

The July 2000 rule was controversial from the outset. Both the proposed and final rules generated considerable controversy, as expressed in Congressional action, letters, testimony and public meetings. Even before it was published in the **Federal Register** on July 13, 2000, Congress prohibited EPA from implementing the final rule through a spending prohibition attached to an FY2000 appropriations bill that prohibited EPA from using funds "to make a final determination on or implement" the July 2000 rule. This spending prohibition was scheduled to expire on September 30, 2001, and, barring further action by Congress or EPA, the rule would have gone into effect 30 days later on October 30, 2001. Because of the continuing controversy regarding the July 2000 rule, EPA proposed on August 9, 2001 (66 FR 41817), and promulgated on October 18, 2001 (66 FR 53044), a new effective date of April 30, 2003, for the July 2000 rule, to allow time for reconsideration of the rule.

Stakeholder concerns were also reflected in legal challenges to the July 2000 rule by a broad array of litigants. Ten petitions for review were filed by States, industrial and agricultural groups, and environmental organizations asserting that many of EPA's revisions to the TMDL regulations were either unlawful under the Administrative Procedure Act or exceeded the Agency's authority under the CWA. These petitions, which identified more than 50 alleged legal defects in the July 2000 rule, were ultimately consolidated in *American Farm Bureau Federation et al. v. Whitman* (No. 00-1320) in the United States Court of Appeals for the District of Columbia Circuit. In addition, several other stakeholders have intervened in these lawsuits. The litigation over the July 2000 rule is currently stayed pending EPA's determination regarding whether, and to what extent, that rule should be revised.

In the December 27, 2002, preamble to the proposed withdrawal rule, EPA explained why it had decided to withdraw the July 2000 rule. EPA said that by continuing to examine the regulatory needs of the TMDL and NPDES programs against the impending April 30, 2003, effective date for the July 2000 rule, the Agency was sending confusing signals to the States and other interested parties about which set of rules they should be prepared to implement. Further, because of the significant controversy, pending litigation and lack of stakeholder consensus on key aspects of the July 2000 rule, the Agency said that the July

2000 rule could not function as the blueprint for an efficient and effective TMDL program without significant revisions. Moreover, the Agency said it needed more time to consider whether and how to revise the currently-effective TMDL rules without concern that those efforts would be adversely affected and distracted by the July 2000 rule's impending effective date. In the preamble to the proposed rule, the Agency also explained why it believes that, given the significant progress States have made during the past four years in developing TMDLs, withdrawal of the July 2000 rule will not compromise continuing efforts to implement section 303(d) of the Clean Water Act. EPA's rationale for proposing the withdrawal of the July 2000 rule is more fully explained in the preamble accompanying the proposal (67 FR 79020).

II. Response to Comments and Final Decisions

EPA received approximately 90 separate written comments regarding its proposal to withdraw the July 2000 rule. These comments came from a broad cross-section of stakeholders, including agricultural and forestry groups, business and industry entities and trade associations, State agencies, environmental organizations, professional associations, academic groups and private citizens. An overwhelming majority of the commenters (more than 90 percent) supported EPA's proposed action to withdraw the July 2000 rule. These commenters generally agreed with the Agency's rationale for withdrawing the rule as discussed in the December 27, 2002, preamble. Commenters reiterated EPA's concerns about the potential distraction and confusion caused by the July 2000 rule's impending deadline, as well as the controversy surrounding various provisions of the rule and uncertainty caused by the pending DC Circuit Court litigation. Others stated that the July 2000 rule was no longer needed because of the increased technical guidance that EPA has provided to States to improve the quality of their lists of impaired waters, and the increased funding provided by EPA for developing TMDLs. Many commenters said that States have made significant strides in developing TMDLs since the rule was originally proposed and promulgated and, therefore, the July 2000 rule was not needed. Several commenters stated that allowing the July 2000 rule to go into effect would be disruptive to ongoing TMDL development efforts, and that withdrawing the July 2000 rule would

give the Agency additional time to evaluate the need for new TMDL regulations. Some commenters offered additional reasons for supporting withdrawal of the July 2000 rule. Although most of these reasons are consistent with EPA's rationale for withdrawing the July 2000 rule, some are not. For example, some commenters, though supporting EPA's decision to withdraw the July 2000 rule, also questioned the legal soundness of certain provisions of that rule. EPA does not necessarily agree with those comments, and its decision today to withdraw the July 2000 rule should not be understood as an implicit endorsement of those views and comments.

A small minority of commenters (four) disagreed with EPA's proposal to withdraw the July 2000 rule. One commenter asserted that withdrawing the July 2000 rule would "postpone the TMDL program for several more years" and, by removing incentives to reduce pollution, would hinder progress "to implement the TMDL program" and "only make the problem worse." Another commenter said that not going forward with the July 2000 rule would "undermine the momentum of State programs" that have been "waiting to see Federal guidelines to develop programs of their own." EPA does not agree with these comments. Indeed, one State in its comments supporting withdrawal said that the July 2000 rule "would undo much of the momentum and success" of the State's ongoing and successful TMDL program. As described in more detail in the December 27, 2002, preamble, in recent years, EPA and the States have made great strides in implementing the existing 303(d) program to list impaired waters and develop and implement TMDLs to restore impaired waters. States have substantially improved their TMDL programs while the Agency has provided the States with significant increases in technical and financial support to expand and strengthen all elements of their programs. From FY 1999 to 2002, EPA has provided the States almost \$30 million for TMDL-specific activities and allowed States to use a portion of State grants for water program administration (CWA section 106 grants) and nonpoint source programs (CWA sections 319 grants) for developing and implementing TMDLs. In addition, since 1998, EPA has spent more than \$11 million to support development of technical guidance for developing TMDLs and identifying the most appropriate and efficient best management practices for nonpoint