THE SIERRA CLUB v. THE U. S. ENVIRONMENTAL PROTECTION AGENCY: A PRESENTATION OF THE CASE FILED TO CLEAN UP GEORGIA'S WATERS

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REFERENCE: Proceedings of the 1997 Georgia Water Resources Conference, held March 20-22, 1997, at the University of Georgia, Kathryn J. Hatcher. Editor. Institute of Ecology, The University of Georgia, Athens, Georgia.

Abstract. On September 22, 1994, the Sierra Club and other organizations filed a citizens suit against the United States Environmental Protection Agency, in an effort to compel the EPA to implement specific provisions of the Clean Water Act in Georgia. Judge Marvin H. Shoob presided and ordered the EPA to establish Total Maximum Daily Loads for Water Quality Limited Segments in waters of Georgia. This paper presents the details of that lawsuit.

INTRODUCTION

On September 22,1994, the Sierra Club filed a Complaint for Declaratory and Injunctive Relief against the United States Environmental Protection Agency. The Complaint was filed in an effort to "compel the Defendants to implement the Clean Water Act's provisions requiring the USEPA to identify certain environmentally impaired waters known as Water Quality Limited Segments and establish Total Maximum Daily Loads for those [Segments], in order to achieve desired standards of water quality', for certain waters in the State of Georgia. (Complaint, 1994) The suit was described in the Complaint as "a citizens suit brought pursuant to Section 505(a)(2) of the Federal Water Pollution Control Act, as amended, (commonly and hereinafter referred to as "Clean Water Act"), 33 U.S.C. Section 1365(a)(2) and under the Administrative Procedures Act, 5 U.S.C. Section 701 et.seq." (Ibid.)

The original plaintiffs in this case included the Sierra Club, the Georgia Environmental Organization, Inc. and the Coosa River Basin Initiative, Inc. In addition, on February 22, 1995, both Trout Unlimited and the Ogeechee River Valley Association joined in as plaintiffs. The defendants included John Hankinson, Regional Administrator of the USEPA; Carol Browner, Administrator of the USEPA, and; Region IV of the USEPA. The case was tried in the United States District Court for the Northern District of Georgia, Atlanta Division. Senior Judge Marvin H. Shoob presided, and made two major rulings on this case on March 25 and August 30, 1996.

The purpose of this paper is to summarize the details of this case as presented by the plaintiffs (hereafter referred to as "the Sierra Club") and the defendants (hereafter referred to as "the EPA"). Included will be descriptions of the background information on the specific issues of the Clean Water Act (hereafter referred to as "the CWA") and the Administrative Procedures Act (hereafter referred to as "the APA") addressed in this case, the Sierra Club's original Complaint, the EPA's original answer to that Complaint, and the major court orders. Table 1 contains a brief chronological list of the events of this lawsuit.

BACKGROUND

As described above, the Complaint filed by the Sierra Club used the Clean Water Act and the Administrative Procedures Act as their "tools" to convince the court to order the EPA to "clean up" the waters of the State of Georgia. The plaintiffs presented background material for their Complaint and described five specific violations of the laws and regulations of the CWA and APA. The following is a synopsis of that background material and a summary of the five counts.

The Clean Water Act

In 1972, Congress passed the Federal Water Pollution Control Act (also known as the Clean Water Act). The objective of the Act was to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." (33U.S.C.§1251). In order to achieve this goal, the EPA and individual states must determine "ambient water quality standards" (WQS) as needed to protect the "public health or welfare, enhance the quality of water and serve the purposes of" the Act, and work to minimize the discharge of pollutants into water bodies so as to achieve and maintain those ambient standards. (33U.S.C.§1313)

Table 1. Chronological List of Events The Sierra Club v. the U.S. E.P.A.

09/22/94	Plaintiffs file original complaint.
12/20/94	Defendants answer complaint.
06/29/95	Plaintiffs file for summary judgment.
07/11/95	Defendants file cross-motion for summary judgment.
07/11/95-03/25/96	Various arguments filed.
03/25/96	Judge Shoob issues first major order. Judge Shoob orders both parties to submit final remedy suggestions by 8/6/96
08/30/96	Judge Shoob issues final opinion (recorded in docket 9/3/96);
09/05/96	Defendants file appeal.

