

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLEAN WATER ACTION
1444 I Street NW, Suite 400
Washington, DC 20005,

ENVIRONMENTAL INTEGRITY
PROJECT
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005,

SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612,

WATERKEEPER ALLIANCE, INC.
180 Maiden Lane, Suite 603
New York, NY 10038,

PENNENVIRONMENT, INC.
1429 Walnut Street, Suite 1100
Philadelphia, PA 19102,

CHESAPEAKE CLIMATE ACTION
NETWORK
6930 Carroll Avenue, Suite 720
Takoma Park, MD 20912,

PHYSICIANS FOR SOCIAL
RESPONSIBILITY, CHESAPEAKE,
INC.
325 East 25th Street
Baltimore, MD 21218,

and

PRAIRIE RIVERS NETWORK
1902 Fox Drive, Suite G
Champaign, IL 61820

Plaintiffs,

v.

Civil Action No. 17-817

E. SCOTT PRUITT,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, in his official capacity
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

and

U.S. ENVIRONMENTAL
PROTECTION AGENCY
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Defendants.

COMPLAINT

INTRODUCTION

1. Plaintiffs Clean Water Action, Environmental Integrity Project (“EIP”), Sierra Club, Waterkeeper Alliance, Inc., PennEnvironment, Inc., Chesapeake Climate Action Network (“CCAN”), Physicians for Social Responsibility, Chesapeake, Inc. (“Chesapeake PSR”), and Prairie Rivers Network (“PRN”) (collectively “Plaintiffs”) assert violations of the Administrative Procedure Act (“APA”) by defendants E. Scott Pruitt, Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (collectively “EPA”), for EPA’s April 25, 2017 notice purporting to indefinitely stay certain compliance deadlines in EPA’s November 2015 final rule revising the Clean Water Act Effluent Limitation Guidelines for power plants (the “ELG rule”). *See* Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric

Power Generating Point Source Category, 82 Fed. Reg. 19,005 (Apr. 25, 2017) (“Indefinite Stay”). A copy of the Indefinite Stay notice is attached hereto as Exhibit A.

2. The ELG rule had been finalized by EPA after a lengthy rulemaking process. 80 Fed. Reg. 67,838 (Nov. 3, 2015). The effective date of the rule was January 4, 2016—nearly sixteen months ago.

3. Power plants are by far the largest source of toxic water pollution in the country, and the ELG rule requires power plants to meet new limits on pollutants in their wastewater effluent that are based on EPA’s technical findings as to the level of pollution reduction achievable using the best available wastewater treatment technology that is affordable to the industry.

4. On April 25, 2017, however, without notice and without providing the public with an opportunity to comment, EPA promulgated the Indefinite Stay, which purports to postpone indefinitely Clean Water Act compliance deadlines for power plants established in the ELG rule.

5. EPA’s Indefinite Stay violates the APA for at least six reasons:

- a. First, EPA failed to make the findings required to support a determination that “justice so requires” an administrative stay under 5 U.S.C. § 705, which (as this Court has held) are equivalent to the four-part test that courts must apply when determining whether a preliminary injunction is appropriate. *See Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012). EPA’s Indefinite Stay notice does not even mention the four-part preliminary injunction test, much less make any of the findings that would be necessary to support an administrative stay of the ELG rule.

- b. Second, the Indefinite Stay is unlawful, because EPA's professed justification for the stay was to consider pending petitions for reconsideration, rather than to stay the rule pending judicial review. In fact, contemporaneously with issuing the Indefinite Stay, EPA sought and was granted an abeyance of judicial review in the U.S. Court of Appeals for the Fifth Circuit.
- c. Third, the Indefinite Stay is unlawful because 5 U.S.C. § 705 provides only for "postpon[ing] the effective date" of an action, and the effective date of the ELG rule is nearly sixteen months in the past.
- d. Fourth, the Indefinite Stay is unlawful because EPA postponed the compliance dates for only selected portions of the ELG rule, rather than staying the effectiveness of the rule in its entirety. This is contrary to the plain language of Section 705, which only authorizes agencies to "postpone the effective date" of rules in their entirety. It is also arbitrary and capricious, because EPA's action only postpones compliance dates for new, more stringent effluent limitations in the ELG rule, while leaving in effect other provisions of the rule, such as exemptions from more stringent effluent limitations for so-called "legacy wastewater" and leachate. EPA did not provide any reasoned explanation in the Indefinite Stay notice as to why the regulatory status quo that existed prior to the promulgation of the ELG rule should be maintained only for some portions of the ELG rule but not others.
- e. Fifth, the Indefinite Stay is unlawful because EPA did not provide an adequate justification for the stay or consider all relevant factors. EPA considered only the costs of the rule, and arbitrarily failed to consider the significant benefits of

preventing more than 1.4 billion pounds of toxic mercury, arsenic, lead, and other pollutants from being dumped in our nation's waterways every year.

