

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

	)	
AMERICAN FARM BUREAU FEDERATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 00-1320
	)	(and consolidated cases
CAROL M. BROWNER, Administrator,	)	00-1341, 00-1353, 00-1384,
United States Environmental Protection Agency,	)	00-1468, 00-1475, 00-1478,
and ENVIRONMENTAL PROTECTION	)	00-1491, 00-1496)
AGENCY,	)	
	)	
Respondents.	)	
	)	

**STATEMENT OF ISSUES OF FRIENDS OF THE EARTH, ET AL.,  
PETITIONERS IN NO. 00-1475**

Pursuant to the Court’s Order dated November 13, 2000, Friends of the Earth and Water Keeper Alliance, petitioners in No. 00-1475, hereby identify issues that they intend to raise in their challenge to the final rule promulgated by Respondent Environmental Protection Agency (“EPA” or the “Agency”) 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” (“TMDL Rule”). 65 Fed. Reg. 43,586-670 (July 13, 2000).

Petitioners intend to raise the following issues:

1. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by authorizing States to establish schedules for the establishment of total maximum daily loads

(“TMDLs”) which extend the deadlines for establishing TMDLs established by the Federal Water Pollution Control Act (the “Act”), 33 U.S.C. § 1251 *et seq.*

2. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by authorizing States to exclude TMDLs from the submission required by Section 303(d)(2) of the Act, 33 U.S.C. § 1313(d)(2), and instead requiring the States to only submit a schedule for preparing TMDLs.
3. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by extending the 30-day deadline for EPA to “either approve or disapprove” a state’s submission under Section 303(d), 33 U.S.C. § 1313(d), including both the list of waters and the TMDLs that must comprise that submission, by allowing itself up to one more year to approve or disapprove the submission when a state does not submit TMDLs for waters included on the list.
4. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by providing for extensions of up to four years of the 30-day deadline established by the Act for EPA to establish TMDLs once the Agency has disapproved a state’s submission for failing to include TMDLs.
5. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by failing to include any deadline for the Agency’s review of schedules for developing TMDLs required to

be included in lieu of final TMDLs in the states' submissions under Section 303(d)(2), 33 U.S.C. § 1313(d)(2).

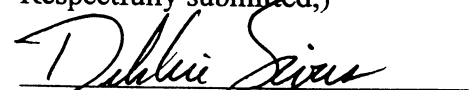
6. Whether EPA acted unlawfully, or arbitrarily and capriciously, or otherwise abused its discretion in promulgating the TMDL Rule by establishing criteria for listing and "delisting" waters on the lists required by Section 303(d)(1), 33 U.S.C. § 1313(d)(1), inconsistent with the criteria established by the Act.

These issues are broadly stated and may include related, subsidiary issues.

Petitioners reserve the right to supplement these issues as appropriate in the course of reviewing the administrative record and briefing.

Dated this 12th day of December, 2000.

Respectfully submitted,



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## DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Friends of the Earth ("FOE") states that it is a not-for-profit environmental organization representing itself and its members. FOE has no parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public.

Dated this 12<sup>th</sup> day of December, 2000

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## DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Water Keeper Alliance states that it is a not-for-profit environmental organization representing itself and its members. Water Keeper Alliance has no parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public.

Dated this 12<sup>th</sup> day of December, 2000

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## CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2000, I caused a copy of the above Statement of Issues to be served by first class mail, postage prepaid, on:

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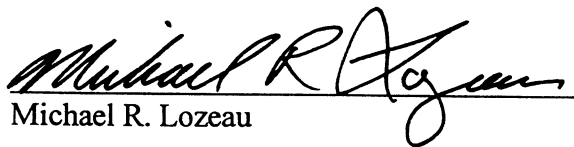
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