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EPA, farm groups win Mississippi River nutrient case

By Stephen Davies

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WASHINGTON, Dec. 19, 2016 - Mississippi River Basin states should be given a chance to address nutrient pollution first, before the federal government steps in, a federal court ruled late last week.

"EPA's 'policy' of partnering with the states and maintaining a states-in-the-first-instance approach is . . . an integral part of the (Clean Water Act) as enacted by Congress," U.S. District Judge Jay C. Zainey said in his opinion, issued Dec. 15.

Lead plaintiff in the lawsuit was the Gulf Restoration Network (GRN), which was joined by the Missouri Coalition for the Environment, Iowa Environmental Council, Tennessee Clean Water Network, Sierra Club and others. They sought an order from the court that would force EPA to adopt numeric water quality criteria for nitrogen and phosphorus in the 10 Mississippi River Basin states.

On the other side of the lawsuit was EPA, along with dozens of farm groups, including the American Farm Bureau

Federation, Agricultural Retailers Association, 15 state farm bureaus and a collection of commodity-specific organizations.

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GRN and other environmental groups <u>released a report last</u> <u>month</u> faulting EPA for failing to reduce nitrogen and phosphorus pollution in the 1.1 million-square-mile Mississippi River Basin. The

agency, they said, needs to use its authority under the Clean Water Act to force states to adopt numeric water quality criteria for rivers, streams and lakes.

But Zainey, who sits in the Eastern District of Louisiana in New Orleans, said the CWA takes a "state-driven approach" to water pollution.

Despite "undisputed scientific data surrounding the serious nature of the nitrogen and phosphorous pollution in the nation's waters," Zainey said he had to defer to EPA's approach "to continue in its comprehensive strategy of bringing the states along without the use of federal rulemaking."



"Even if the court were to disagree with EPA's stance on rulemaking, the court cannot properly substitute its own judgment for that of the agency," Zainey said.

AFBF said it was happy with the decision, in particular "the court's strong language supporting the purposeful design of the Clean Water Act to leave states in the lead role when it comes to water quality improvement," said Ellen Steen, AFBF chief counsel.

She noted, however, that the job of farm groups is easier when EPA itself is arguing for flexibility. "We face a more difficult challenge when EPA is pushing to expand its own role - as it did in the Chesapeake Bay watershed," she said.

EPA worked with states in the <u>Chesapeake Bay watershed</u> to develop a TMDL - Total Maximum Daily Load - with specific pollution reduction targets. Farm groups failed to get the federal courts to overturn the EPA program. Steen said the latest decision "isn't likely to be the end of the road - at least not for many years. But the agricultural community and the states in the Mississippi River Basin should take this opportunity to redouble our efforts to ensure the best practices are in place to demonstrate, when the next round of petitions and lawsuits come, that we are all doing our part for water quality."

Matt Rota, senior policy director for the Gulf Restoration Network, said the environmental groups are disappointed with Rainey's decision and are looking at their legal options. But he added that "it doesn't mean there aren't avenues to pursue" to effect nutrient reductions at the state, regional or national level.

Earlier this month, the Mississippi River Collaborative, which includes GRN, <u>reached a settlement</u> with EPA requiring the agency to set numeric water quality criteria for lakes in Missouri by Dec. 15, 2017. #30

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Money and time again wasted. While trying to use the CWA, plaintiffs tried to regulate the runoffs from farms and cities, but failed to even mention hat EPA never implemented the CWA. The goal of the act was to eliminate all water pollution by 1985, but when EPA established sewage treatment criteria for their NPDES permits, it used ye 5-day reading of the BOD (Biochemical Oxygen Demand) test, instead of its full 30-day reading. By doing so EPA not only ignored 60% of this oxygen exerting pollution, but also all the nitrogenous (urine and protein) waste, while this waste also is a fertilizer for algae or as it is now called a nutrient.

The second largest federally funded public works program failed due to a faulty applied test and that apparently is so embarrassing to admit for everybody, that even environmental groups are willing to waste their members contribution on lawsuits that all will end similar as this one, i.e. failing to force EPA to implement the CWA as intended.

The groups would spent their members contribution better by educating their members and the media, so they can educate their members of Congress and let them hold EPA accountable for not only failing to implement the CWA, but having wasted billions of taxpayers money. Because of incorrect testing, we still do not know how sewage is treated and the possibility real, that multi-million dollar sewage treatment plants are designed to treat the wrong waste.

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