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Endangered Species Act/Clean Water Act: Center for Biological Diversity Challenges U.S. Environmental Protection Agency's Water Quality Criteria for Cadmium

03/28/2022

The Center for Biological Diversity ("CBD") filed a Complaint for Declaratory and Injunctive Relief ("Complaint") in the United States District Court for the District of Arizona against the United States Environmental Protection Agency ("EPA") alleging a violation of the Endangered Species Act ("ESA"). See Case No. 4:22-cv-00138-JCH.

The Complaint alleges that EPA failed to consult under Section 7 of the ESA on the effects to wildlife of the federal agency's revisions to the aquatic life water quality criteria for the heavy metal cadmium.

CBD states that this alleged failure puts at greater risk certain endangered species.

CBD challenges EPA's finalization in 2016 of a revised set of ambient water quality criteria ("WQC") relating to the effects of cadmium on aquatic organisms based upon the agency's assessment of cadmium's ecological effects. The organization alleges that those criteria are less protective of water quality than prior versions for chronic freshwater exposure. It further states that at least 18 states, territories, and/or tribes have adopted EPA's revised cadmium criteria.

WQC are ambient water quality conditions that are deemed protective of the uses established for a waterbody. The Clean Water Act requires that states adopt WQC protective of the designated uses. WQC represent a judgment as to what levels, concentrations or conditions can support a desired use in the waterbody.

EPA develops WQC under Section 304(d) of the Clean Water Act. The WQCs that EPA develops are frequently used by the states in establishing or revising their water quality standards. However, states are free to adopt or develop their own WQC. Of course, they must be scientific defensible.

CBD argues that EPA's revision of the cadmium WQC in 2016 was undertaken without consulting with the United States Fish and Wildlife Service or the National Marine Fishery Service (collectively "Services") as required by Section 7 of the ESA.

The Complaint alleges that:

. . . this is a clear violation of EPA’s obligations to engage the Services in consultation to insure EPA’s action “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.”

CBD further alleges that EPA has a history of failing to consult under the ESA on adoption of WQC.

The Complaint seeks a declaration that EPA is in violation of Section 7 of the ESA for promulgating cadmium water quality in 2016 without consultation. The organization also seeks an order remanding those criteria and vacating what it describes as the “less protective chronic freshwater criterion” and any other appropriate relief.

A copy of the Complaint can be downloaded [here](#).