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COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT  
SEP 11 2000  
RECEIVED

AMERICAN FOREST & PAPER )  
ASSOCIATION, INC., AMERICAN )  
CROP PROTECTION ASSOCIATION, )  
and NATIONAL PORK PRODUCERS )  
COUNCIL, )  
Petitioners, )  
v. )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

UNITED STATES DISTRICT COURT OF COLUMBIA  
FILED

SEP 11 2000  
Consolidated Petitions

No. 00-1320

CLERK

No. 00-1353

STATEMENT OF ISSUES  
TO BE RAISED

ORIGINAL

Pursuant to the Court's Order of August 11, 2000, Petitioners the American Forest & Paper Association, Inc. ("AF&PA"), the American Crop Protection Association ("ACPA"), and the National Pork Producers Council ("NPPC") hereby identify issues that they intend to raise with respect to the final rule promulgated by respondent U.S. Environmental Protection Agency ("EPA") pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1369(b), 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 at 65 Fed. Reg. 43,586-670 (July 13, 2000) ("TMDL Rule"). Issues to be raised by Petitioners include the following:

1. Whether EPA acted unlawfully in promulgating its regulation requiring, as an element of each TMDL, an “implementation plan” demonstrating “reasonable assurances” that the TMDL will be implemented. *See* 65 Fed. Reg. at 43,595-601, 43,625-27, 43,663, 43,668.

2. Whether EPA acted unlawfully in promulgating its regulation requiring that waters impaired solely by “nonpoint” sources of pollution be listed pursuant to CWA section 303(d)(1)(A) and that EPA-approved TMDLs be established for those waters. *See* 65 Fed. Reg. at 43,588, 43,605-06, 43,665.

3. Whether EPA acted unlawfully in promulgating its regulation requiring that each state list prepared pursuant to CWA section 303(d)(1)(A) serve as a “comprehensive public accounting” of all impaired waters within the state, rather than simply as a list of waters that require EPA-approved TMDLs. 65 Fed. Reg. at 43,605-06.

4. Whether EPA acted unlawfully in promulgating its regulation allowing states to include on their EPA-approved lists of waters, prepared pursuant to CWA section 303(d)(1)(A), waters that currently attain water quality standards but that are expected not to attain standards before the next such list is established. *See* 65 Fed. Reg. at 43,590, 43,606.

5. Whether EPA acted unlawfully in promulgating its regulation identifying as “impaired” for purposes of CWA section 303(d)(1)(A) waters that are determined to be in noncompliance with a state’s “antidegradation” policy. *See* 65 Fed. Reg. at 43,607-08.

6. Whether EPA acted unlawfully in promulgating its regulation requiring that states submit for EPA approval a "prioritized schedule" for the establishment of TMDLs. *See* 65 Fed. Reg. at 43,612.

7. Whether EPA complied with applicable law in its analysis of the economic impact of the TMDL Rule.

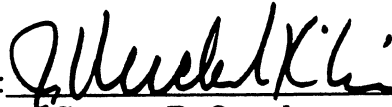
8. Whether EPA's action in promulgating the TMDL Rule was otherwise arbitrary, capricious, an abuse of discretion, or not in accordance with law.

These issues are broadly stated and include additional, subsidiary challenges to particular related aspects of EPA's regulation. Additionally, Petitioners may supplement these issues as appropriate in the course of briefing.

DATED this 11th of September, 2000.

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

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**Hand Delivery**

Mark J. Langer  
Clerk, United States Court of Appeals  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, N.W., #5409  
Washington, D.C. 20001-2866

Re: *American Forest & Paper Association, et al. v. Environmental  
Protection Agency*, No. 00-1353, consolidated with *American Farm  
Bureau Federation v. Browner*, No. 00-1320

Dear Mr. Langer:

Please find enclosed the original and four copies of a Statement of Issues to be Raised, for filing on behalf of petitioners the American Forest & Paper Association, the American Crop Protection Association, and the National Pork Producers Council.

Sincerely,



Ellen Steen

Enclosures

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