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For Immediate Release

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AFBF, Plaintiffs File for Judgment in Chesapeake Bay Case

WASHINGTON, D.C., January 30, 2012 -- The Environmental Protection Agency's Total Maximum Daily Load regulation (TMDL) for the Chesapeake Bay watershed establishes new controls on land use that trespass into territory Congress legally reserved for state governments, according to the opening brief for summary judgment, filed Friday, Jan. 27 by the American Farm Bureau Federation in the case "AFBF vs. EPA."

The TMDL will impact all economic activity in the watershed with potentially devastating impacts for agriculture within the watershed, according to the American Farm Bureau Federation.

"We all want a clean and healthy Chesapeake Bay," said AFBF President Bob Stallman. "This lawsuit is about how we reach that common goal. Farm Bureau believes EPA's new regulation is unlawful and costly without providing the environmental benefit promised. Farmers in the watershed have clearly delivered a documented track record of continuous improvement, through conservation and sound stewardship and will continue their dedicated efforts."

Maryland Farm Bureau President Patricia Langenfelder, a livestock and grain farmer from Kennedyville, said the state organization supports AFBF's actions. "Maryland farmers have been working for decades for a cleaner Chesapeake Bay but we have to work together reasonably so that our efforts make a difference," she said.

The TMDL dictates how much nitrogen, phosphorous and sediment can be allowed into the Bay and its tributaries from different areas and sources. According to the brief, TMDL proposals are "informational tools" under the Clean Water Act. But, in this action, EPA's final TMDL goes far beyond traditional and lawful scope and authority.

"It imposes detailed pollutant 'allocations' among sources throughout the Bay's vast watershed," the brief charged. "These mandatory allocations of allowable pollutant

loading among farms, towns, and homeowners amount to nothing short of a federal TMDL implementation plan. This plan directly encroaches on state authority over land and water quality planning – not only in states bordering the Bay, but in states hundreds of miles away. EPA’s action is not authorized under the (Clean Water) Act.”

The brief also charges that the EPA’s TMDL is based on flawed technical analysis and computer models that have proved to be fundamentally unworkable, and not appropriate as a basis for any regulatory program.

“(EPA) used those models for purposes beyond their predictive capabilities and relied on key assumptions that are demonstrably false,” the brief stated. “Those modeling defects are fatal, even if EPA had the authority (which it does not) for the Final TMDL.”

A major economic study has also indicated that enforcement of the EPA’s Bay plan would be expensive -- a fact magnified by the nation’s current fiscal challenges. In 2004, a “Blue Ribbon Panel” report estimated that achieving water quality standards for the Bay would cost \$28 billion in total upfront capital costs, plus \$2.7 billion in subsequent annual costs.

Joining AFBF as plaintiffs in the case, filed in U.S. District Court for the Middle District of Pennsylvania, are the Pennsylvania Farm Bureau, The Fertilizer Institute, National Pork Producers Council, National Corn Growers Association, National Chicken Council, U.S. Poultry & Egg Association, National Turkey Federation and the National Association of Home Builders.