



Chesapeake Bay TMDL Myths & Why Local WIPs Matter

No Bay watershed state is required to take any specific action pursuant to the 2010 Chesapeake Bay TMDL.

No local government is required to take any specific action pursuant to the 2010 Chesapeake Bay TMDL.

The 2010 Bay TMDL is not self-implementing; it is only an informational tool.

Federal courts have made the following rulings about the 2010 Bay TMDL:

The mere practice of setting a standard in the 2010 TMDL ... does not require the states to undertake any particular implementation effort. ... [A] TMDL is an informational document, not an implementation plan.¹ ... ‘States must implement TMDLs only to the extent that they seek to avoid losing federal grant money; there is no pertinent statutory provision otherwise requiring implementation of [TMDLs] or providing for their enforcement.’ In other words, nothing requires states to uncritically and mechanically implement each and every TMDL allocation.²

All that EPA can do to enforce the 2010 TMDL is withdraw federal funding for Clean Water Act programs.

Only recently has EPA threatened to withhold funding (\$2.9 million) from Pennsylvania, even though Pennsylvania has done comparatively nothing to implement the 2010 TMDL or prior Chesapeake Bay agreements between the Bay watershed states.

When State agency officials or NGOs claim: ***"This program/action is required under the 2010 TMDL"*** - **they are either (a) misleading or (b) misinformed.**

States have traditional and primary power over land and water use.

Maryland has delegated land use regulation to local governments, including what could and should be one key component of a county's master land use plan - the watershed implementation plan (WIP).

Federal courts describe the TMDL as a product of **“cooperative federalism”** where federal, state and local agencies responsible for implementation of a TMDL are required to **coordinate** with each other.

National Environmental Policy Act regulations promulgated by The White House Council on Environmental Quality establish the framework for implementing cooperative federalism, which requires federal and state regulators to give deference to local land use plans to the maximum extent practicable.

A WIP that furthers the economic, social and cultural wellbeing of a jurisdiction, while also addressing concerns for the natural environment, will empower the local government with the local policy necessary to have an equal seat at the table with federal and State agencies when it comes to WIP implementation, *i.e.*, the programs, policies and practices pursued to meet the Bay TMDL goals.

For more on Bay TMDL truths and the integral role of local governments in restoring the Chesapeake Bay, see our policy paper: “Chesapeake Bay TMDL Myths & Making WIPs Matter” (January 2016) – in light of recent federal court rulings in the case of *American Farm Bureau Federation v. U.S. EPA*

1/27/16

¹ *American Farm Bureau v. USEPA*, 984 F. Supp.2d 289, 326 (D.C.Pa 2013). *Accord*, *American Farm Bureau v. USEPA*, 792 F.3d 281, 303 (3rd Cir. 2015) (citing 33 U.S.C §1313(e)(1) & (3)).

² 984 F.Supp.2d at 328-29 (citing *Pronsolino v. Nastri*, 291 F.3d 1123, 1140 (11th Cir. 2002)).