

# WATERWAYS

A Quarterly Publication of the Iowa Drainage District Association

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## EPA Puts States on Notice

Federal officials last fall began a sweeping crackdown on pollution in the Chesapeake Bay – threatening to punish five Mid-Atlantic States with rules that could raise sewer bills and put new conditions on construction.

The move by the Environmental Protection Agency is part of the biggest shakeup in the 27 year history of the Chesapeake cleanup. Earlier, when states failed to meet deadlines to cut pollution in 2000 and 2010, nothing happened.

Now, the deadline has moved to 2025- but the EPA is already threatening states that lag behind. The agency has gone after Virginia, Pennsylvania, West Virginia, Delaware and New York, which together account for more than 70 percent of the pollution that causes “dead zones” in the bay. The agency told the states their plans contained “serious deficiencies” and said it would force them to make up the differences with expensive new measures.

It’s too early to tell how this might translate into increased property taxes or new rules for farms. But it is clear that by squeezing states – and calculating they will in turn squeeze homeowners and farmers – the administration is taking a serious political risk.

In an era when environmentalism seems to be losing steam, it is betting that residents of the Chesapeake region care enough to pay the cost of saving the bay.

“I’m a little concerned that EPA could do something to damage the goodwill toward the bay, said John Hanger, secretary of Pennsylvania’s Department of Environmental Protection.

Hanger said he thought EPA’s plans were too fast moving and too draconian: “This isn’t China where the Communist Party meets and announces that ‘we’re just doing it.’ If EPA proceeds in a way that is more like that, it’s going to be counterproductive.

Environmentalists cheered the news as a potential turning point for the Chesapeake. “There is good reason to hope that decades from now, we will look back on this as a watershed moment in the protection of the bay,” said Rena Steinzor, a University of Maryland professor who has advocated for green causes.

But the specter of increased regulation has led local

governments to worry that they will have to raise taxes or set new rules, for instance, about how much of new and redeveloped properties must remain grass and woods.

“I think everyone will jump on a legal reaction if it comes out that sewer plants will have to go a lot lower in the pollution they emit,” said John Brosious, deputy director of an association of Pennsylvania cities and towns.

And in Virginia, the Farm Bureau warned that new rules could prove suffocating. “It’s basically going to mean that EPA is a full partner in that farming operation because rules will be so intrusive,” said Wilmer Stoneman of the Farm Bureau. “I’m not sure why the farmer would want to continue.”

The Chesapeake’s most problematic pollutants, nitrogen and phosphorus, wash downstream in treated sewage, fertilizer and animal manure. In the water, they fuel unnatural algae blooms, which suck out the oxygen that fish, crabs and oysters rely on.

Federal and state governments have been trying to fix these problems since 1983. They have spent more than \$5 billion, but the cleanup devolved into an odd kind of cordial failure. The EPA did not punish the states failed to deliver on promises. And states, which cracked down on sewage plants, shied away from requiring more expensive changes on farms and from urban storm-sewer systems.

Now, 27 years later, nitrogen has been cut by only about half the amount required. And a study showed phosphorus pollution going up, not down, in eight of nine major Chesapeake tributaries.

Now, the tone of the cleanup has changed. For better or worse, the Chesapeake has become a fight.

“We all agree that it’s not going to be easy. This is a part of that ‘not easy’, said Shawn Garvin, the EPA official of the mid-Atlantic region.

The change was set in motion last May, when President Obama signed an executive order that shifted the EPA’s role from collaborator to cop. Obama said the agency would attack water pollution as it has successfully attacked air pollution: by requiring local authorities to meet cleanup goals, or face legal consequences.

States were required to submit plans for cutting pollution

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Waterways is a quarterly publication of the Iowa Drainage District Association. Comments can be directed to the association at:

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before 2025. When those plans came in, several states admitted they were not sure how they would do it.

“Full implementation of this plan will likely cost billions of new dollars,” Virginia’s plan read. “In these austere times, we cannot guarantee such significant additional funding will be provided by our General Assembly.”

