Friends of the Cacapon River Join In Lawsuit Against EPA

The Friends of the Cacapon River have joined with two dozen other environmental groups and several citizens in filing a lawsuit against the U.S. Environmental Protection Agency (EPA).

The suit concerns a water quality policy that is supposed to keep West Virginia’s high quality rivers and streams from being polluted, but the environmental groups believe the policy is too lenient.

The Friends of the Cacapon and other plaintiffs, including local resident Abby Chapple, are represented by Joe Lovett of the Appalachian Center for the Economy and the Environment in Lewisburg and Jim Hecker of Trial Lawyers for Public Justice in Washington.

The complaint, filed on January 23 in U.S. District Court in Huntington, alleges that the EPA approved an illegal anti-degradation plan for West Virginia. The plan, passed by the State Legislature last spring, was approved by the EPA in November.

“We feel the West Virginia implementation procedures run counter to our purpose,” said Ron W. Wilson, president of the Friends of the Cacapon River, whose members are primarily residents and land owners in Morgan and Hampshire counties.

The anti-degradation provision of the 1972 Federal Clean Water Act is supposed to ensure that clean waters are protected and that polluted waters are not polluted further. Before a polluter gets permission from the state to pollute high quality waters, the state must conduct a thorough and public review of the project to assure that the benefits of allowing water pollution outweigh the economic costs.

The environmental groups, however, contend that West Virginia’s policy is full of exemptions and weak provisions. For example, the lower reaches of the Monongahela River and Kanawha River are given the lowest level of protection regardless of water quality.

Closer home, the rules would allow a 20% degradation of Cacapon River quality before protective measures would be taken. The Cacapon is considered a Tier 2 River, on a scale of three, which means that the water quality exceeds minimum standards necessary for aquatic life and recreation.

“We want the Cacapon River to be improved, not degraded by even one percent, much less twenty percent,” said Wilson, speaking for Friends of the Cacapon River.

We’re concerned because an implementation policy was supposed to be on the books decades ago, and now that the state finally adopted one, it doesn’t comply with federal law,” said Dianne Bady, director of the Ohio Valley Environmental Coalition. “It’s because of weak policies like this that West Virginia’s environment and its people have suffered from decades of needless pollution.”

Additionally, all present dischargers in the state are exempt from review, unless they significantly expand, and certain activities are exempt, such as valley fills from large mountaintop removal operations.

“This is what you get when you take rule-making away from expert agencies and place it in the hands of the Legislature and high..."
paid lobbyists,” said Bryan Moore, chairman of the board of the West Virginia Rivers Coalition.

“This lawsuit has national implications for clean water and could set the standard for the whole country,” said Joan Mulhern, co-chair of the Clean Water Network, a national coalition of over 1,000 advocacy organizations.

“Public health, recreation, tourism, a strong economy and West Virginia’s future are why we protect our clean water. It appears the Bush EPA would allow industry to pollute West Virginia’s rivers rather than protect them,” said Jeremiah Muller.

The environmental groups say they participated in 18 months of good-faith negotiations with the State Environmental Quality Board, but the board ended up writing a weak policy for the Legislature. The Department of Environmental Protection crafted an even weaker policy, which the Legislature passed. Several months later, the EPA gave its approval to the policy, prompting the present lawsuit.

“All of these plaintiffs would prefer to not set environmental policy through the courts,” said Dianne Bady. “But when every other avenue - the Legislature, the state agencies and the Bush EPA - demonstrates a disregard for protecting our rivers, those who work daily to protect our environment are left with no other option. It’s disappointing and a shame.”