



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0367; FRL-11167-01-OGC]

### Proposed Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding "Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency," notice is hereby given of a proposed settlement agreement that would resolve *Gunpowder Riverkeeper v. Regan, et al.*, No. 1:20-cv-02063 (D.D.C.). On July 29, 2020, Gunpowder Riverkeeper (Plaintiff) filed a complaint in the United States District Court for the District of Columbia alleging that EPA's approval of Maryland's submission of Total Maximum Daily Loads of Polychlorinated Biphenyls (PCB TMDLs) for the Gunpowder and Bird Rivers was arbitrary and capricious in violation of the Administrative Procedure Act (APA). EPA seeks public input on a proposed settlement agreement prior to its final decision-making with regard to potential settlement of the litigation.

**DATES:** Written comments on the proposed settlement agreement must be received by

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0367 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Additional Information About Commenting on the Proposed Settlement Agreement" heading

under the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-9616; email address: mullee.alec@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Additional Information About the Proposed Settlement Agreement**

A TMDL is the maximum amount of a pollutant that could enter a waterbody without causing a violation of water quality standards. The Clean Water Act (CWA) requires states to submit TMDLs for impaired waters to EPA for approval or disapproval. The Maryland Department of the Environment (MDE) listed the Gunpowder River and the Bird River as impaired for PCBs in fish tissue in 2006 and 2008, respectively. In 2015, MDE established PCB TMDLs concerning those impairments. In 2016, EPA approved the PCB TMDLs.

In July 2020, Plaintiff filed a lawsuit challenging EPA's approval. In October 2021, EPA and Plaintiff jointly requested the court to hold the case in abeyance so that they could engage in settlement negotiations. In the proposed settlement, EPA would agree to begin fish tissue sampling in specified areas by December 1, 2023; to make the results of the sampling available on its website and submit them to MDE; and to hold a public meeting on PCB TMDL implementation by March 30, 2026 if neither MDE nor Baltimore County does so by September 30, 2025.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or APA.

**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 Docket ID No. EPA-HQ-OGC-2023-0367) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through <https://www.regulations.gov>. You may use <https://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.”

### *B. How and to whom do I submit comments?*

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0367 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> 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. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email 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 <https://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, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA does not plan to consider these late comments.

**Steven Neugeboren,**

*Associate General Counsel.*

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