



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2024-0145; FRL-11854-01-OGC]

Proposed Consent Decree, Clean Water Act Claim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; 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 consent decree in *Sierra Club, et al. v. EPA, et al.*, No. 3:24-cv-00130 (S.D.W. Va. 2024). On March 18, 2024, the Sierra Club, the West Virginia Highlands Conservancy, Inc., and the West Virginia Rivers Coalition, Inc. (collectively, "Plaintiffs") filed a complaint in the United States District Court for the Southern District of West Virginia against EPA alleging that the Agency failed to perform a mandatory duty under the Clean Water Act (CWA) to establish Total Maximum Daily Loads (TMDLs) for certain waters located in the Lower Guyandotte River Watershed in West Virginia that are impaired due to ionic toxicity. This complaint followed Plaintiffs' submission to EPA of a Notice of Intent to Sue on March 21, 2023. EPA seeks public input on a proposed consent decree prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed consent decree 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-2024-0145 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 Consent Decree” 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 Consent Decree

On March 18, 2024, Plaintiffs filed a complaint in Federal district court asserting that EPA failed to perform a mandatory duty under the CWA to establish TMDLs for certain waters located in the Lower Guyandotte River Watershed in West Virginia that are biologically impaired due to ionic toxicity (Ionic Toxicity TMDLs). This complaint followed Plaintiffs’ submission to EPA of a Notice of Intent to Sue (NOI) on March 21, 2023. Following submission of the NOI, Plaintiffs and EPA initiated settlement discussions, which resulted in the proposed consent decree. Under the consent decree, EPA would be obligated to establish Ionic Toxicity TMDLs for 11 waterbody segments in the Lower Guyandotte River Watershed by January 15, 2025. In exchange, Plaintiffs would permanently release any and all claims against EPA that the Agency must establish ionic toxicity TMDLs for any other waterbody segments within the Lower Guyandotte River Watershed except for six identified waterbody segments and any waterbody segments that are listed as biologically impaired for the first time after June 1, 2023. For those six waterbody segments and any waterbody segments listed as biologically impaired for the first time after June 1, 2023, Plaintiffs would refrain from bringing any such claims against EPA until January 15, 2039. Further, Plaintiffs would not bring such claims against EPA for any West Virginia waterbody segment outside the Lower Guyandotte River Watershed until after January 15, 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 consent decree from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree 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.

II. Additional Information About Commenting on the Proposed Consent Decree.

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2024-0145) contains a copy of the proposed consent decree. 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 consent decree 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-2024-0145 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 M. Neugeboren,

Associate General Counsel.

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