2022-24 Montana Combined Integrated Report: Upper Missouri Waterkeeper Notice of Intent to Sue U.S. EPA for Alleged Clean Water Act Violations



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Upper Missouri Waterkeeper ("UMW") sent a July 15th document to the United States Environmental Protection Agency ("EPA") styled:

Notice of Intent to Sue EPA for Failure, Under Clean Water Act Section 303(d), 33 U.S.C. 1313(d), to Approve or Disapprove State of Montana's 2022-24 Combined Integrated Report ("NOI").

UMW alleges that EPA has a nondiscretionary duty to act on the Montana Department of Environmental Quality's ("MDEQ") June 12, 2026, submission of a CWA impaired waters list under 33 U.S.C. § 1313(d) within thirty days.

The Clean Water Act requires states and authorized 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).

Section 303 specifies the adoption of WQS as primarily the responsibility of the states and tribes. The states must adopt uses consistent with Clean Water Act objectives and water quality criteria sufficient to protect the chosen uses. However, EPA is required to ensure that state WQS meet the minimum requirements of the Clean Water Act. Therefore, the Clean Water Act regulations provide for EPA review of any state WQS changes.

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. Further, the states must also establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. A determination that a particular water is not meeting an applicable WQS is typically denominated an "impairment" and in a full ranking of impaired waters ("Impaired Waters List").

UMW's NOI alleges that MDEQ submitted its 2022-24 Combined Integrated Report to EPA on June 12th. It is stated to have included an Impaired Waters List. The NOI further provides in part:

… The Integrated Report explicitly declined to use available water quality data for nutrients and dissolved oxygen in Montana waters, or to make impairment determinations on those pollutant parameters for that Integrated Report.

UMW alleges that EPA has failed to carry out its mandatory duty to approve or disapprove the Impaired Waters List within 30 days of submission and therefore this authorizes a citizen suit pursuant to Section 505(a)(2) of the Clean Water Act.

A copy of the NOI can be found here.