- f. Sixth, the Indefinite Stay is unlawful because EPA failed to provide prior notice and an opportunity to comment, as required by 5 U.S.C. § 553, despite the fact that by indefinitely postponing certain compliances deadlines in the ELG rule, the Indefinite Stay is a final action with binding legal effect.

6. Plaintiffs request that the court hold that EPA's Indefinite Stay of the ELG rule is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the APA, 5 U.S.C. § 706(2)(A), and vacate the Indefinite Stay.

JURISDICTION & VENUE

7. This Court has jurisdiction under the federal question statute, 28 U.S.C. § 1331, and may issue a declaratory judgment under 28 U.S.C. § 2201(a) and grant further relief under 28 U.S.C. § 2202. Plaintiffs have a right to bring this action under the APA, 5 U.S.C. §§ 701–06, which provides for judicial review of final agency actions for which there is no other adequate remedy in a court.

8. Venue is proper in this Court because Defendants reside in this district, the Indefinite Stay giving rise to this lawsuit was issued in this district, and one of the Plaintiff organizations, EIP, resides in this district. *See* 28 U.S.C. § 1391(e)(1).

PARTIES

9. Plaintiffs are non-profit conservation, environmental, and public health advocacy organizations with longstanding interests in improving water quality across the nation, and a particular interest in advocating for control of water pollution from large sources such as power plants, due to their significant impacts on public health and the environment.

10. Clean Water Action is a national, non-profit membership organization incorporated under the laws of the District of Columbia, and has more than 800,000 members nationwide. Clean Water Action's mission includes the prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work.

11. EIP is a non-profit organization based in Washington, D.C. EIP's objectives are to provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public's health, to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws, and to help local communities in key states obtain the protection of environmental laws.

12. Sierra Club is a non-profit corporation incorporated in San Francisco, California, with more than 744,000 members nationwide. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting responsible use of the Earth's resources and ecosystem; and to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives.

13. Waterkeeper Alliance, Inc. is a non-profit headquartered in New York, New York uniting more than 300 Waterkeeper Organizations and Affiliates around the world and focusing citizen advocacy on issues that affect our waterways and water quality. Within the United States, Waterkeeper Alliance, Inc. works with 165 Waterkeeper Organizations and Affiliates to create and preserve drinkable, fishable, swimmable, and clean waterways.

14. PennEnvironment, Inc. is a non-profit environmental advocacy group that is actively engaged in education, research, lobbying, litigation, and citizen organizing to encourage

conservation and environmental protections in Pennsylvania. PennEnvironment, Inc. has worked to reduce toxic pollution in Pennsylvania waterways and educate the public about the dangers of mercury and other toxic pollutants through its reports and grassroots outreach on behalf of its tens of thousands of members.

15. CCAN is a grassroots, non-profit organization founded to transition the region towards clean-energy solutions to climate change, specifically in Maryland, Virginia, and Washington, D.C. CCAN's mission is to educate and mobilize citizens in a way that fosters a rapid societal switch to clean energy sources. This mission includes ensuring that facilities that contribute to global warming, such as coal-fired power plants, do not impact the health of CCAN's members or the environment through the release of dangerous pollutants.

16. Chesapeake PSR is a non-profit organization dedicated to creating a healthy, just, and peaceful world for both present and future generations. On behalf of its approximately 300 members, Chesapeake PSR uses its medical and public-health expertise to engage in regulatory and permitting processes to promote clean, renewable energy and to minimize the amount of toxic pollution released from coal-fired power plants.

17. PRN is an Illinois non-profit organization that champions clean, healthy rivers and lakes and safe drinking water to benefit the people and wildlife of Illinois. Drawing upon sound science and working cooperatively with others, PRN advocates public policies and cultural values that sustain the ecological health and biological diversity of water resources and aquatic ecosystems.