Environmentalists said the plans lack crucial details—noting that in theory, the states should have been working toward the goal of a healthy Chesapeake since the 1980’s.

“We don’t have an understanding of what is going to be different to meet these goals this time,” said Jenn Aiosa, of the non-profit Chesapeake Bay foundation after reading the plans.

The agency said that two plans – submitted by the District and Maryland – had “deficiencies” requiring minor corrections. But for the five states that make up the rest of the Chesapeake’s 64,000 square mile watershed, the agency found serious faults.

The agency ordered the states to fix the flaws. If they don’t, it said, the result could be requirements that sewage plants be upgraded to remove more pollutants, or that urban areas could be forced to corral storm water with measures like “rain barrels” or grass buffers.

EPA officials said it is too early to say what these new limits would be or how much they would cost. 18 public hearings on the issue were held last fall.

The EPA’s move has made the Chesapeake a test case for American water pollution. There are now 300 places with low-oxygen water along the U.S. coastline and scientists and regulators have been stymied by the Chesapeake’s old problem: It’s unpopular and expensive to clean up pollution that doesn’t come out of a sewer pipe.

“If EPA can’t make it work here, they can’t make it work anywhere,” said Oliver Houck, and environmental –law expert at Tulane University.

Officials in Virginia and Pennsylvania say that is a real risk. In Virginia, Natural Resources Secretary Doug Domenech said that if the EPA imposes its punishments, residents will have to pay extra taxes or sewer fees.

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## IDDA Board Members re-elected

One of the items of business during the IDDA annual meeting on December 3 was the election of officers for 2011. The IDDA board has seven members. All members serve three year terms. The terms are staggered. This year, the board members with terms expiring were Phil Condon, Webster County supervisors and Ron Smith, Emmet County supervisor. The IDDA nominating committee had recommended that both individuals be re-elected for new three year terms. There were no nominations from the floor so both individuals were seated on the board for new three year terms.

## Supreme Court to hear Calhoun Railroad Case— IDDA to become directly involved in case

On February 1, the Iowa Supreme Court agreed to grant further review status to the Calhoun County Railroad case. The issue in the case is who has the responsibility to pay for repairs on drainage structures that are in railroad right-of-way. So far, two courts have sided with the county board of supervisors and found that the responsibility should be the railroad's. Now, the Iowa Supreme Court will eventually weigh in on the issue.

The court looked at 31 cases for potential further review. The Calhoun County case was one of only four that were granted. According to IDDA executive director John Torbert, this means that the case has “become a really big deal. We thought we had put this thing to bed but it seems to have a life of its own.”

Now, at least one other railroad is trying to get into the act. The Union Pacific railroad has notified the court that they wish to file an “Amicus Curiae” (friend of the court) brief to support the Chicago, Central and Pacific Railroad Company. Upon hearing that information, IDDA president Harlan Hansen immediately gave the go ahead for IDDA to retain an attorney to file a brief in support of Calhoun County. “We need to give Calhoun County all the support we can,” Hansen said. “Somebody has to stand up for the landowners in these districts and we are going to do so.”

The Supreme Court decision will establish precedent on how these repairs are handled in the future. ISAC is also considering further involvement in the case.

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## AFBF Files Suit

The American Farm Bureau Federation has filed suit in federal court in an attempt to halt EPA's pollution regulatory plan for the Chesapeake Bay. AFBF President Bob Stallman said in an editorial that he wrote – “Why should farmers and ranchers nationwide be concerned with the Chesapeake Bay region? Simply, this new EPA approach will not end with the Chesapeake Bay. EPA has already revealed its plan to follow suit in other watersheds across the nation, including the Mississippi watershed. That is why our legal effort is essential to preserving the power of the states – not EPA – to decide whether and how to regulate farming practices in America's watersheds. “

Stallman went on to say that “the EPA's plan is built on inaccurate assumptions and flawed data. Further the agency failed to provide the public with critical information about the basis for the Total Maximum Daily load (TMDL) and allow the public sufficient time to comment on the incomplete, but highly technical information. In addition, EPA's plan overreaches its legal authority by dictating to states how and when they must achieve water quality goals, regardless of cost.”

