

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF MARYLAND,
1800 Washington Boulevard
Baltimore, MD 21230

DISTRICT OF COLUMBIA,
400 6th Street NW
Washington, D.C. 20001

COMMONWEALTH OF VIRGINIA,
202 North Ninth Street
Richmond, VA 23219

STATE OF DELAWARE,
820 N. French St.
Wilmington, DE 19801
Plaintiffs,

v.

ANDREW WHEELER, in his official
capacity as Administrator, United
States Environmental Protection
Agency; UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

and

COSMO SERVIDIO, in his official
capacity as Regional Administrator for
the Mid-Atlantic Region (Region 3),
United States Environmental
Protection Agency,
1650 Arc Street
Philadelphia, PA 19103

Defendants.

Case No.:

Judge:

COMPLAINT

The District of Columbia and the States of Maryland, Virginia, and Delaware (“Plaintiffs”) bring this action to compel Andrew Wheeler, in his official capacity as Administrator of the United States Environmental Protection Agency, Cosmo Servidio, in his official capacity as Regional Administrator for EPA Region 3, and the United States Environmental Protection Agency (collectively, “EPA”) to comply with EPA’s nondiscretionary duty under Section 117 of the Clean Water Act, 33 U.S.C. § 1267(g)(1)(A), to ensure that each of the states that are signatories to the Chesapeake Bay Agreement (“Bay Agreement”) develops and implements management plans that will “achieve and maintain” the nutrient reduction goals set forth in the Bay Agreement. Alternatively, Plaintiffs bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, to hold unlawful and set aside EPA’s arbitrary and capricious approval of the management plans submitted by New York and Pennsylvania.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1365(a)(2), which authorizes any person, after duly giving notice, to commence an action in district court to compel the Administrator to perform a nondiscretionary duty that the Administrator has failed to perform.

2. Jurisdiction also lies in this Court pursuant to 28 U.S.C. § 1331 (actions arising under the laws of the United States) because this suit is alternatively brought under the Administrative Procedure Act, 5 U.S.C. § 706. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may

grant declaratory, injunctive, and other relief pursuant to 28 U.S.C. §§ 2201 and 2202, 5 U.S.C. § 706, and the Court's inherent and equitable authority.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e), because EPA headquarters is in Washington, D.C., a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and because one of the Plaintiffs, the District of Columbia, resides in this judicial district.

PARTIES

4. The State of Maryland is a sovereign state of the United States of America. Attorney General Brian E. Frosh, who has general charge of the legal business of the State of Maryland, Md. Code Ann., State Gov't § 6-106, brings this action on behalf of the State of Maryland, including the Maryland Department of the Environment.

5. Plaintiff District of Columbia is a municipal corporation and is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The District of Columbia is defined as a state under the CWA. 33 U.S.C. § 1362(3).

6. The State of Delaware is a sovereign state of the United States of America. Delaware brings this action by and through Attorney General Kathleen Jennings. The Attorney General is the chief officer of the State, and is empowered and charged

with the duty to represent as counsel in all proceedings or actions which may be brought on behalf or against the State and all officers, agencies, departments, boards, commissions and instrumentalities of state government. *See* Del. Code Ann. Tit. 29, § 2504.

7. The Commonwealth of Virginia brings this action by and through Attorney General Mark Herring. The Attorney General is the chief legal officer of the Commonwealth of Virginia. The Attorney General “shall represent the interests of the Commonwealth . . . in matters before or controversies with the officers and several departments of the government of the United States,” Va. Code Ann. § 2.2-513, and “all legal service in civil matters for the Commonwealth . . . including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General.” Va. Code Ann. § 2.2-507.

8. Defendant Andrew Wheeler is the Administrator of the EPA. The Administrator is charged with implementing and enforcing the Clean Water Act, including the nondiscretionary requirement in Section 117 of the Act.

9. Defendant Cosmo Servidio is the Regional Administrator for the Mid-Atlantic Region (Region 3) of the EPA and the signatory on EPA’s approval of Pennsylvania’s and New York’s Phase III Watershed Implementation Plans. Plaintiffs sue Defendant Servidio in his official capacity.

10. Defendant EPA is an executive agency of the United States government charged with implementing and enforcing the Clean Water Act.

NOTICE

11. On May 18 and 20, 2020, pursuant to 33 U.S.C. § 1365(b), Plaintiffs sent EPA notices of intent to sue for EPA's failure to comply with its nondiscretionary duty under Section 117 of the Clean Water Act to ensure that the signatories to the Bay Agreement develop and implement management plans that will achieve and maintain the nutrient reduction goals in the Bay Agreement—more specifically, the nutrient reduction goals in the Chesapeake Bay Total Maximum Daily Load (“TMDL”).

12. More than 60 days have elapsed since the Plaintiffs sent the notice letters, and EPA has not fulfilled its nondiscretionary duty set forth in paragraph 11.¹

CWA STATUTORY FRAMEWORK

13. The overall objective of the CWA “is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

14. To meet that objective, the CWA requires states to establish water quality standards for waterbodies within their jurisdiction. *Id.* § 1313(a)-(c).

15. For each waterbody within a state, the state must designate specific uses (e.g., recreation or fishing) and set water quality standards based on those designated uses. *Id.* § 1313(c)(1), (2).

¹ Count 2 of this Complaint, alleging arbitrary and capricious or otherwise unlawful final agency action in violation of the Administrative Procedure Act, is not subject to the notice requirement of 33 U.S.C. § 1365(b).

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