18. Plaintiffs bring this action on their own behalf and on behalf of their members. Plaintiffs and their members have been and will continue to be injured by EPA's Indefinite Stay of the ELG rule. Plaintiffs' members are injured because they use and enjoy waters throughout

the United States that receive discharges of pollution from power plants. EPA's Indefinite Stay of the ELG rule impairs Plaintiffs' members' use and enjoyment of those waters, causing them to curtail activities they would otherwise enjoy, derive less enjoyment or benefit from other activities, and suffer reasonable concerns and anxiety about the potential for future harm.

Plaintiffs are also harmed because their organizations have a long history of involvement in (and investment of institutional resources in) exercising their legal rights to engage in advocacy for more protective power plant Clean Water Act permits, for enforcement of those permits, and for development and implementation of the ELG rule itself. In fact, EPA only issued the ELG rule in 2015 in response to several of Plaintiffs and another partner organization taking the Agency to court and securing an order requiring it to review and revise the power plant ELGs. *See Defenders of Wildlife v. Jackson*, No. 1:10-cv-01915-RWR (D.D.C. filed Nov. 8, 2010).

Plaintiffs' injuries are actual, concrete and irreparable. They cannot be redressed by money damages. The requested relief will redress these injuries.

19. Defendant E. Scott Pruitt is the Administrator of the United States Environmental Protection Agency. He is sued in his official capacity only.

20. Defendant United States Environmental Protection Agency is an agency of the federal government.

STATUTORY FRAMEWORK

CLEAN WATER ACT

21. The Clean Water Act is the principal federal statute enacted to protect the quality of the waters of the United States. The Clean Water Act's goals are "to restore and maintain the chemical, physical, and biological integrity of," and to "eliminate[]" "the discharge of pollutants into," the waters of the United States. 33 U.S.C. § 1251(a), (a)(1).

22. A central mechanism within the Clean Water Act to advance these goals is the requirement that polluting facilities meet a series of increasingly stringent limitations on the pollutants in their wastewater effluent, based on the pollution reduction achievable through use of technology to treat or eliminate wastewater discharges. *Natural Res. Def. Council, Inc. v. EPA*, 859 F.2d 156, 202 (D.C. Cir. 1988).

23. For pollutants the Clean Water Act classifies as either toxic (such as heavy metals) or “nonconventional” (such as nitrogen), the first effluent limitations that sources were required to meet were “best practicable control technology,” which Congress intended to apply to all pollutant dischargers by 1977, 33 U.S.C. § 1311(b)(1)(A), followed by the more stringent “best available technology economically achievable” (“BAT”), which Congress intended to apply to all pollutant dischargers by 1989, *id.* § 1311(b)(2). The statute requires EPA to promulgate these technology-based effluent limitations through rulemakings establishing effluent limitation guidelines, or ELGs, which are nationwide, minimum standards for different categories of sources. *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 127, 129 (1977).

24. Section 301 of the Clean Water Act provides that “compliance with effluent limitations” based on BAT must be achieved “as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under” the Act. 33 U.S.C. § 1311(b)(2).

25. Congress intended BAT to be “technology-forcing” and to “push[] industries toward the goal of zero discharge as quickly as possible.” *Kennecott v. EPA*, 780 F.2d 445, 448 (4th Cir. 1985). BAT limits are supposed to “represent[] a commitment of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges.” *EPA v. Nat’l Crushed Stone Ass’n*, 449 U.S. 64, 74 (1980).

26. EPA must review and revise as necessary the ELGs every year, 33 U.S.C. § 1314(b), and review and revise as necessary the effluent limitations every 5 years, *id.* § 1311(d).

27. The Clean Water Act also requires EPA to establish (and periodically revise) pretreatment standards for “indirect dischargers” who send their wastewater offsite to publicly owned treatment works rather than discharging it directly. *Id.* § 1317(b). For toxic pollutants, these pretreatment standards must be no less stringent than the effluent limitations that would apply to the same wastewater if it were directly discharged. *Id.* § 1317(b)(1). The Clean Water Act provides that pretreatment standards “shall specify a time for compliance not to exceed three years from the date of promulgation.” *Id.*

ADMINISTRATIVE PROCEDURE ACT

28. Under the APA, “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” 5 U.S.C. § 705. Congress did not thereby intend to grant any new or additional authority to federal agencies; that portion of the statute was meant only as “a restatement of existing law.” Attorney General’s Manual on the Administrative Procedure Act 93, at 105 (1947).

29. Under 5 U.S.C. § 705, “the standard for a stay at the agency level is the same as the standard for a stay at the judicial level: each is governed by the four-part preliminary injunction test applied in this Circuit.” *Sierra Club v. Jackson*, 833 F. Supp. 2d at 30.