“EPA likes to call the TMDA a pollution diet” he said. This diet threatens to starve agriculture out of the 64,000-square-mile Chesapeake Bay watershed. The agency's diet would unlawfully micromanage state actions and the activities of farmers, homeowners and businesses within the six-state watershed, imposing specific pollution allocations on activities such as farming and home building, sometimes down to the level of individual farms. *Sources – the Washington Post and Iowa Farm Bureau Spokesman.*

## Watershed Planning Grants

The DNR is opening the third round of Watershed Planning Grants, which help local Iowa groups find solutions for improving Iowa's state's lakes, streams and rivers. Groups can get started by calling for a consultation to discuss their ideas and have their questions about the grant application process and watershed improvement answered. Applications are due April 1. Planning grants offer \$10,000 to \$50,000 to develop Watershed Management Plans that address problems and create solutions for waters on the state's impaired waters list. Local or regional groups, organizations or agencies (public or private) are eligible to apply. More information is available on the DNR website at: [watershed.iowadnr.gov/planning.html](http://watershed.iowadnr.gov/planning.html)

# Legislative priorities approved

At the IDDA annual conference, member ship voted to approve our legislative priorities for the 2011 session. Those priorities are as follows:

**1) Crep/Wetlands Funding**—The IDDA supports an increased state appropriation from the “Environment First” fund for the Crep/Wetlands program. Every dollar appropriated by the state is able to leverage four federal dollars. The current state appropriation level is \$1.5 million. The program currently has a waiting list of interested landowners. An increased state appropriation would allow increased construction of nitrate removal wetlands providing increased protection for Iowa’s water. The state Soil Conservation Committee and Conservation Districts of Iowa have requested that the appropriation level be increased to \$3 million. IDDA supports this request.

**2) Regulation of Wetlands**—The IDDA opposes any legislative proposal to empower the state of Iowa to regulate the dredging or filling of isolated wetlands. The dredging or filling of the majority of these isolated wetlands is already subject to review and regulation under provisions of the farm bill or local subdivision approval and building permit authorities. The state of Iowa cannot afford and ought not to divert precious resources toward creation of a needless regulatory bureaucracy.

**3) Ag Drainage Well Closure**— There are currently about 140 Ag drainage wells in active use – acting as direct chemical pipelines into drinking water supplies. IDDA supports an increased state appropriation for the Ag drainage well closure program. Funding for this program was previously at \$1.5 million but was cut to \$1.25 million in FY ’10. The state Soil Conservation Committee and Conservation Districts of Iowa are requesting that the appropriation be restored to the \$1.5 million level. IDDA supports this request.

**4) Protection of Drainage District Funds**— When a landowner takes action that damages existing drainage district structures, the district should be able to restore or repair the damage. Such damage could include, for example, redirecting water so that it overburdens an existing tile or ditch. Restoration or repair would be done according to the recommendations of an engineer retained by the district. The district should also be able to recover the costs relating to correcting that action including attorney and engineering fees.

**5) Five Island Lake (Palo Alto County) drainage assessment**— The IDDA supports Palo Alto County in its efforts to obtain state funding of \$96,633.83 for improvements to Five Island Lake and surrounding area. The lake, which is state owned, clearly benefits from the drainage project. The state avoided paying the assessment on a leg.

## Etler Appointed to CALT Advisory Board

Algona consulting engineer Donald Etler has been appointed to the nine-member Advisory Board for The Center for Agricultural Law and Taxation (CALT) at Iowa State University. CALT was created by the Iowa Board of Regents in 2006 to provide timely critical information to producers, professionals and agribusinesses regarding developments in agricultural law and taxation. It is also a primary source of continuing education in agricultural law and taxation. CALT’s emphasis is in estate planning, production contracts, environmental and water law, secured transactions, real estate and regulatory law. For more information about CALT see [www.calt.iastate.edu](http://www.calt.iastate.edu).