Under the Act, two major sources of water pollution are acknowledged: point source (pollution discharges from a discrete, identifiable point); and non-point source (pollution discharges from non-discrete points, i.e., those reaching water from runoff, atmosphere, and the like). (Schoenbaum and Rosenberg, 1991) The EPA is authorized to issue "National Pollutant Discharge Elimination System" (NPDES) permits to various entities, which authorize and regulate the discharge of pollution into a water body from a point source. (33U.S.C.§ 1311 and § 1342) Point source water pollution can thereby be directly controlled.

As non-point source pollution is inherently more difficult to regulate, each state is responsible for identifying "water quality limited segments" (WQLSs), which are water bodies that are unlikely to meet the identified ambient water quality standards even after point source pollution has been regulated. (Schoenbaum and Rosenberg, 1991) The state must also define a "total maximum daily load" (TMDL) for each WQLS. (Ibid.) A TMDL is the sum of pollutants from point source, non-point source and natural background pollutants and is to be set at "a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." (33U.S.C.§1313)

The CWA specifies that states submit a comprehensive list of these WQLSs and their TMDLs to the EPA for approval "from time to time, with the first submission not later that one hundred and eighty days after [the EPA publishes its identification of pollutants suitable for TMDL calculation]." (33U.S.C.§1313) As this identification was published in December 1978, all states were required to submit their WQLS and TMDL lists by June 26, 1979. (Complaint, 1994) The CWA specifies that the EPA must prepare such a list for any state that either fails to meet these time lines or any state that provides an incomplete or unacceptable list, and that the EPA must prepare this information within thirty days of such a state action. (33U.S.C.§ 1313)

Administrative Procedures Act

The Administrative Procedures Act (APA, 5U.S.C.A.§701) delineates "rules" by which federal agencies must abide in their affairs. These rules apply to all federal agencies except where "statutes preclude judicial review; or agency action is committed to agency discretion by law." {5U.S.C.A.§701(a)} Further, the Act does not apply to Congress, the Courts of the United States, governments of U.S. territories or possessions, the government of the District of Columbia, or to military authority in the field in the time of war. {5U.S.C.A.§701(b)} The Act provides courts with the authority to "compel agency action unlawfully withheld or unreasonably delayed; and hold unlawful and set aside agency action, findings and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law . . . " (5U.S.C.A.§706)

THE SIERRA CLUB'S ALLEGATIONS

The following is a summary of each count filed by the Sierra Club and the EPA's responses to those allegations. Each entry begins with the plaintiffs' statement and ends with the defendants' response. Following each series in a specific count are the requests made by the plaintiffs to the court for relief. Note that some of the counts appear to be very similar, because some were filed "in the alternative" to others. Briefly, this is a move by the plaintiffs requesting the court to review the alternative counts separately from their "counterparts", if the court rules against those counterparts. (Smith, personal communication) The court's orders will be discussed later in this paper.

Count I

- Georgia made its first WQLS submittal to the EPA in 1992, approximately 12 years after the required date. The EPA denied this allegation.

Georgia has not submitted an updated list of WQLSs, although the EPA required this no later than April 1, 1994. The EPA admitted that the list was to be submitted by April 1, and that Georgia did not submit a list by that date, but that a list was submitted in August 1994.

- Georgia has evaluated/monitored only 4,054 miles (roughly 6%) of its total 71,143 total miles of rivers and streams and, in addition, not all the acreage of lakes and reservoirs has been evaluated/monitored. Defendants admitted that only 6% of the State's rivers and streams were included in the 1992 WQLS report, but denied the allegation, based on its vague and ambiguous "evaluated/monitored" wording.
- Georgia's current WQLS list fails to include all state waters which "are actually impaired and for which TMDLs are required to be established under CWA Section 303(d)." The EPA denied this based on "insufficient knowledge" as to the accuracy of this statement.
- By suspending, reducing, and/or eliminating monitoring efforts, Georgia has rendered the "full extent of WQLSs in Georgia unknown or unknowable. Georgia suspended [its major lake monitoring program; its Toxic Substances Monitoring Project; and its Coastal Monitoring Project for 1994 and 1995] . . . and reduced [by approximately 90% its state-wide trend monitoring; its model calibration studies for various streams; and its compliance monitoring of treatment plants for 1994 and 1995]." Defendants admitted that Georgia suspended its Coastal Monitoring Project and reduced its state-wide monitoring program by 90%, its model calibration studies and its compliance monitoring of treatment plants for 1994 and 1995. Georgia "reallocated the resources" used to perform those tasks and applied them to its "recently adopted river basin management approach", and that the State will continue to reallocate its resources in such a manner to monitor all of Georgia's watersheds in their turn. The other allegations were denied.