30. The APA requires agencies to engage in a notice-and-comment process prior to formulating, amending, or repealing a rule. 5 U.S.C. §§ 551(5), 553. This process is designed to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” *Id.* § 553(c).

31. The APA provides that “[t]he reviewing court shall . . . hold unlawful and set aside” agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” or “without observance of procedure required by law.” *Id.* § 706(2).

FACTS

32. Power plants are by far the largest source of toxic water pollution in the United States. When finalizing the ELG rule in 2015, EPA found that power plants generate more toxic wastewater than the next two-largest polluting industries combined. EPA, *Environmental Assessment for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, Doc. No. EPA-821-R-15-006, Dkt. ID No. EPA-HQ-OW-2009-0819-6427, at 3-15, Table 3-3 (Sept. 2015) (“Final Environmental Analysis”).

33. Power plant wastewater contains toxic metals such as mercury, arsenic, and selenium, as well as nonconventional pollutants such as nitrogen and dissolved solids that contaminate drinking water and harm ecosystems. 80 Fed. Reg. at 67,840–41. “The pollutants discharged by [power plants] can cause severe health and environmental problems in the form of cancer and non-cancer risks in humans, lowered IQ among children, and deformities and reproductive harm in fish and wildlife.” *Id.* at 67,838.

34. Power plants release this pollution near almost 100 public drinking water intakes and approximately 1,500 wells, and studies confirm that drinking water supplies are adversely affected by the pollution. *Id.* at 67,840. Power plant pollution also contaminates fish that people eat—an impact that is borne disproportionately by minority and low-income communities. *Id.*

35. Water pollution from power plants makes over 4,000 miles of rivers unsafe for use as a source of drinking water or for fish, and makes over 6,000 miles of rivers unsafe for

children to use for recreational fishing. Final Environmental Analysis at 7-35. EPA estimates that roughly 30 million people are exposed to fish contaminated by power plant wastewater, including over 3 million young children exposed to lead and over 400,000 infants exposed to mercury in utero. EPA, *Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, Document No. EPA-821-R-15-005, Dkt. ID No. EPA-HQ-OW-2009-0819-5856, at 3-4, 3-9, 3-16 (Sept. 2015) (“Final Benefit and Cost Analysis”).

36. Despite statutory obligations to periodically review and revise ELGs and effluent limitations, prior to issuing the final ELG rule in 2015, EPA had not updated the ELGs for power plants since 1982. *See* 47 Fed. Reg. 52,290 (Nov. 19, 1982). EPA has admitted that the 1982 ELG rule is “out of date.” 80 Fed. Reg. at 67,840. The 1982 guidelines did not set any specific limits on the discharge of toxic metals in power plant wastewater. *See id.* at 67,840–41. In the 1982 rulemaking, EPA acknowledged that future revisions would be necessary, in particular to address wastewaters from air pollution control systems, specifically flue gas desulfurization systems (also known as “FGD” systems or “scrubbers”).

37. In the absence of nationwide best available technology limits on specific toxic pollutants in power plant wastewater, it was left up to state and regional permitting agencies to set limits on a case-by-case basis. State permitting agencies largely failed to do so. A 2013 report found that nearly 70 percent of power plant permits (188 out of 274) set no specific limits on discharges of toxic pollutants such as arsenic, lead, and mercury from these plants. *See* EIP et al., *Closing the Floodgates: How the Coal Industry is Poisoning Our Water and How We Can Stop It*, at 7 (July 23, 2013), Dkt. ID No. EPA-HQ-OW-2009-0819-4714, Ex. 1. Thus, in

practice, most power plants have for decades been able to dump significant amounts of toxic pollutants into rivers, lakes, and streams.

38. In 2010, Defenders of Wildlife and Sierra Club (represented by EIP and Earthjustice) sued EPA in this Court for its failure to comply with Clean Water Act requirements that it review and revise the power plant ELGs. *See Defenders of Wildlife v. Jackson*, No. 1:10-cv-01915-RWR (D.D.C.). In March 2012, the Court approved a consent decree setting deadlines for EPA to issue a proposed and final rule. With the consent of plaintiffs in that action, these deadlines were repeatedly extended to allow EPA further time to consider and develop the record.

39. Over thirty years after EPA had last updated the power plant ELGs, EPA issued the ELG Rule in 2015. 80 Fed. Reg. at 67,838.

