

Endangered Species Act/Clean Water Act: Environmental Organizations Challenge the State of Washington's Cyanide Water Quality Standards

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The Western Environmental Law Center and Center for Biological Diversity (collectively “CBD”) filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) in the United States District Court for the District of Columbia (“Court”) against the United States Environmental Protection Agency (“EPA”) challenging its approval of Clean Water Act water quality standards (“WQS”) for cyanide.

Additional federal defendants include:

- United States Department of Interior
- National Oceanic and Atmospheric Administration
- U.S. Fish and Wildlife Service
- U.S. Department of Commerce

The Complaint alleges a violation of the Endangered Species Act (“ESA”).

The challenged WQS have been set by the State of Washington’s Department of Ecology (“WDE”) pursuant to the Clean Water Act.

States are required pursuant to Section 303 of the Clean Water Act to develop WQS for their various jurisdictional waters of the United States. Such WQS include both the designated uses and the water quality criteria to support the designated uses.

The Complaint alleges that cyanide is a toxic compound released into the State of Washington’s waterways by anthropogenic activities which are stated to include:

- Urban stormwater runoff
- Industrial and municipal discharges
- Deposition from air pollution
- Mining

CBD alleges that WDE has utilized for decades water quality criteria for freshwater and marine cyanide approved by EPA. The organizations further argue that EPA has never completed consultation with the United States Fish and Wildlife Service (“FWS”) for the National Marine Fisheries Service (“NMFS”) (collectively “Services”) to ensure against jeopardy and adverse modification by cyanide as required under Section 7 of the Endangered Species Act (“ESA”).

EPA is alleged to have violated and continue to violate Section 7 of ESA by failing to ensure that the survival of ESA listed species is not jeopardized. It is further argued that there has been no assurance that critical habitat has not been destroyed or modified by WDE's water quality criteria for cyanide.

The Complaint references a number of species that have been designated as listed or threatened pursuant to the ESA and are allegedly jeopardized by the water quality criteria for cyanide. A decline of listed species impacted by the referenced state aquatic cyanide water quality criteria is alleged. As a result, EPA and the Services are alleged to be required to reinstate consultation to address the impact of the water quality criteria on the listed species and their habitat.

CBD requests that the Court declare that the defendants alleged failure to consult and ensure against jeopardy and adverse modification is arbitrary and capricious and in violation of the ESA and its implementing regulations. They further ask that defendants be ordered to initiate and complete consultation on EPA's approval of WDE's water quality criteria for cyanide.

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