



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2025-3259; FRL-13104-01-OGC]

Proposed Settlement Agreement

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 entitled Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency, notice is hereby given of a proposed settlement agreement that resolves *In Re Center for Biological Diversity, et al.*, a case in the United States Court of Appeals for the District of Columbia Circuit (No. 25-1087) that alleges EPA failed to “take action” on petitioner’s rulemaking petition within a “reasonable time”, despite obligations to do so pursuant to the Resource Conservation and Recovery Act (RCRA) and Administrative Procedure Act (APA). Petitioner’s 2021 rulemaking petition sought the “promulgation of rules that reverse the Environmental Protection Agency’s (EPA) 1991 Bevill regulatory determination excluding phosphogypsum and phosphoric acid production process wastewater (“process wastewater”) from the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations,” and “govern the safe treatment, storage and disposal of phosphogypsum and process wastewater as hazardous wastes under RCRA Subtitle C.”

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-2025-3259 at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions 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: Erin Wever, Solid Waste and Emergency Response Law Office, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202)564-4464; email address: wever.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. **EPA-HQ-OGC-2025-3259**) 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 to 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”.

II. Additional Information About the Proposed Settlement Agreement

On February 8, 2021, Petitioners submitted a rulemaking petition “seeking the promulgation of rules that: (1) reverse the Environmental Protection Agency’s (EPA) 1991 Bevill regulatory determination excluding phosphogypsum and phosphoric acid production process wastewater (“process wastewater”) from the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations,” and “(2) govern the safe treatment, storage and disposal of phosphogypsum and process wastewater as hazardous wastes under RCRA Subtitle C.” In their mandamus suit, Petitioners allege EPA has failed to take action on the 2021 rulemaking petition within a reasonable time, as required by the RCRA and APA.

The proposed settlement agreement states that no later than February 1, 2027, EPA shall issue a final decision on the petition. Further, the proposed settlement agreement states that within 15 days of the execution of the proposed settlement agreement, the parties will file a joint motion to continue holding the litigation in abeyance pending EPA’s issuance of a final decision on the rulemaking petition. Finally, the proposed settlement agreement provides that within five days of receipt of EPA’s decision, the Petitioners in the case shall file a stipulation of voluntary dismissal with prejudice.

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 agreement from persons who are not named as parties to the litigation in question. 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 APA or RCRA. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed settlement agreement will be affirmed.

III. Additional Information About Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. **EPA-HQ-OGC-2025-3259** 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 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. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

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 is not required to consider these late comments.

Sean M. Donahue,
General Counsel.

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