

7/20/2012

Ten states will intervene in lawsuit against EPA*by Michael P. Tremoglie*

LITTLE ROCK, Ark. (Legal Newsline) - A federal judge has granted the motions to intervene filed by Attorneys General from 10 states in a lawsuit against the Environmental Protection Agency.

The attorneys general of Alabama, Arkansas, Iowa, Kansas, Kentucky, Missouri, Nebraska, North Dakota, Oklahoma and South Dakota are intervening in the lawsuit brought by the Sierra Club, the Natural Resources Defense Council, the Gulf Restoration Network, Missouri Coalition for the Environment, Iowa Environmental Council, Tennessee Clean Water Network, Minnesota Center for Environmental Advocacy, Waterkeeper Alliance, Prairie Rivers Network, Kentucky Waterways Alliance and the Environmental Law & Policy Center.

The AGs maintain that the environmental groups want "unnecessary and unreasonable federal regulation of nutrient pollution in the Mississippi River basin and the northern Gulf of Mexico." They say there could be significant and costly implications for the states' agricultural industry if the court rules against the EPA.



McDaniel

"Arkansas is abiding by federal clean-water regulations already in its management of pollution within the Mississippi River watershed," Arkansas Attorney General Dustin McDaniel said.

"We are protecting our waters. We do not need more burdensome and costly federal regulation that will threaten important agricultural jobs in the Delta, result in higher sewer bills and negatively impact our overall economy."

The environmental groups want the court to force the EPA to institute specific, numeric criteria for total nitrogen and total phosphorus discharges for the entire Mississippi River watershed. The groups also want the EPA to impose total maximum daily load requirements for nitrogen and phosphorus within the watershed.

The EPA maintains that this is not necessary since it has worked with states to address nutrient pollution issues. The Clean Water Act allows states to develop and adopt their own standards as long as they are consistent with the CWA.

The environmental groups filed an amended complaint April 3 seeking to have the EPA's July 29, 2011, denial of their July 30, 2008 petition for a CWA rule declared "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The EPA denied the initial petition because it said "that the most effective and sustainable way to address widespread and pervasive nutrient pollution... is to... work cooperatively with states and tribes to strengthen nutrient management programs."

The EPA noted that "long-standing policy, consistent with the CWA, has been that states should develop and

adopt standards in the first instance, with the EPA using its own rulemaking authority only in cases where it disapproves a new or revised standard, or affirmatively determines that new or revised standards are needed to meet CWA requirements."

This case is very similar to a recent lawsuit filed in Florida in which the EPA settled with environmental groups and established numeric criteria for its waters. The Florida Department of Agriculture and Consumer Services estimated the new regulations will cost more than 14,500 Florida agricultural jobs.

Other estimates are that Florida sewer bills would increase \$570 to \$990 per year to fund the projects to achieve the new standard - estimated to cost between \$298 million and \$4.7 billion.

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