



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2025-0019; FRL-12555-01-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 *Delaware Riverkeeper Network et al. v. U.S. EPA et al.*, Docket No. 2:24-cv-05308 (E.D. Pa.). On October 2, 2024, Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, filed a complaint in the United States District Court for the Eastern District of Pennsylvania. The complaint alleges that: the EPA failed to comply with its mandatory duty under the Clean Water Act (CWA) to promulgate revised water quality standards to protect aquatic life in the Delaware River within 90 days of proposal; and the EPA's failure to promulgate revised water quality standards is an unreasonable delay under the Administrative Procedure Act. The 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-2025-0019 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: Katie Spidalieri, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-4138; email address: *Spidalieri.Katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

While states have the primary responsibility for reviewing, establishing, and revising water quality standards for their waters, CWA section 303(c) directs the EPA to promulgate water quality standards where the EPA Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA. CWA section 303(c)(4)(B). Such a determination is referred to as an “Administrator’s Determination.”

On December 1, 2022, the EPA issued an Administrator’s Determination for part of the Delaware River in Delaware, New Jersey, and Pennsylvania pursuant to CWA section 303(c)(4)(B).¹ The EPA determined that two types of revised water quality standards are necessary to meet the requirements of the CWA in the Delaware River: (1) revised aquatic life designated uses that provide for propagation of fish; and (2) corresponding dissolved oxygen criteria that protect the propagation use.

On December 21, 2023, the EPA proposed revised water quality standards for an approximately 38-mile stretch of the Delaware River from river miles 108.4 to 70.0. 88 FR 88315 (December 21, 2023). Specifically, the EPA proposed a designated use of protection and propagation of resident and migratory aquatic life along with dissolved oxygen criteria to protect that use.

On August 2, 2024, the Delaware Riverkeeper Network and the Delaware Riverkeeper

¹ The Delaware River is co-managed by multiple states, including Delaware, New Jersey, and Pennsylvania, as well as the Delaware River Basin Commission.

(collectively, Plaintiffs) sent the EPA a 60-day Notice of Intent to Sue pursuant to CWA section 505(b)(2) alleging the agency failed to promulgate revised water quality standards for a stretch of the Delaware River within 90 days of proposing them as required under CWA section 303(c)(4). On October 2, 2024, the Plaintiffs filed a complaint against the EPA in the U.S. District Court for the Eastern District of Pennsylvania. The Plaintiffs are seeking a declaratory judgement that the EPA violated the CWA and the Administrative Procedure Act by not promulgating revised water quality standards for the Delaware River within the statutory timeframe at CWA section 303(c)(4) and an injunction requiring the agency to promulgate such standards by a date certain.

The parties initiated settlement discussions, which produced the proposed consent decree.² Under the proposed consent decree, the EPA Administrator would be required to sign a final rule promulgating revised water quality standards for miles 108.4 to 70.0 of the Delaware River on or before June 30, 2025. In addition, the EPA would be required to file status reports with the court every thirty days after a consent decree is entered until the final rule is signed.

For a period of thirty days following the date of publication of this notice, the EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. The 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-2025-0019) 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

² In the litigation, the EPA filed an answer to the Plaintiffs' complaint on December 9, 2024.

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-2025-0019 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The 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. The 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, the 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 the EPA to contact you in case the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to the EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means the 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." The EPA does not plan to consider these late comments.

Dawn Messier,

Acting Associate General Counsel.

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