303(d) List/Clean Water Act: Wild Virginia, Inc. Citizen Suit Alleging U.S. EPA Failure to Address PFAS Contaminated Waterbodies



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Wild Virginia, Inc. ("WV") filed a Motion for Partial Summary Judgment against the United States Environmental Protection Agency ("EPA") pursuant to a Clean Water Act citizen suit action alleging the agency's violation of its duties under Sections 303(d) and 305(b) of the Clean Water Act. See CIVIL ACTION NO. 3:25-cv-1043.

WV's action alleges that EPA violated its duties under the Sections 303(d) and 305(b) of the Clean Water Act ("CWA"), with respect to the list of impaired waterbodies submitted by Virginia Department of Environmental Quality ("VDEQ") on March 28, 2025.

WV alleges that EPA failed to perform its non-discretionary duty to approve or deny Virginia's submission when it:

… carved out a list of waterbody segments for which it purported to take "no action."

The Clean Water Act requires states and authorizes tribes to periodically review and, as appropriate, adopt new or revised Water Quality Standards ("WQS") to meet the requirements of the Clean Water Act. They must submit any new or revised WQS resulting from such a review to the United States Environmental Protection Agency for review and approval or disapproval under Clean Water Act Section 303(c).

The states must adopt uses consistent with Clean Water Act objectives and water quality criteria sufficient to protect its chosen uses. However, EPA is required to ensure that the state WQS meet the minimum requirements of the Clean Water Act.

Section 303 of the Clean Water Act also requires each state to identify those waters within its boundaries for which the technology-based effluent limitations required by the Clean Water Act and defined by EPA are not stringent enough to attain applicable WQS. Water so designated are known as "Water Quality Limited Segments" or "Impaired Waters". Each state is required to submit this list of waters to EPA biennially (accompanied by a listing determination).

Once a state submits a 303(d) list to EPA, the federal agency must approve or disapprove the list within 30 days. EPA must also determine whether the states has provided a technical, science-based rationale for declining to use any available data to assess the impairment of its waters. If EPA disapproves the states' 303(d) list, the federal agency must identify the impaired waters itself and develop its own list for the state. Further, Section 305(b) requires each state to provide a biennial report and an analysis describing

water quality of all navigable waters and an analysis of the extent to which all navigable waters provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and out on the water.

WV's motion alleges that:

1. EPA itself stated in its letter approving Virginia's 303(d) list that it was not taking action with respect to the waterbody segments listed in Enclosure 3, Appendix B attached to its letter; and,
2. EPA had no authority to carve out any Virginia waters from its approval or disapproval of Virginia's 303(d) List, which it was required to issue within 30 days of Virginia's submission.

WV states that an EPA letter indicated that the federal agency was taking no action at this time on water quality related information suggesting the presence of PFOS in fish tissue in certain segments in the Middle Chickahominy River watershed. EPA is stated to have further indicated VADEQ would use the information it has collected to update its Assessment Methodologies for its 2026 Section 303(d) list, including how it will evaluate data suggesting the presence of PFAS.

WV states that:

… Missing from EPA's letter and Rationale is any approval or disapproval of VDEQ's decision not to list those potentially impaired waters.

WV argues that EPA had no authority to leave some waterbody segments out of its evaluation. It further states that if EPA declined to take action on these segments because VDEQ lacked a science-based rationale for failing to include them on its 303(d) List because it determined that the state's Integrated Report failed to satisfy CWA section 303(d)'s requirements by failing to include waterbody segments impaired for PFOS, EPA disapproval was required.

WV argues that there is no genuine dispute of material fact over whether EPA failed to take action on its non-discretionary duty to approve or deny the 303(d) list in its entirety and the organization is entitled to judgment as a matter of law.

A copy of the pleading can be found here.