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STATE'S RIGHTS VICTORY - WEST VIRGINIA WILL DEVELOP WATER QUALITY IMPROVEMENT PLANS, NOT EPA

A recent article titled West Virginia - not EPA - Will Develop Water Quality Improvement Plans prepared by Robert M. Stonestreet of Babst Calland, a leading Pittsburgh and West Virginia Environmental Law Firm, announced that the state of West Virginia was recently a victor in the Fourth Circuit Court of Appeals when the court reversed a lower court decision that concluded West Virginia had failed to timely submit plans for improving the quality of its waterways to the federal Environmental Protection Agency (EPA). The prior decision could have required the EPA to take over and assume the role in developing such plans in West Virginia. This recent decision will allow the state of West Virginia to continue efforts to implement a credible plan for addressing these complex water quality issues and to continue submittal of proposed Total Maximum Daily Load (TMDL) limits for EPA approval. As indicated in Mr. Stonestreet's article, the Fourth Circuit Court of Appeals decided that West Virginia had previously submitted a number of TMDLs for specific pollutants for EPA approval and was actively working toward the development of ionic toxicity TMDLs on a reasonable schedule. This issue is considered controversial because EPA was "stepping in" to essentially disapprove a West Virginia TMDL, because there was concern that a coalition of environmental groups had filed suit against EPA for West Virginia not having submitted a "constructive TMDL" submission to address streams failing to meet West Virginia's biological component of water quality standards due to "ionic toxicity".

A link to the article published by Babst Calland is provided below. As Mr. Stonestreet indicates, this recent decision supports the role of the individual state to regulate its waters rather than the federal government. RT has extensive experience with water quality limits and TMDLs in several states in the Northeast, as we complete several permit applications related to water quality and commercial and industrial discharges for our clients every year.

We believe the Court's decision in this matter was the correct one that will ultimately benefit the environment and the economy by allowing permittees in West Virginia to work directly with the state rather than the EPA. The article makes it clear that the balance of power between states and the federal government is stronger than in the past and that West Virginia's environmental agency has been doing its job. States' rights will not be overturned by federal courts just because environmental groups file lawsuits which sometimes reflect on issues that are being properly addressed by the states.

*- Justin Lauterbach, QEP
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Mr Stonestreet's article can be accessed [here](#).

For questions about the Fourth Circuit's decision or the Clean Water Act in general, please contact Robert M. Stonestreet at 681.265.1364, rstonestreet@babstcalland.com or Christopher B. ("Kip") Power

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