40. The ELG rule's effective date was January 4, 2016. *Id.*

41. The ELG rule was the culmination of many years of rulemaking, during which EPA obtained detailed information from 733 power plants as well as pollution control vendors, conducted site visits to power plants, responded to thousands of comments, and produced an administrative record consisting of thousands of documents. *See id.* at 67,844–46.

42. Among other things, the ELG rule sets new, more stringent technology-based effluent limitations on the discharge of toxic metals in wastewater from power plants' FGD systems, and it prohibits the discharge of any water used to transport fly ash or bottom ash generated during the combustion process. *Id.* at 67,841; 40 C.F.R. § 423.13(g)(1), (h)(1), (k)(1). For existing sources that directly discharge to waterways, the rule requires that each facility's Clean Water Act permitting agency establish a compliance date for the new effluent limitations that is as soon as possible after November 1, 2018, but in no case later than December 31, 2023. 80 Fed. Reg. at 67,854; 40 C.F.R. § 423.13(g)–(k). For existing sources that indirectly discharge

by sending their wastewater to outside wastewater treatment facilities, the rule requires compliance with new pretreatment standards by November 1, 2018. 40 C.F.R. § 423.16(e)–(i).

43. The ELG rule exempts two components of power plant wastestreams from having to meet new, more stringent effluent limitations: leachate from impoundments and landfills, and so-called “legacy wastewater,” which is wastewater that was generated and stored at a power plant but not yet discharged as of the compliance date for the new effluent limitations. The ELG rule did not include an extended compliance timeframe for either of these exemptions, and so both went into effect as of the rule’s January 4, 2016 effective date. *See* 40 C.F.R. § 423.13(g)(1)(ii) (legacy FGD wastewater), (h)(1)(ii) (legacy fly ash transport water), (i)(1)(ii) (legacy flue gas mercury control wastewater), (j)(1)(ii) (legacy gasification wastewater), (k)(1)(ii) (legacy bottom ash transport water), (l) (leachate).

44. EPA’s detailed analysis projected that the ELG rule would prevent 1.4 billion pounds of pollution from entering the nation’s waters every year. *See* 80 Fed. Reg. at 67,840–41.

45. After EPA issued the final ELG rule in 2015, several parties (including several Plaintiff organizations) filed petitions for review. The Panel on Multi-District Litigation selected the Fifth Circuit as the circuit in which the cases should be heard, and all petitions have been consolidated in the Fifth Circuit. *See* Consolidation Order, *In re: EPA, Effluent Limitation Guidelines*, MCP No. 136, ECF Doc. 3 (J.P.M.L. Dec. 8, 2015); Consolidation Order, *Sw. Elec. Power Co. v. EPA*, No. 15-60821, ECF Doc. 00513301255 (5th Cir. Dec. 9, 2015).

46. In the consolidated proceedings challenging the ELG rule, Petitioners filed their opening briefs on December 5, 2016.

47. On March 24, 2017, the Utility Water Act Group (“UWAG”) filed a petition with EPA requesting that the agency stay all deadlines in the rule and reconsider the rule.

48. On April 5, 2017, the Advocacy Office of the U.S. Small Business Administration filed a petition with EPA requesting that the agency reconsider the rule.

49. On April 12, 2017, EPA Administrator Scott Pruitt sent a letter to UWAG and the Small Business Administration stating that EPA intends to reconsider the final ELG rule.

50. On April 14, EPA moved to hold the cases pending in the Fifth Circuit in abeyance for 120 days, so as to allow EPA time to evaluate the petitions for reconsideration. On April 24, the Fifth Circuit granted EPA's motion and ordered that the cases be held in abeyance until August 12. Order, *Sw. Elec. Power Co. v. EPA*, No. 15-60821, ECF Doc. 00513964356 (5th Cir. Apr. 24, 2017).

51. On April 25, 2017, EPA published a notice purporting to stay indefinitely "the compliance deadlines for the new, more stringent limitations and standards" in the ELG rule. 82 Fed. Reg. at 19,005 (the Indefinite Stay). EPA did not provide the public with notice or an opportunity to comment on this Indefinite Stay prior to publication, despite the immediate effect of this action to halt measures being taken to achieve compliance with the ELG rule.

52. In the Indefinite Stay notice, EPA stated that it was "not making any concession of error with respect to the rulemaking," but rather was basing the Indefinite Stay on its desire to conduct a "careful and considerate review" of the issues presented in the reconsideration petitions. *Id.* at 19,005.

