeting’s overall theme and the specific discussion questions. Participants were given an opportunity to share their ideas with EPA, and others, both orally and in writing.

5. Subsequent to the Chicago meeting, four additional public listening sessions were held in other parts of the country focused on the following themes:

- Sacramento (Nov. 1-2, 2001): “Scope and Content of TMDLs”
- Atlanta (Nov. 7-8, 2001): “EPA’s Role, the Pace/Schedule for Development of TMDLs, and NPDES Permitting Pre and Post TMDL”
- Oklahoma City (Nov. 15-16, 2001): “Listing Impaired Waters”
- Washington D.C. (Dec. 11, 2001): “Comprehensive Discussion of All Listing and TMDL Issues”

Each of these meetings was well attended (over 300 people attended the concluding meeting in Washington, D.C.), and each meeting provided EPA “listeners” with an opportunity to receive and exchange ideas with stakeholder groups, including representatives from petitioners and interveners in this litigation, and members of the public. EPA intends to publish detailed summaries of all the listening sessions (including comments received) on its website.

6. On November 19, 2001, EPA finalized its “2002 Integrated Water Quality Monitoring and Assessment Report Guidance.” EPA developed this guidance to provide states, territories and

authorized tribes with guidance for integrating the development and submission of 2002 Clean Water Act section 305(b) water quality reports and section 303(d) lists of impaired waters. One of the reasons EPA extended the deadline for submission of section 303(d) lists of impaired waters from April 1, 2002 until October 1, 2002 was to give states, territories and authorized tribes extra time to incorporate the ideas presented in this guidance into their 2002 lists.

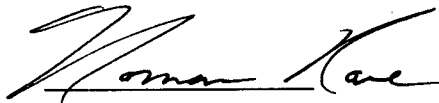
7. Because agricultural producers have a strong interest in the TMDL rule, EPA is making special efforts to work with the United States Department of Agriculture (“USDA”) as it considers revisions to the TMDL rule. EPA has already had a number of meetings with USDA on this subject.

8. In addition to the five public listening sessions already held, EPA intends to engage in additional outreach over the next few months by participating in meetings with a variety of stakeholders, petitioners in this lawsuit and, upon request, other stakeholders as well. EPA has already met with the Association of State and Interstate Water Pollution Control Administrators, committees of the Water Environment Federation, the Association of Metropolitan Sewerage Agencies, the National Governors Association, and the Western States Water Council. Special briefings have been conducted for environmental groups, industrial point sources, agricultural interests, and Senate and House committee staff in Washington, D.C.

9. Now that the public listening sessions are over, EPA is focusing its attention on identifying alternative approaches to possible TMDL rule changes, considering their advantages and disadvantages, and drafting regulatory and preamble language. EPA expects to publish its proposal in the Federal Register for comment in mid-2002 and promulgate a revised final TMDL rule before April 30, 2003.

Respectfully submitted,

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January 2, 2002

## CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January, 2002, I caused a copy of the foregoing Status

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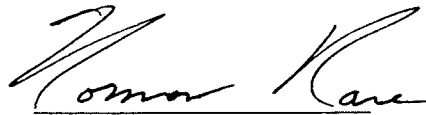
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A handwritten signature in cursive script, appearing to read "Norman Rave".

Norman L. Rave, Jr.