In a case involving management of a watershed hundreds of miles east of his state's border, and that will be decided by a U.S. appeals court in Philadelphia, Kansas Attorney General Derek Schmidt has taken much more than a passing interest.

He is leading a coalition of states that have filed an amicus brief asking the federal court to reject the U.S. Environmental Protection Agency's plan to require states in the Chesapeake Bay region to develop processes to reduce nutrient runoff (nitrogen, phosphorus and sediment).

“The issue is whether EPA can reach beyond the plain language of the Clean Water Act and micromanage how states meet federal water-quality standards,” Schmidt says.

Attorneys general from Indiana, Michigan, Nebraska, North Dakota, South Dakota and 15 other states joined Schmidt in signing the brief.

The attorneys general argue that by imposing its own deadlines and nutrient “allocations,” the EPA's plan for the Chesapeake region unlawfully limits the ability of states to have their own management plans.

“Congress deliberately structured the Clean Water Act to involve states in the decision-making process when nonpoint source runoff is being regulated,” Schmidt says.

The reason, he adds, is that this type of runoff comes from individual businesses and property owners — homes, farms and manufacturing facilities, for example. As a result, the regulation of nonpoint sources of pollution has implications for private property rights and land-use decisions.

“Every state wants to retain control of its property decisions,” Schmidt says.

The federal Chesapeake Bay plan covers six states and the District of Columbia. Only one of those jurisdictions, West Virginia, signed the amicus brief. But Schmidt says the case also has clear implications for the future management of watersheds in the Midwest. For example, the EPA is now working to identify target concentrations of nitrogen and phosphorus for the northern Gulf of Mexico and Mississippi River.

Could that eventually be followed by EPA-imposed deadlines and binding pollutant allocations for states across the Mississippi River watershed? Schmidt worries the answer could be yes, unless court rulings stop it from occurring.

The EPA, though, says its restoration plan for Chesapeake Bay reflects cooperation and input from the six affected states and the District of Columbia. The EPA’s senior agricultural counsel, Sarah Bittleman, has said, too, that the agency does not have any plans to spearhead a similar effort for the Mississippi River watershed.

By: Carolyn Orr

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