

Court Says EPA Can Take Forever

In January 2004, the United States District Court for the Eastern District of Pennsylvania ruled on West Virginia Rivers Coalition's lawsuit against the United States Environmental Protection Agency (EPA) regarding West Virginia's water quality standards. Our assertion was that EPA failed to fulfill mandatory duties required by the Clean Water Act (CWA), namely to determine if new or revised water quality standards meet the requirements of the CWA.

Specifically, we stated that the Bush administration's EPA was incorrect in approving water quality standards that under previous administrations EPA had disapproved, and that EPA had unreasonably delayed in their action to approve or disapprove a number of standards.

The suit involved water quality standards (WQS) that the State of West Virginia had adopted or revised as far back as 1998, but yet for which EPA had neither approved nor disapproved, leaving the WQS in question. By law, EPA has 60 days to approve standards and 90 days to disapprove them. WVRC was represented by James Stuhltrager of the Mid-Atlantic Environmental Law Center at the Widener University School of Law.

Water quality standards give the Clean Water Act much of its meaning, its backbone. In addition to setting goals, limits and rules for each water body, WQS drive the development of water quality-based discharge permits. In states where WQS are strong, they act as a powerful force for pollution prevention and water quality improvement. In states where they are weak, they may offer little or no defense at all.

Unfortunately, the court deferred to EPA in each instance but one.

WVRC challenged both the lack of an EPA approval and the numeric criteria for the iron, manganese, aluminum and 3-methyl-4-chlorophenol standards, as they did not meet the requirements of the CWA. WVRC filed its lawsuit against EPA on February 24, 2003. On April 17, 2003 EPA approved the numeric criteria for iron, aluminum and 3-methyl-4-chlorophenol and subsequently approved the criteria for manganese on June 24, 2003.

The court responded to this: "Moreover, the issues raised by plaintiff [WVRC] in its original complaint regarding the EPA's failure to act "promptly" on the iron and manganese WQS were valid and have become moot only after plaintiff filed the current lawsuit."

Unfortunately, the court did not reprimand EPA for responding solely to our lawsuit and not the requirements of the CWA with regard to timely approval (60 days) or disapproval (90 days) of a standard.

EPA then used research and reports from Greece, Germany and elsewhere to support their after-the-fact approvals. In our view, the science EPA used was spotty at best, but

the court deferred to EPA's scientific experts for each standard except 3-methyl-4-chlorophenol, where it ordered EPA as follows:

the EPA shall promptly review West Virginia's omission of 3-methyl-4-chlorophenol from its WQS according to the requirements of the Clean Water Act and document its review process in the Federal Register. If the EPA approves the WQS without 3-methyl-4-chlorophenol, it shall announce its approval within sixty days of this Order. If the EPA disapproves, it shall announce its disapproval within ninety days of this Order. If the EPA disapproves the omission of a 3-methyl-4-chlorophenol standard, it shall promulgate a new standard, and submit this new standard to a public hearing and comment period consistent with the terms of the Clean Water Act and its implementing regulations, within 270 days of this Order;

WVRC will not appeal this decision. Appellate courts are typically deferential to the lower court and we see very little likelihood of having the ruling overturned. Nonetheless, this ruling will not dissuade us from filing lawsuits where we deem a state or federal agency is not living up to their responsibilities under the Clean Water Act.