



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0140; FRL-10008-42-OGC]

Proposed Settlement Agreements, Safe Drinking Water Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed settlement agreement to address several claims in a lawsuit filed by the Waterkeeper Alliance, Inc., Waterkeeper Chesapeake, Inc. and California Coastkeeper (d/b/a California Coastkeeper Alliance)("Plaintiffs") in the United States District Court for the Southern District of New York. On January 30, 2019, the Plaintiffs filed a complaint pursuant to the Safe Drinking Water Act and the Administrative Procedure Act seeking declaratory and injunctive relief to resolve the claims regarding EPA's obligations to develop new and revised National Primary Drinking Water Regulations. Under the proposed settlement agreement, the EPA would agree to deadlines with respect to certain actions under the Safe Drinking Water Act.

DATES: Written comments on the proposed settlement agreements must be received by **[insert date 30 days after date of publication date in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2020-0140, online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). The EPA encourages the public to submit comments via www.Regulations.gov, as there will be a delay in processing mail and no hand deliveries will be accepted. For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>

FOR FURTHER INFORMATION CONTACT: Leslie Darman, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-5452; email address: Darman.Leslie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement.

On January 30, 2019, the Plaintiffs filed a complaint pursuant to the Safe Drinking Water Act (SDWA) and the Administrative Procedure Act (APA) seeking declaratory and injunctive relief to resolve several claims regarding EPA’s obligations to develop new and revised National Primary Drinking Water Regulations (NPDWRs). First, the Plaintiffs allege that the deadlines in Section 1412(b)(1)(B)(i) of the SDWA for publishing the Contaminant Candidate List (CCL) is based on fixed five-year intervals and therefore, the EPA failed to perform a mandatory duty to publish the fifth CCL by February 6, 2018, and the EPA has unreasonably delayed publication of the CCL. Second, the Plaintiffs allege that the deadlines in Section 1412(b)(1)(B)(ii) of the SDWA for publishing regulatory determinations are based on

fixed five-year intervals and therefore, the EPA failed to perform a mandatory duty to publish the fourth regulatory determination by August 6, 2016, and the EPA has unreasonably delayed its publication.

Finally, the Plaintiffs' complaint also includes claims under the SDWA and the APA with respect to EPA's treatment of certain contaminants covered by the Six-Year Review process in Section 1412(b)(9) of the SDWA: chromium, trichlorethylene (TCE), tetrachloroethylene (PCE), and a group of microbial and disinfection byproducts (MDBPs). The Plaintiffs allege that EPA unreasonably delayed and failed to perform a mandatory duty to review the NPDWR for total chromium and determine whether to revise it. The Plaintiffs also allege the EPA violated the APA because the Agency has unreasonably delayed completion of the health assessment of chromium. The Plaintiffs claim that the EPA unreasonably delayed and failed to perform an alleged mandatory duty to revise the NPDWRs for TCE, PCE, and the MDBPs within the same six-year review period in which EPA identified the contaminants as appropriate for revision, or to meet the deadlines for proposal and promulgation of NPDWRs in Section 1412(b)(1)(E) of the SDWA.

Under the proposed settlement agreement, the EPA would agree to deadlines for (1) publishing a proposed regulatory determination for at least five contaminants that are listed on the Fourth CCL; (2) signing for publication in the Federal Register the Fifth and Sixth CCLs; (3) making a determination as to whether the existing NPDWR for chromium is appropriate for revision; (4) signing for publication in the Federal Register a proposal to revise the NPDWRs for the MDBP contaminants identified as candidates for revision in the EPA's Six-Year Review 3, published on January 11, 2017; and (5) signing for publication in the Federal Register a notice of final action on the proposal to revise the NPDWRs for the MDBPs. If the EPA fails to meet any of these deadlines, Plaintiffs' sole remedy under this Agreement shall be to reopen this lawsuit after undertaking the informal dispute-resolution procedures.

For a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed settlement from persons who are not named as parties to the litigation in question. If so requested, EPA will also consider holding a public hearing on whether to enter into the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the SDWA. Unless EPA or the Department of Justice determines that consent to this proposed settlement agreement should be withdrawn, the settlement agreement will be signed, and the parties will notify the Court of the settlement agreement and seek a court order dismissing with prejudice all claims in this action. If the Court does not enter such an order, the settlement agreement will have no force or effect.

II. Additional Information About Commenting on the Proposed Settlement Agreement.

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA-HQ-OGC-2020-0140) contains a copy of the proposed settlement agreement. The official public docket is located at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The regular hours of the EPA Docket Center Public Reading Room are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; however, due to the COVID-19 pandemic, there may be limited or no opportunity to enter the docket center. At the time of this printing, the docket center is closed to public visitors out of an abundance of caution for members of the public and EPA staff to reduce the risk of transmitting COVID-19. During the closure, Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services, see <https://www.epa.gov/dockets>. The telephone number for the

Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA’s website at www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. EPA has not included any copyrighted material in the docket for this proposed settlement. If commenters submit copyrighted material in a public comment, it will be placed in the official public docket and made available for public viewing when the EPA Docket Center is open.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. The EPA encourages the public to submit comments via www.Regulations.gov. There will be a delay in processing mail and no hand deliveries will be accepted due to the COVID-19 pandemic.

EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be

identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 10, 2020.

Steven Neugeboren,
Associate General Counsel.

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