

Chesapeake Bay TMDL/Nutrients: Virginia/Maryland/District of Columbia Notice of Intent to Sue U.S. Environmental Protection Agency



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The states of Virginia, Maryland and District of Columbia (collectively “Virginia”) sent a Notice of Intent to Sue (“NOI”) to the United States Environmental Protection Agency (“EPA”) for what is styled:

Failure to Ensure That the Phase III Watershed Implementation Plans of Pennsylvania and New York Meet the Chesapeake Bay TMDL

The alleged failure is stated to constitute a breach of the EPA Administrator’s:

. . . nondiscretionary duty to “ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain” the Bay TMDL.

The states of Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia had previously entered into an agreement with EPA that the federal agency would establish a total maximum daily loading (“TMDL”) for the Chesapeake Bay Watershed pursuant to the provisions of the Clean Water Act.

A TMDL is a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.

The Chesapeake Bay TMDL is focused on reductions in nutrients. The EPA TMDL requires each of the states to submit a series of Watershed Implementation Plans (“WIP”) detailing how they would achieve their allocated pollution reductions over a specified time period.

Virginia alleges in the NOI that Pennsylvania and New York submitted Phase III WIPs that failed to meet their allocated targets.

The NOI alleges that the EPA Administrator has breached a nondiscretionary duty set forth in the language of Section 117(g)(1)(A) of the Clean Water Act which provides that:

. . . “[t]he Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain . . . the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and its watershed.

A copy of the NOI can be downloaded [here](#).