

## Chief Joseph Dam/Clean Water Act: U.S. Army Corps of Engineers Settles Citizen Suit by Agreeing to Apply for NPDES Permit



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The United States Army Corps of Engineers (“Corps”) and Columbia Riverkeeper (“Riverkeeper”) resolved a Clean Water Act citizen suit action regarding the Chief Joseph Dam (“Dam”) which is located in the State of Washington.

Riverkeeper had filed a Clean Water Act citizen suit in the United States District Court (Eastern District of Washington) alleging the Dam (owned by the Corps) was discharging pollutants into the Columbia River without obtaining a National Pollution Discharge Elimination System (“NPDES”) permit.

The Complaint alleged that the hydroelectric dam discharges pollutants that include oils, greases, other lubricants and cooling water and the associated heat. It further alleged that because the discharges were not authorized by an NPDES permit they violated Section 301(a) of the Clean Water Act.

A Clean Water Act NPDES permit must be required if five jurisdictional elements are present:

- A person
- adds a
- pollutant
- to navigable waters
- from a point source.

Riverkeeper’s Complaint alleged that the discharge of the previously referenced pollutants constituted addition to a water of the United States through pipes and/or other discernable, confined, and/or discreet conveyances associated with the Dam. As a result, it argued that such discharges should have been authorized by an NPDES permit.

Riverkeeper’s and the Corps’ resolution of this action is embodied in a document jointly filed styled as a Notice of Acceptance of Offer of Judgment/Joint Request for Entry of Judgment, and Joint Motion to Extend Rule 54(d) Deadlines.

The Offer of Judgment requires that by March 27, 2020 the Corps apply for an NPDES permit to address the alleged discharges of pollutants at the Dam. This is required to include (at a minimum) alleged discharges from:

- drainage sumps
- unwatering sumps

- drains
- discharges from cooling water systems
- any other alleged discharges that the permitting authority requires

The Corps is also required to notify Riverkeeper of events that are reported to the National Response Center pursuant to the Dam's Spill Prevention Control and Countermeasure Plan. Further, an assessment and report addressing whether it is feasible to switch from using grease as a lubricant on certain "in-water" components of the Dam to using components that do not require lubrication. If so, a projected schedule for completing such switch is required. In addition, the Corps is required to prepare annual reports that account for all oils and greases delivered to the Dam within the prior calendar year to lubricate "in-water" components that may contact the Columbia River. Volumes must also be provided.

The Offer of Judgment also provides for potential payment of costs of litigation to Riverkeeper.

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