Etler, a professional agricultural engineer, is a principal in the firm Kuehl & Payer, Ltd. The forty-person firm offers professional engineering and land surveying services to individuals, communities and businesses from its offices in Sac City, Algona and Storm Lake. Etler’s appointment as a CALT advisor is due to his expertise in storm water management, agricultural drainage, wetlands and associated state and federal regulations.



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# USDA holding firm on nesting season restriction

Iowa Farm Bureau President Craig Lang contacted USDA on their latest stance to prohibit maintenance activities in drainage districts during the nesting season of May 15 to August 1. In his letter, Lang said “Farmers say that waivers that were normally granted for regular, lawful maintenance activities of these ditches and associated structures are no longer possible during the nesting season of May 15 – August 1.” Given the temporary, limited and periodic nature of ditch maintenance (once every 30 years but then only on 3 percent of the district’s ditch), it seems that this is an action that would have a minimal effect, if any, on nesting habitat. At the very least, it seems that a field evaluation by your staff could determine if special conditions might document habitat protection or impacts during the activity.”

Lang continued that “we are very concerned that unless this issue is addressed quickly, Iowa drainage districts might prohibit landowners from participation in the continuous CRP (they have the statutory authority now). We do not want to dissuade farmers from participation in this important voluntary program.

Brandon Willis, deputy administrator for farm program responded to the letter as follows;

“Thank you for your letter of January 24, 2011 on behalf of the Iowa Farm Bureau, regarding the minimal disturbance of Conservation Reserve Program (CRP) buffers and filter strips.

I understand and appreciate your concern about Iowa drainage district maintenance activities on land that is

devoted to CRP buffer areas and filter strips. I know how critical drainage is for much of Iowa’s landscape, and how successfully Iowa producers have incorporated continuous CRP practices in their operations. However, FSA does not permit minimal disturbance of CRP buffers and filter strips during the primary nesting season, April 15 – August 1. Buffers and filter strips provide critical habitat during the primary nesting season.”

IDDA will be in contact with Mr. Willis to determine what law or rule is being used to support this action. We may have to pursue a legislative remedy at the national level. Also, Iowa Secretary of Agriculture Bill Northey has set up a meeting between IDDA representatives and state FSA director John Whitaker to discuss this issue. That meeting will take place on March 17.



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## Unattributed Wisdom

“The essence of faith is a belief in that which cannot be proven.”

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# Agriculture not primary reason for river sediment

Urban dwellers, even some of my rural neighbors, often tell me of their concerns about large-scale farming ruining our rivers “because the rivers are muddy.”

Certainly, the rivers in the world’s farming areas run brown. Muddy rivers generally mean that surrounding soils are good enough to farm. The mountain streams produce no food – even though the water coming down the mountainside travels at much higher and more dangerous speeds and runs crystal clear. Why? The soil from the mountainsides has mostly eroded long since.

Fortunately, you don’t have to just take my word for that. A research team sponsored by Minnesota corn and soybean farmers just carried out an airborne laser scanning study of the Minnesota River above Mankato. The study found that 56 to 85 percent of the sediment in the river came from the natural erosion along the riverbanks, which has been going on for centuries.

Dr. Satish Gupta of the Minnesota Department of Soil, Water and Climate and lead author of the study said: “Some of these (river) banks are 150 feet high. They are very steep, not very stable and slough into the river.”

Gupta also emphasized that the sediment load in any

farm-county river will be a combination of bank erosion and runoff from the farm fields. The proportions vary with the soils, slopes rainfall patterns and farming systems.

Gupta notes that in addition to bank erosion, the Minnesota River has also been impacted by the Corps of Engineers dredging program. The dredging makes the river flow faster and straighter. So does the extra water from urban rooftops, streets, parking lots, and airports running into the river.

Even though the Minnesota River study shows 86 percent of the sediment coming from bank erosion, best-farming practices are still helpful in minimizing crop and soil losses.

Continuous research and innovation has made today’s farmers the most sustainable in history. Their crops yields mean they need to farm less cropland to supply food demands. But don’t expect to see crystal clean rivers in good farming country. *Source – Dennis Avery, reprinted from Farm Bureau Spokesman. Avery is senior fellow at the Hudson Institute and is an environmental economist.*

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