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Opposition threatens Chesapeake Bay cleanup plan

By [Darryl Fears](#),

The embattled [Chesapeake Bay cleanup plan](#) is being hit by opponents from both the left and right.

A pair of liberal watchdog groups struck it with a lawsuit last month seeking to erase one of the plan's key programs — nutrient trading. They support the overall cleanup plan but call nutrient trading a [“pay to pollute” program](#) that departs from the spirit of the Clean Water Act, enacted 40 years ago this fall.

At the other end of the political spectrum, the conservative American Farm Bureau Federation is arguing that only the states in the bay's watershed — not the Environmental Protection Agency — have the authority to put pollution-control measures into place.

If the groups are successful, the most recent and more aggressive version of the bay cleanup plan, in place about two years, could wind up back on the drawing board.

“You would have to start over,” said Will Baker, president and chief executive of the Chesapeake Bay Foundation, whose lawsuit against the EPA in 2008 for failing to restore the watershed under the Clean Water Act led to the current cleanup plan.

The plan is designed to have enough pollution-control measures in place to restore the health of the nation's largest estuary by 2025.

It calls on the states to achieve major reductions in the amount of nitrogen from compounds such as fertilizer, sediment from dusty housing and commercial development, and phosphorous from animal waste and sewers that pollute the bay and [wipe out marine life](#), threatening the entire ecosystem.

The EPA compelled the six states in the watershed — Virginia, Maryland, West Virginia, Pennsylvania, New York and Delaware — and the District to agree to the cleanup by threatening to withhold federal sewage and development permits. Enforcing the pollution-control regulations is up to them.

At least three states — Maryland, Pennsylvania and West Virginia — already have different forms of pollution-credit trading. Such plans allow farms and other enterprises that meet or exceed pollution-control expectations to sell credits to organizations that fail to curtail pollution.

Food and Water Watch, a nonprofit humanitarian organization represented by lawyers at the Columbia Law School's Environmental Law Clinic, argued that baywide trading could not work, largely because the EPA has no way of monitoring, and therefore knowing, if organizations or farms selling credits are creating less pollution.

“Simply put, the bay water-pollution trading program . . . will allow more, not less, pollution in the Chesapeake Bay,” Friends of the Earth President Erich Pica said when the lawsuit was filed.

When Food and Water Watch, the Potomac Riverkeeper and other organizations first raised concerns about nutrient trading, other groups that fought long and hard for the bay cleanup plan [pushed back](#), saying trading was the only way to maintain state support.

Ignoring angry resistance from groups such as the Chesapeake Bay Foundation, Food and Water Watch and its allies started preparing a lawsuit. But the preparation stopped suddenly when the Keith Campbell Foundation in Annapolis called in river keepers and issued an ultimatum.

“If you challenge nutrient trading, you're done. You won't be funded by us anymore,” said a riverkeeper who declined to be identified for fear of losing funding, recalling the words of the foundation's executive director, Vern Harrison.

Earthjustice, which had agreed to argue the case, backed out. Earthjustice would not give a reason, but its Web site listed the Keith Campbell Foundation as a major donor.

The Keith Campbell Foundation, the Chesapeake Bay Foundation and the Choose Clean Water Coalition are some of the more than 225 groups that support nutrient trading.

Before their battle over trading, the environmental groups were all aligned against the American Farm Bureau Federation's challenge to the cleanup last year. [The farm bureau's suit](#) in a Harrisburg, Pa., court was eventually joined by the National Association of Home Builders, the Fertilizer Institute and others.

U.S. District Judge Sylvia H. Rambo is in the process of deciding the plan's fate, and she set no timetable for issuing a ruling on the farm bureau's lawsuit.

The farm bureau argued that the cost of the plan would fall on the shoulders of farmers who could barely make ends meet, requiring them to pay for expensive pollution easements such as fencing to stop fertilizer and defecating cattle from entering fresh water.

But opponents argued that the bureau's relatively new interest in the Chesapeake Bay region had a far-reaching aim — to stop the EPA from attempting a similar cleanup of the Mississippi River, which carries pollution from huge industrial farms there to the Gulf of Mexico, creating oxygen depleted dead zones that kill ocean life.

Bob Stallman, the farm bureau's president, buttressed that claim last year in a speech to members.

“This new EPA approach will not end with the Chesapeake Bay,” Stallman said. “EPA has already revealed its plan to follow suit in other watersheds across the nation, including the Mississippi watershed.”

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