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

FILED
CLERK

The NATIONAL CORN GROWERS ASSOCIATION and
The NATIONAL CHICKEN COUNCIL

Petitioners,

v.

CAROL M. BROWNER, Administrator,
United States Environmental Protection Agency
and ENVIRONMENTAL PROTECTION AGENCY

Respondents.

ORIGINAL

No. 00-1320
and consolidated
cases

PETITIONERS' STATEMENT OF ISSUES TO BE RAISED

In accordance with Local Rule 28(a)(1) and the August 29, 2000, Order of this Court, Petitioners National Corn Growers Association ("NCGA") and National Chicken Council ("NCC") hereby state the issues that they intend to raise in support of their petition for review of the Final Rule 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 on July 13, 2000, at 65 Fed. Reg. 43,586 ("Final Rule").

Issues to be raised by Petitioners include:

1. Whether EPA acted unlawfully in promulgating the Final Rule by re-defining a Total Maximum Daily Load (“TMDL”) under Clean Water Act (33 U.S.C. § 1251, et. seq., “CWA”) Section 303(d) as a comprehensive plan that includes an implementation plan.
2. Whether EPA acted unlawfully in promulgating the Final Rule by requiring waters impaired solely by nonpoint sources to be listed pursuant to CWA Section 303(d)(1)(A), and by requiring establishment of TMDLs for such waters, pursuant to CWA Section 303(d)(1)(C).
3. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to provide “reasonable assurances” that load allocations will be implemented.
4. Whether EPA acted unlawfully in promulgating the Final Rule by authorizing EPA to object to administratively-continued state permits, and to subsequently undertake the review and permit-issuance procedures authorized at 40 C.F.R. § 123.44(a)(1) – (h)(3).
5. Whether EPA acted unlawfully in promulgating the Final Rule by dictating that antidegradation policies are a required element of State water quality standards and by determining that states must consider antidegradation when identifying and listing impaired waterbodies under CWA Section 303(d). 33 U.S.C. § 1313(d).

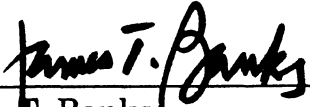
6. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to include allowances for future growth in the calculation of TMDLs.
7. Whether EPA acted unlawfully in promulgating the Final Rule by authorizing states to use subjective, "evaluated data" in creating the list of "impaired waters" pursuant to CWA section 303(d)(1)(A), and in subsequently establishing TMDLs for those waters.
8. Whether EPA acted unlawfully in promulgating the Final Rule by requiring all waters impaired by "pollution," as defined by 40 C.F.R. § 130.2(c), but for which no pollutants have been identified, to be listed pursuant to CWA section 303(d)(1)(A).
9. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to include a margin of safety for any technical and scientific uncertainties, not just in cases where the state lacks knowledge concerning the relationship between effluent limitations and water quality, as authorized by the statute. 42 U.S.C. § 1313(d)(1)(C).
10. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to identify as "impaired," for purposes of listing under CWA Section 303(d)(1)(A), those waters that exceed Maximum Contaminant Level ("MCL") standards under the Safe Drinking Water Act. 42 U.S.C. § 300(f) et. seq.

11. Whether EPA acted unlawfully in promulgating the Final Rule by interpreting the "seasonal variation" requirement of CWA Section 303(d)(1)(A), as covering any excursions above any applicable water quality standard.
12. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to address solar radiation issues in establishing TMDLs under CWA 303(d)(1).
13. Whether EPA acted unlawfully in promulgating the Final Rule by requiring states to account for aerial and atmospheric deposition in creating the list of "impaired waters" pursuant to CWA section 303(d)(1)(A), and in subsequently establishing TMDLs for those waters.

NCC and NCGA reserve the right to raise issues other than those listed above.

Respectfully submitted,

Date: September 28, 2000

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