53. EPA also stated in the Indefinite Stay notice that it was making its decision to stay "the compliance deadlines for the new, more stringent limitations and standards" in the ELG rule "[i]n light of the capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet" those deadlines. *Id.* at 19,005. However, EPA failed to consider any

benefits of the ELG rule. In particular, the Indefinite Stay notice does not mention any benefits to public health and the environment from reducing these toxic wastewater discharges.

54. The Indefinite Stay notice does not even mention the four-part test for a preliminary injunction, let alone make any findings concerning the likelihood of success on the merits of any of the legal challenges to the ELG rule, the balance of harms to the regulated industry versus those who would benefit from the rule, or the public interest.

55. By its own admission, EPA has applied the Indefinite Stay to only the new, more stringent effluent limitations and standards in the ELG rule. Other provisions of the ELG rule, such as the legacy wastewater and leachate exemptions, are unaffected by the Indefinite Stay. By allowing these exemptions to remain in place, EPA prevents states from making case-by-case determinations as to what represents the appropriate effluent limits for leachate and legacy wastewater, which could be more stringent than the limits in the ELG rule.

FIRST CLAIM FOR RELIEF: VIOLATION OF THE APA FOR FAILURE TO MAKE THE REQUIRED FINDINGS FOR A STAY UNDER 5 U.S.C. § 705

56. The allegations above are incorporated by reference.

57. EPA's promulgation of the Indefinite Stay is "final agency action for which there is no other adequate remedy in a court" within the meaning of the APA, 5 U.S.C. § 704.

58. Under 5 U.S.C. § 705, an agency may only "postpone the effective date of action taken by it" if it "finds that justice so requires."

59. This Court has held that, under this provision, "the standard for a stay at the agency level is the same as the standard for a stay at the judicial level: each is governed by the four-part preliminary injunction test applied in this Circuit." *Sierra Club v. Jackson*, 833 F. Supp. 2d at 30. Thus, an agency must base any administrative stay under 5 U.S.C. § 705 on specific findings that legal challenges to the agency action are likely to succeed on the merits,

that there will be irreparable harm absent a stay, that this harm is greater than the harm to others who would be deprived of benefits of a rule because of a stay, and that the public interest is served by a stay. *Id.*

60. EPA's prior practice has been to consider the four-factor preliminary injunction test when reviewing requests to postpone the effective dates of rules under 5 U.S.C. § 705. *See, e.g.*, 76 Fed. Reg. 28,318, 28,326 (May 17, 2011); 76 Fed. Reg. 4780, 4788 (Jan. 26, 2011); 75 Fed. Reg. 49,556, 49,563 (Aug. 13, 2010).

61. The Indefinite Stay does not mention the four-part preliminary injunction test, much less make findings under each of the four factors for a preliminary injunction.

62. Therefore, the Indefinite Stay violates 5 U.S.C. § 705, is arbitrary and capricious, not in accordance with law, an abuse of discretion, and in excess of EPA's statutory jurisdiction and authority, under 5 U.S.C. § 706.

SECOND CLAIM FOR RELIEF: VIOLATION OF THE APA TO STAY A RULE FOR PURPOSES OF RECONSIDERING IT

63. The allegations above are incorporated by reference.

64. 5 U.S.C. § 705 permits an agency to postpone the effective date of a rule "pending judicial review," and does not authorize staying a rule for other purposes, such as pending agency reconsideration of a rule.

65. EPA issued the Indefinite Stay for the purpose of reviewing petitions to reconsider the ELG rule, rather than for the purpose of maintaining the status quo pending judicial review. In fact, contemporaneously with issuing the Indefinite Stay, EPA sought and was granted an abeyance of judicial review in the U.S. Court of Appeals for the Fifth Circuit.

66. In its notice announcing the Indefinite Stay, EPA failed to address the merits of the legal challenges to the ELG rule, instead basing its action on the petitions for reconsideration and the fact that industry would have to bear costs to comply with the rule.

67. The Indefinite Stay is therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of EPA's statutory jurisdiction and authority, under 5 U.S.C. § 706.

THIRD CLAIM FOR RELIEF: VIOLATION OF THE APA TO STAY A RULE WHERE THE EFFECTIVE DATE HAS ALREADY PASSED

68. The allegations above are incorporated by reference.

69. By applying 5 U.S.C. § 705 to a rule that was already in effect, EPA in issuing the Indefinite Stay contradicted the plain meaning of "postpon[ing] the effective date" of a rule. 5 U.S.C. § 705.