The EPA has failed to perform a "mandatory duty" under the CWA by not identifying all impaired waters of the State of Georgia. The defendants found this allegation to be "a legal conclusion to which no response is required", meaning that the allegation is not based on factual evidence and such a statement can be offered only by a court or judge.

With these counts in mind, the Sierra Club requested that the court:

• Declare that EPA has "failed to perform its mandatory duties under [the CWA] to . . . identify all of the waters in Georgia that are WQLSs."
• Order the EPA to perform this mandatory duty.
• Order the EPA to "promulgate a new list of all WQLSs for the State of Georgia within an appropriate time." (Complaint, 1994) (Please note that all Counts request that the Court award the costs of the litigation to the plaintiffs.)

Count II:
Count II was "in the alternative" to Count I

Georgia made its first WQLS submittal to the EPA in 1992, approximately 12 years after the required date. Defendants denied this allegation.

Although the State of Georgia evaluated/monitored just a small number of its rivers and streams, the EPA approved the State's 1992 WQLS list. The EPA admitted that it did approve the 1992 list, but denied the specific allegation due to its vague and ambiguous "monitoring or evaluation" wording.

The 1992 WQLS list does not contain certain rivers and streams that it should. The EPA denied this allegation, claiming it had "insufficient knowledge" to determine if this allegation is true.

Because the State's monitoring and evaluation program is inadequate, "it is impossible to identify all rivers and streams that should be on the WQLS list." The EPA denied this allegation, claiming it had "insufficient knowledge" to determine if this allegation is true.

By approving Georgia's 1992 WQLS list, the EPA acted in a manner "that is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." The defendants found this allegation to be "a legal conclusion to which no response is required."

In addition, by failing to develop its own WQLS list, the EPA conducted an "agency action that is unlawfully withheld or unreasonably delayed; and is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." The defendants found this allegation to be "a legal conclusion to which no response is required."

In accordance with these issues, the plaintiffs asked the Court:
• To declare that EPA's "approval of the State of Georgia's WQLS violated APA Section 706(2)."
• Order Georgia's 1992 WQLS list "null and void", if the requests made pursuant to Count I were not granted.
• To declare that the EPA violated Section 303(d) of the CWA and Sections 706(1) and (2) of the APA when it failed to promulgate its own WQLS list in Georgia as a substitute for "Georgia's deficient list."
• Order the EPA to "promulgate a new Section 303(d) list of all WQLSs for the State of Georgia within an appropriate time", if the requests made under Count I were not granted. (Complaint, 1994)

Count III

The State of Georgia failed to submit a TMDL for EPA approval by the required date of June 26, 1979. The EPA explained that although Georgia did not submit a TMDL to the EPA by this date, the State did submit a report on "Wasteload Allocations (WLAs) by that date, the analysis for which is the functional equivalent of the analysis required for developing TMDLs."

Georgia has failed to submit any TMDLs for a WQLS pursuant to Section 303(d)(2) of the CWA. The defendants responded in the same manner as to the allegation preceding this.

The EPA has also failed to establish any TMDLs for a WQLS in Georgia, and "no TMDL has been implemented or utilized for any WQLS in Georgia so as to remove that water body from designation as 'water quality limited'." The EPA admitted that it had not established any TMDLs for WQLSs in Georgia, but denied that no water bodies were removed from the 1992 list, based on the use of the State's WLAs as the functional equivalents of TMDLs. These WLAs have been "incorporated into Georgia's NPDES and Construction Grants Program, resulting in numerous wastewater facility upgrades, and as such have been implemented to ensure attaintment of Water Quality Standards."

In Georgia, no TMDLs have been used to modify any permit in order to reduce pollutant effluent that is causing a water body to be a WQLS. Defendants responded in a manner similar to the preceding allegation, by admitting that although no TMDLs have been used in this capacity, WLAs (which are the functional equivalents of TMDLs) have been used to reduce pollutant effluent and to attain water quality standards.

No TMDL has undergone public review processes, and no EPA-approved TMDLs have been included in Georgia's Water Quality Management Plan. The EPA explained that WLAs have undergone the public notice or participation process, that the State has "conducted public meetings in connection with the development of TMDL(s) for the Chattahoochee River Basin", and that although TMDLs have not been incorporated into Georgia's Water Quality Monitoring Plan, WLAs have "been incorporated into Georgia's basin monitoring initiative."

