



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

## Citizen Suit Action/Clean Water Act: Environmental Group Alleges Failure by U.S. Environmental Protection Agency to Address State of Washington TMDL Program Deficiencies

10/17/2019

Northwest Environmental Advocates (“NEA”) filed a September 26th Clean Water Act Citizen Suit Action in United States District Court alleging that the United States Environmental Protection Agency’s (“EPA”) 2016 approval of Washington’s 2012 list of Clean Water Act impaired waters was arbitrary, capricious, and not in accordance with the law under Section 303 of the Clean Water Act and the federal agency’s implementing regulations.

NEA states that EPA should have disapproved the State of Washington’s list of impaired waters and developed an adequate list – because the state had failed to assemble and evaluate all of the existing and readily available water quality-related data and failed to fully and properly apply the state’s water quality standards in developing the 2012 list.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders. WQS establish water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point sources.

The WQS consists of three parts:

1. The designated uses of a waterbody
2. The water quality criteria that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. An anti-degradation statement or policy to protect existing uses in high quality water

Section 303(c) of the Clean Water Act specifies that the adoption of WQS is primarily a responsibility of the states. However, EPA is required to ensure that the state WQS, along with any changes, meet the minimum requirements of the Clean Water Act.

Section 303 of the Clean Water Act requires that the state 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 the applicable WQS. Waters so designated are known as “water quality limited segments” or “impaired waters.” A pollution loading limit for a waterbody is referred to as the Total Maximum Daily Load (“TMDL”) a waterbody can assimilate. EPA defines a TMDL in part as a “written quantitative plan analysis for attaining or maintaining a water quality standard in all seasons for a specific waterbody and pollutant. . . .”

NEA in its September 26th Complaint argues that EPA has “impermissibly approved Washington’s glacial rate of developing TMDL clean-up plans for thousands of the State’s polluted surface waters.”

The Complaint states as a basis for relief:

1. Approval of Washington’s 2012 303(d) List
2. Failure to Identify the Water Quality-Limited Waters in Washington and Establish TMDLs for Such Waters
3. Failure to Identify the Water Quality-Limited Waters in Washington and Establish TMDLs for Such Waters
4. Failure to Identify the Water Quality-Limited Waters in Washington and Establish TMDLs for Such Waters
5. Approval of Washington’s 2012 Priority Ranking and Prioritization Schedule

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