70. In issuing the Indefinite Stay, EPA also contradicted its own prior practice in interpreting 5 U.S.C. § 705 to apply to only rules whose effective date had not yet passed. *See, e.g.*, 76 Fed. Reg. at 4800 ("Postponing an effective date implies action before the effective date arrives.").

71. The effective date of the ELG rule was January 4, 2016.

72. EPA, by invoking 5 U.S.C. § 705 to indefinitely stay certain compliance deadlines for the ELG rule despite the fact that the ELG rule had already been in effect since January 4, 2016, acted in a manner that was arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of EPA's statutory authority. 5 U.S.C. § 706.

FOURTH CLAIM FOR RELIEF: VIOLATION OF THE APA TO SELECTIVELY STAY PORTIONS OF A RULE WHILE LEAVING OTHERS IN EFFECT

73. The allegations above are incorporated by reference.

74. The plain language of 5 U.S.C. § 705 provides federal agencies with authority to “postpone the effective date” of a rule in its entirety to preserve the regulatory status quo. 5 U.S.C. § 705 does not provide federal agencies with authority to selectively postpone the effectiveness of portions of a rule while leaving others in effect.

75. The legacy wastewater and leachate exemptions in the ELG rule went into effect on the rule’s effective date of January 4, 2016.

76. The legacy wastewater and leachate exemptions in the ELG rule are unaffected by the Indefinite Stay.

77. The Indefinite Stay does not purport to stay the ELG rule in its entirety, but instead only stays compliance deadlines for new, more stringent effluent limitations and standards, while leaving in effect other portions of the rule (including the legacy wastewater and leachate exemptions).

78. By applying 5 U.S.C. § 705 to stay only portions of the ELG rule, while leaving other portions in effect, EPA in issuing the Indefinite Stay contradicted the plain meaning of “postpon[ing] the effective date” of a rule. 5 U.S.C. § 705.

79. The Indefinite Stay only preserves the regulatory status quo that existed prior to EPA’s promulgation of the ELG rule with respect to some portions of the rule but not others, without providing a reasoned explanation as to why only certain portions of the rule should be stayed.

80. The Indefinite Stay is therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of EPA’s statutory jurisdiction and authority, under 5 U.S.C. § 706.

FIFTH CLAIM FOR RELIEF: VIOLATION OF APA FOR FAILURE TO PROVIDE ADEQUATE JUSTIFICATION AND CONSIDER RELEVANT FACTORS

81. The allegations above are incorporated by reference.

82. The grounds offered by EPA do not justify the Indefinite Stay.

83. EPA failed to consider the Indefinite Stay's impacts to any person or entity other than regulated facilities, and EPA failed to consider the Indefinite Stay's impacts on public health and the environment.

84. The Indefinite Stay is therefore arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of EPA's statutory jurisdiction and authority, under 5 U.S.C. § 706.

SIXTH CLAIM FOR RELIEF: VIOLATION OF APA FOR FAILURE TO PROVIDE PRIOR NOTICE AND AN OPPORTUNITY TO COMMENT

85. The allegations above are incorporated by reference.

86. The APA requires that, prior to promulgating a rule, "[g]eneral notice of [the] proposed rule making shall be published in the Federal Register." 5 U.S.C. § 553(b). The APA further requires that "[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments . . ." *Id.* § 553(c).

87. EPA failed to provide prior notice of the Indefinite Stay, and failed to provide an opportunity to comment on the stay prior to issuance of the Indefinite Stay, as required by 5 U.S.C. § 553.

88. By indefinitely postponing certain compliances deadlines in the ELG rule, the Indefinite Stay is a final action with binding legal effect.

89. The Indefinite Stay therefore violates 5 U.S.C. § 553, and is also arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of EPA's statutory jurisdiction and authority, under 5 U.S.C. § 706.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiffs request that the Court:

- a. declare that the Indefinite Stay is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA, 5 U.S.C. § 706(2)(A);
- b. vacate the Indefinite Stay;
- c. issue a mandatory injunction compelling EPA to reinstate all ELG rule compliance deadlines;
- d. award Plaintiffs their litigation costs and reasonable attorneys' fees in this action; and,
- e. provide any other necessary and appropriate relief.