Georgia does not have any TMDLs established for the purposes of ensuring that "the cumulative impacts of point sources and non-point sources, with a margin of safety, are taken into account in the permitting process or for assessing the adequacy of [programs] for controlling non-point sources." The EPA responded that it has not objected to the State's WLAs (which are the functional equivalent of TMDLs) in this capacity.

By failing to submit TMDLs for WQLSs, the State has "constructively refused to act." The defendants found this allegation to be "a legal conclusion to which no response is required."

Because the State has failed to submit TMDLs for its WQLSs, the EPA is required to do so, pursuant to the CWA. By failing to do so, the EPA has failed to "perform the Agency's mandatory duty under [the CWA]." The defendants found this allegation to be "a legal conclusion to which no response is required."

The plaintiffs asked the court to consider these issues and to:
• Declare that the EPA has failed to perform its mandatory duties under the CWA (i.e., to set TMDLs for Georgia's WQLSs).
• Order the EPA to perform this mandatory duty. (Complaint, 1994)

Count IV:

Count IV was "in the alternative to" Count III

The EPA, by failing to establish TMDLs for Georgia's WQLSs, has performed an "agency action unlawfully withheld or unreasonably delayed, and is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law in violation of [the APA]." The defendants found this allegation to be "a legal conclusion to which no response is required."

Pursuant to this statement, the Sierra Club requested that the court:

- Declare that the EPA's failure to establish TMDLs for Georgia's WQLSs is a violation of the CWA and the APA.
- Order the EPA to "promulgate and implement TMDLs for all of the WQLSs in [Georgia] within an appropriate time", if the plaintiffs' requests in Count III are not granted. (Complaint, 1994)

Count V:

Count V was "in the alternative to" Counts III and IV

Georgia has failed to submit an acceptable list of WQLSs and proposed TMDLs for those Segments by the dates set pursuant to the CWA. The EPA admitted that Georgia has not submitted a list of TMDLs, or WQLSs "targeted for TMDLs", but that the State did submit WLAs (which are the functional equivalent of TMDLs), and on December 15, 1994, the State submitted a draft TMDL.

The EPA is responsible for setting the schedules by which states are to submit TMDLs, but has not done so in Georgia. The EPA admitted this responsibility pursuant to the CWA, but denied that it has not set such a schedule.

By not setting such a schedule, the EPA has failed to perform a mandatory agency action and has performed an "agency action unlawfully withheld or unreasonably delayed; and is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law in violation of [the APA]." The defendants found this allegation to be "a legal conclusion to which no response is required.

The EPA has "prevented achievement of the goals of the federal anti-pollution policy" through these actions. The EPA denied this allegation.

The Sierra Club asked the court to:

- Declare that the EPA has failed to perform a mandatory agency duty under the CWA (by failing to establish a schedule for Georgia's submission of TMDLs for the State's WQLSs).
- Order the EPA to perform this mandatory duty if the plaintiffs' requests under Counts III and IV are not granted. (Complaint, 1994)

Summary of Counts

In short, the plaintiffs asked the court to:

Count I: Declare that the EPA failed to perform its mandatory duty under the CWA to identify all WQLSs in Georgia and order the EPA to perform that duty;

Count II: (in the alternative to Count I) Declare that the EPA violated the APA and CWA by failing to identify an WQLSs in Georgia, declare Georgia's WQLS list null and void, and order the EPA to prepare a new WQLS list for Georgia; (if the requests made under Count I were not granted);

Count III: Declare that the EPA failed to perform its mandatory duty under the CWA to define TMDLs for all WQLSs in Georgia, and order the EPA to perform that duty;

Count IV: (in the alternative to Count III) Declare that the EPA violated the APA and CWA by failing to define TMDLs for an WQLSs in Georgia, and order the EPA to define them; (if the requests made under Count III were not granted);

Count V: (in the alternative to Counts III and IV) Declare that the EPA failed to perform its mandatory agency duty under the CWA to establish a schedule for Georgia to submit TMDLs for WQLSs in Georgia; order the EPA to define TMDLs for all WQLSs in Georgia; (if the requests made under Counts III and IV were not granted).

It is important to note that plaintiffs filed a motion for summary judgment in their favor on June 15, 1995, and defendants filed a cross-motion for summary judgment in their favor on July 11, 1995. Summary judgment is a judgment by a court that there is no real issue between the parties, or that there is an absence of material fact necessary to warrant a trial on the issues presented by a party. This concept plays a notable role in Judge Shoob's decisions on this case.

