



ENERGY AND ENVIRONMENT

Maryland Water Standards a Quarter Century Late and Counting

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Anyone who's ever worked in an office knows that while bureaucracies may have certain advantages, speedy action is not one of them. Things back up – either because a crucial official has an overflowing inbox or because a decision-maker wants ever more information before going on record in support or opposition. But in government, things sometimes back up because that's exactly what the politicians want. Such seems to be the case in my home state of Maryland, as the state's Department of the Environment moves ever so glacially toward developing enforceable standards for a key provision of the Clean Water Act.

In 1972, Congress adopted the Act in response to public outrage over a number of environmental nightmares, the most visible of which was the Cuyahoga River catching fire. Among other things, the landmark law required the 50 states to assess the quality of waterways within their borders, and establish what is called a Total Maximum Daily Load (TMDL) of pollutants that can be present in those waters. Significantly, the law left to the states the decision about how much cumulative pollution was too much in individual rivers, lakes, streams, or estuaries. The states were instructed to determine how particular waterways were used – for drinking, swimming, fishing, or boating. So, for example, a river used for boating but not for drinking or swimming could be held to a different standard than a lake that feeds a community's water supply.

The first steps in accomplishing these crucial mandates were assigned to the Environmental Protection Agency (EPA) and the states jointly. The EPA was to identify the worst pollutants, and the states were to submit a list of "impaired" waters (those rivers and streams too polluted to serve the

purposes states designated). EPA missed its initial 1973 deadline, and did not manage to launch the program until 1978, giving states until 1979 to do their part. Seven years is a long time, even by the standards of large bureaucracies, but when 1979 rolled around, many of the states had nothing to submit, Maryland among them. And indeed, Maryland's Department of the Environment did not submit its first list of impaired waters until 1992, and its first TMDL until 1998, 19 years late. The state has never recovered from this horrendous start, and at its current pace of addressing and resolving an average of 19 impairments a year, it will be 2037 before the state sets standards for the 620 impairments now on the list. That's 58 years after it was required to have done so, and 65 years after passage of the Clean Water Act. Imagine: at this rate, a child born on the day the Clean Water Act passed Congress will be eligible for Social Security by the time Maryland finishes setting its standards.

Remarkably, all that's just fine and dandy so far as the EPA is concerned. No doubt because of such willful ratification of noncompliance, the dirty truth is that Maryland's record on the matter is similar to the problems in many, if not most, other states, which made little if any progress in developing their TMDLs and remain decades behind the 1979, and all other, deadlines. Indeed, other states in the mid-Atlantic are operating under a legally binding consent decree establishing specific timelines for state compliance, the result of litigation brought by environmentalists in the late 1990s. Maryland's sorry record was also the subject of a lawsuit, but in 1998 the state and the EPA were able to persuade a judge to dismiss the case by entering into a formal Memorandum of Understanding establishing a new timetable. Since then, Maryland and the Bush EPA have extended those deadlines, without having to consult the court.

In large measure because of Maryland's extraordinary foot-dragging, pollution in the Chesapeake Bay grows worse and worse, killing fish and other aquatic life, and jeopardizing the backbone of the state's economy: tourism centered on this natural resource. Each day, hundreds of Maryland factories, sewage treatment plants, landfills, mining operations, and farms dump pollution into the fragile system of surface waters that are the lifeblood of the Chesapeake Bay. And as more and more dischargers site facilities in the watershed, the Bay's total pollution burden mounts. While individual polluters are subject to restrictions on how much they can discharge, the TMDL program is intended to serve as a safety net – making sure that the total load of pollutants in a given waterway doesn't exceed what the ecosystem can handle. Without this safety net, pollution continues to increase, putting at risk all those who depend on Maryland's waterways for their water, their livelihood, and their recreation, and causing irrevocable damage to the complex web of ecosystems that comprise the bay.

To give the Maryland Department of the Environment its due, staffers there are working to comply with this decades-old requirement, but they're overwhelmed, lacking the funding they need to tackle a huge task. The department has suffered a whopping 30 percent budget cut since 2000, demonstrating that, as is the case with EPA, the root cause of the problem is failure of political will. If the Bush EPA and Maryland Governor Robert Ehrlich really wanted to comply with the law, they'd allocate the necessary resources to get the job done. Sadly, clean water and a healthy environment just aren't important enough to them.

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