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Oliver Houck, The Clean Water Act TMDL Program: Law, Policy, and Implementation 2nd Ed.

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Oliver Houck, *The Clean Water Act TMDL Program: Law, Policy, and Implementation* 2nd Ed.

include the enactment of water conservation standards; the establishment by the legislatures of minimum stream flows; and provisions to protect those flows from pumping of hydrologically connected groundwater; the elimination of unregulated groundwater pumping; the imposition of extraction taxes on water pumped from any well within a certain distance of any river, spring or lake; and for the implementation of regulations that will impose homeowners and businesses to pay the true cost of water. The author describes each of these proposed solutions in detail, and urges the reader that each of us, as a citizen, can contribute to effect changes and make a difference.

Gloria Maria Soto

OLIVER HOUCK, THE CLEAN WATER ACT TMDL PROGRAM: LAW, POLICY, AND IMPLEMENTATION 2ND ED., Environmental Law Institute, Washington, D.C. (2002); 362pp; \$35.96; ISBN 1-58576-038-2, softcover.

In the second edition of his book on the total maximum daily load ("TMDL") program, Oliver Houck provides a useful guide to section 303(d) of the Clean Water Act ("CWA"). Simply stated, section 303(d) requires the use of water quality standards when the best available technology requirements do not bring a body of water up to standard. Section 303(d) serves as a safety net for when technology-based standards do not accomplish the goals of the CWA. Houck exposes the history and main issues and controversies associated with this section of the CWA. The reader not only learns about the Clean Water Act, but also immerses herself into other topics such as federalism, historical patterns of environmental law, and the wild world of Washington politics. The back cover of the book touts this work as "The First Complete Guide to TMDLs Ever Published." "Complete" might be the best adjective to describe the work.

The first chapter sets the roadmap for the book and also establishes the tone. Drawing upon a metaphor, Houck starts the book by stating that the CWA "is changing course." From the beginning, Houck tries to make the book accessible to all readers. Lawyers, scientists, citizens, and regulators feel at home when reading this book because it provides the proper balance of law, policy, history, and scientific data to give perspective to the unrelenting problem of water pollution.

Chapter two entangles the reader in the history of the CWA. He charts the changing course of water pollution laws starting with Water Pollution Control Act of 1948. Houck starts the reader with a quandary about the oldest dilemma in environmental law: should the nation and states protect the environment or simply manage it for human use? He provides the arguments for a water quality based set of standards and also a technology-based set of standards. He also discusses in depth the federalism arguments associated with

controlling water pollution standards. Houck quotes governors, professors, directors of water utilities boards, representatives in Congress, and numerous others to give the reader the parameters of the state sovereignty debate in regards to water quality. The reader comes out of chapter two with a proper historical perspective of philosophical and practical arguments of varying ways to control water pollution.

Chapter three explores the history of the implementation of section 303 of the CWA. Houck explains that in the 1970's, the Environmental Protection Agency ("EPA") spent most of its time and resources towards establishing the technology-based standards or rather the floor above which states must meet. The "safety net" of section 303(d) concerned them very little because the triggers of 303(d) came into play when polluted waters did not meet the water quality standards under the best available technology. The EPA's complacent attitude changed as various rounds of citizen suits compelled the EPA to act on section 303(d). The book explains that until 1996 the EPA only acted when forced to by court orders. In that same year, the EPA started to pursue on its own initiative, implementation of section 303(d). These measures included assembling a balanced group of twenty individuals to discuss every aspect of the TMDL program. Houck details the problems and issues associated with the TMDL program as developed by the twenty-person group. The eligible waters, scientific uncertainty, implementation, and controlling nonpoint sources comprise four of the main problematic issues.

Chapter four describes the new framework for the TMDL program by showing how the EPA dealt with controversial issues. The chapter also reveals other actions by federal agencies and states that helped shape the TMDL program. The chapter explains that the TMDL program has been completely driven by litigation. Houck postulates that citizen suits, Congress, and the EPA may push along the implementation of the TMDL program, but getting states to act becomes the crucial element of success.

In chapter five, Houck recaps the course that the CWA has run as well as indicates where the EPA, states and Washington are taking the CWA. The chapter expresses the theme that the TMDL is not a perfect system and strong opponents including legislatures heavily dominated by forestry, agricultural and construction interests create hurdles in creating an efficacious TMDL program. Further, it reinforces that the EPA may only go as far as the CWA allows enforcement of TMDL programs. The EPA must change the statutory language of CWA in order to extend its reach under section 303(d). Houck asserts that in order for a TMDL program to be successful, the EPA, among others, must convince the majority of the states to buy into the TMDL program. He concludes the chapter by projecting the reservations of many states and industries because implementation of TMDL requires much more than consensus based decisions to reduce pollution.

Chapter six provides an explanation of the current TMDL rules, adopted in 2000. Houck also speculates about the effectiveness of the current program. This chapter explains the true nuts and bolts of the TMDL program. Houck writes with an historical perspective when describing the “showdown” that occurred during the adoption of the final TMDL rules in 2000. The EPA attempted to take a carrot and stick approach to the TMDL program. However, strong interest groups opposed to the potential for regulation of nonpoint sources disagreed with many of the sticks. Houck wrote, “[w]hat ensued was a high-stakes clash of power in which the EPA won the battle but its opposition, strongly backed by Congress, won the war.” He then proceeds to explain how the final rules became watered down and heavily focused on the carrots without the enforcement power of the sticks. The changing administration of the EPA also reduced the TMDL program. At the end of the chapter, Houck provides his analysis of the current state of the TMDL program. Even with its shortcomings, he agrees that the program could be effective. However, he notes that a corollary of a successful TMDL program requires consequences. A successful program cannot survive solely with carrots. Houck ends the chapter on the notion that if the EPA creates consequences, the agency may make significant impacts in abatement of water pollution.

Oliver Houck concludes the book with his final thoughts on the TMDL issue. He notes the magnitude of the shift towards a TMDL program. He reminds the reader that the technology-based regulations significantly reduced water pollution, but the nation’s waters still contain pollution. He sees TMDLs as the frontier for reducing the elusive yet great in quantity pollutants from nonpoint sources. TMDLs are not perfect, he asserts, but he states, “if ever there were a stakeholder program likely to produce more results than bologna, it is §303(d).” In the end he acknowledges the challenges to implementing and sustaining a TMDL program but also relates the potential viable and effective solution that could result from the TMDL program.

The Clean Water Act TMDL Program: Law, Policy, and Implementation must make its way on the desk of every lawyer, citizen, and politician concerned or working with CWA issues. The book provides useful knowledge and truly lays out in detail the future of the CWA. The seven chapters provide a magnitude of information. Houck also packed the appendices with useful information such a summary of TMDL litigation by state and a summary of TMDL determinations up to April 1998. Oliver Houck wrote a book useful to everyone affected and who will continue to be affected by the CWA.

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