JUDGE SHOOB'S MARCH 25 ORDER

On March 25, 1996, Senior Judge Marvin H. Shoob issued his first major ruling in this case. The following is a brief summary of his rulings on each count alleged by the plaintiffs.

Count I: "On the issue of monitoring, the Court concludes that the EPA does not have a mandatory duty to monitor a state's waters under the Clean Water Act. Therefore, defendants are entitled to summary judgment on Count I." (Shoob, 1996)

Count II: "The record, as it stands, is insufficient for the court to determine whether the EPA's approval of Georgia's 1994 WQLS list of water quality limited segments was arbitrary and capricious. Therefore, the Court denies both plaintiffs' and defendants' motions for summary judgment." (Shoob, 1996)

Count III: "The Court finds that EPA's failure to disapprove of Georgia's inadequate TMDL submissions was arbitrary and capricious in violation of the Administrative Procedure Act and that the EPA's failure to promulgate TMDLs for Georgia violates the Clean Water Act. Therefore, the Court grants summary judgment in favor of plaintiffs on their TMDL claims . . . A decision is 'arbitrary and capricious' within the meaning of the [Administrative Procedures Act] if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise." (Shoob, 1996)

Count IV: (in the alternative to Count III) See ruling under Count III.

Count V: (in the alternative to Counts III and IV) See ruling under Count III.

In other words, Judge Shoob found that the CWA does not dictate that the EPA monitor waters of a state, but that the EPA did violate the CWA and APA when it approved Georgia's TMDL submissions and when it failed to promulgate TMDLs for WQLSs within the State of Georgia.

Judge Shoob made some strong statements in his opinion of the case. In this order, he wrote: "The undisputed facts show that Georgia has hundreds of heavily polluted waters that do not attain applicable water quality standards. Despite this fact, Georgia has failed for over sixteen years to comply with the Clean Water Act's requirement that states identify total maximum daily loads of pollutants in waters that do not attain applicable standards. At its current pace, Georgia will take more than one hundred years to comply with the Clean Water Act..." (Shoob,1996). In addition, he stated: "Georgia and EPA have clearly failed to comply with the time deadlines of the Clean Water Act . . . It is undisputed that Georgia failed to submit a WQLS list to the EPA until September 25, 1992, over thirteen years after the statutory due date..." (Ibid.)

With regard to the TMDL issue specifically, Judge Shoob stated: "Georgia clearly has not complied with the TMDL requirements of the Clean Water Act. In over sixteen years since Georgia's first TMDL submissions were due, Georgia has developed only two TMDLs, both submitted after the filing of this action." (Shoob, 1996) (Both TMDLs dealt with dissolved oxygen levels. One was for Line Creek in Peachtree City, the other for Big Flat Creek in Loganville. The EPA approved both TMDLs). "...after reviewing these TMDLs, the Court concludes that they clearly do not satisfy the requirements of §303(d) because they do not provide daily limits for priority pollutants on identified WQLSs. Furthermore, Georgia's WLAs are not TMDLs because they are not daily loads, they are not for WQLSs, and they do not account for seasonal variations as required by CWA." (Ibid.)

The Judge ordered both parties to submit briefs of their suggestions for the appropriate remedy regarding the TMDL violation. The deadline for submittal was August 6, 1996, and both parties presented their briefs on that day. After reviewing these, Judge Shoob issued his second major order on the case, on August 30, 1996.

JUDGE SHOOB'S ORDER ON T.M.D.L.s

On August 30, 1996, after reviewing the briefs presented by each party on this issue as well as all other information submitted in this case, the Judge presented his opinion on the TMDL issue. He explained that his order was intended to "establish the basic parameters of a short term and long term TMDL process, to provide defendants the opportunity to utilize the resources of the State of Georgia and coordinate defendants' TMDL program with the State's River Basin Management Program, and to ensure that defendants are ultimately responsible for completing each step in the process." (Shoob, 1996) This order was presented in five sections, including: TMDL development; TMDL implementation; reporting on the TMDL process; the court's continuing jurisdiction; and the arrangement for attorneys fees, costs and expenses. The following is a description of these sections.

TMDL Development

Judge Shoob ordered the EPA to establish TMDLs for all WQLSs listed in Georgia's existing and future WQLS lists. These TMDLs "shall establish daily loads and shall account for seasonal variations." (Shoob, 1996) The Judge provided a schedule for the EPA's compliance with this order. It was designed to give the EPA the option to coordinate the development of the TMDLs with the State of Georgia's River Basin Management Plan. This schedule is summarized in Table 2.

If the EPA chose not to follow the river basin management approach, the Judge specified that the Agency must establish the TMDLs on a schedule of "no less than 20% of the total number of TMDLs per year for five years, so that all TMDLs are established within five years of the date of this order." (Shoob, 1996) In summary, the Judge ordered the EPA to establish the appropriate TMDLs for all WQLSs in Georgia no later than June 30, 2001.

TMDL Implementation

Judge Shoob ordered the EPA to take specific actions in the implementation of the TMDLs he ordered them to establish.

Specifically, his order requires the Agency to implement the TMDLs through the NPDES permitting program. Within one year of establishing the TMDLs the EPA must modify, revoke, reissue or terminate any existing permits as needed to implement the load requirements. In addition, the EPA must require new permittees or new dischargers to demonstrate that the existing load limits are sufficient to allow them to discharge into a particular water segment. Also, the EPA must ensure that existing dischargers are complying with schedules designed to allow a particular WQLS to come into compliance with water quality standards. In short, all NPDES permits issued by the EPA

Table 2. Court Ordered Compliance Schedule The Sierra Club v. the US EPA

River Basin	Year Due (State)	Year Due (EPA) (on June 30)
Chattahoochee	1996	1997
Flint	1996	1997
Tallapoosa	1997	1998
Coosa	1997	1998
Tennessee	1997	1998
Savannah	1998	1999
Ogeechee	1998	1999
Ochlochonee	1999	2000
Suwannee	1999	2000
Satilla	1999	2000
St. Mary's	1999	2000
Oconee	2000	2001
Ocmulgee	2000	2001
Altamaha	2000	2001

* these dates were set by the State in accordance with the River Basin Management Plan.

for discharges into basins in Georgia may be revoked, reissued, or terminated in the course of implementing the TMDLs. This order further requires the EPA to consider TMDLs when reviewing Georgia's NPDES program. Another facet of the order dictates that the EPA shall initiate revision of the State NPDES program to include the TMDLs if Georgia fails to do so. The EPA must withdraw its certification of the State's NPDES program if the State further refuses to implement TMDLs through the program.

Reporting and Continuing Jurisdiction

This court order compels the EPA to provide an annual report, on the 31st day of each December, to the Court regarding the Agency's progress with this order. Specifically, the report will include:

- what TMDLs were established during the year,
- what steps were taken during the year to implement the TMDLs,
- what public participation opportunities were offered in the TMDL implementation program,
- a review of the success of the TMDLs and their implementation in achieving water quality standards, and
- information on Georgia's involvement and cooperation in this area.

Jurisdiction over this case will stay with the Court as dictated in the order. After a two year period, however, the EPA may apply to the Court, requesting that the Court terminate this jurisdiction. The Court will base its decision on any evidence that the EPA has made a "good faith effort to comply with this order." (Shoob, 1996)

CONCLUSIONS

According to citizens, scientists, popular literature and now the United States District Court for the Atlanta area, the Environmental Protection Agency and the State of Georgia have failed for many years to implement the water quality protection provisions of the Clean Water Act in Georgia's waters. The plaintiffs' Complaint and Judge Shoob's subsequent rulings are an important step toward achieving the water quality standards defined by the Act. The orders in this case are specific and clear in nature and the EPA and the State of Georgia have been told explicitly what must be done.

By June 30, 2001, the EPA must have total maximum daily loads established for all water quality limited segments in the State of Georgia. The EPA must also modify, revoke, reissue or terminate all existing point source pollution discharge permits as necessary to implement these TMDLs. If the State of Georgia fails to incorporate these TMDLs into their point source discharge program, the EPA must withdraw its certification of the State's program. Due to the clarity of the orders, it should not be difficult to determine whether these entities comply with the court orders.

The work by the plaintiffs and their attorneys is encouraging and exciting. Through the courts they were able to compel the federal government and, in turn, the state government, to perform the duties they are required by law to perform. This case illustrates the power of the Clean Water Act and the opportunities it affords citizens to ensure that government officials comply with the environmental protection laws of our country. All involved parties should be applauded for the dedication this job surely required.

ACKNOWLEDGMENTS

I would like to thank Dr. Cathy Pringle, Professor J. Owens Smith, and Professor Laurie Fowler for reviewing this paper. Also, I am grateful for the guidance and information all three have given me.

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