DATED: May 3, 2017

/s/ Jennifer C. Chavez

Jennifer C. Chavez (D.C. Bar No. 493421)

Earthjustice

1625 Massachusetts Avenue NW, Suite 702

Washington, D.C. 20036

T: (202) 667-4500

E: jchavez@earthjustice.org

/s/ Thomas J. Cmar

Thomas J. Cmar (Illinois Bar No. 6298307) (*pro hac vice* pending)

Earthjustice

1101 Lake Street, Suite 405B

Oak Park, IL 60301

T: (312) 257-9338

E: tcmar@earthjustice.org

/s/ Matthew Gerhart

Matthew Gerhart (Washington Bar No. 42787) (*pro hac vice*
pending)
3639 N Clayton Street
Denver, CO 80205
T: (510) 847-7721
E: megerhart@gmail.com

*Counsel for Plaintiffs Clean Water Action, Sierra Club,
and Waterkeeper Alliance, Inc.*

/s/ Casey Austin Roberts

Casey Austin Roberts (California Bar. No. 253474) (*pro hac vice*
pending)
Sierra Club
Environmental Law Program
1536 Wynkoop Street, Suite 200
Denver, CO 80202
T: (303) 454-3355
E: casey.roberts@sierraclub.org

/s/ Joshua Smith

Joshua Smith (Florida Bar No. 0096844) (*pro hac vice* pending)
Sierra Club
Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
T: (415) 977-5560
E: joshua.smith@sierraclub.org

Counsel for Plaintiff Sierra Club

/s/ Abel Russ

Abel Russ (D.C. Bar No. 1007020)
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
T: (802) 482-5379
E: aruss@environmentalintegrity.org

/s/ Lisa Widawsky Hallowell

Lisa Widawsky Hallowell (Pennsylvania Bar No. 207983) (*pro hac*
vice pending)
Environmental Integrity Project
509 Vine Street, Apt. 2A
Philadelphia, PA 19106

T: (202) 294-3282

E: lhallowell@environmentalintegrity.org

*Counsel for Plaintiffs Environmental Integrity Project,
PennEnvironment, Inc., Chesapeake Climate Action Network,
Physicians for Social Responsibility, Chesapeake, Inc., and Prairie
Rivers Network*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CLEAN WATER ACTION
1444 I Street NW, Suite 400
Washington, DC 20005,

ENVIRONMENTAL INTEGRITY PROJECT
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005,

SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612,

WATERKEEPER ALLIANCE, INC.
180 Maiden Lane, Suite 603
New York, NY 10038,

PENNENVIRONMENT, INC.
1429 Walnut Street, Suite 1100
Philadelphia, PA 19102,

CHESAPEAKE CLIMATE ACTION
NETWORK
6930 Carroll Avenue, Suite 720
Takoma Park, MD 20912,

PHYSICIANS FOR SOCIAL
RESPONSIBILITY, CHESAPEAKE, INC.
325 East 25th Street
Baltimore, MD 21218,

and

PRAIRIE RIVERS NETWORK
1902 Fox Drive, Suite G
Champaign, IL 61820

Plaintiffs,

v.

Civil Action No. 17-817

E. SCOTT PRUITT, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, IN HIS OFFICIAL CAPACITY
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

and

U.S. ENVIRONMENTAL PROTECTION
AGENCY
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Defendants.

EXHIBIT A

INDEFINITE STAY NOTICE

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 423**

[EPA-HQ-OW-2009-0819; FRL-9961-67-OW]

RIN 2040-AF14

Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notification; postponement of compliance dates.

SUMMARY: By a letter dated April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule that amends the effluent limitations guidelines and standards for the steam electric point source category under the Clean Water Act (“CWA”), published in the *Federal Register* on November 3, 2015. These regulations have been challenged in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al. v. EPA*, No. 15–60821. The EPA is postponing these compliance dates pending judicial review.

DATES: April 25, 2017.

ADDRESSES: EPA has established a docket for the Rule amending 40 CFR part 423 under Docket ID No. EPA-HQ-OW-2009-0819. All documents in the docket are listed on the <http://www.regulations.gov> Web site.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 564-1003; email address: jordan.ronald@epa.gov. For information related to NPDES permitting of these facilities, contact Sean Ramach at (202) 564-2865, email address: ramach.sean@epa.gov.

Electronic copies of this document and related materials are available on EPA’s Web site at <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>. Copies of this notification are also available at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 3, 2015, the EPA issued a final rule amending 40 CFR part 423, the effluent limitations guidelines and standards for the steam electric power generating point source category, under

Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: Fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (“FGD”) wastewater, gasification wastewater, and combustion residual leachate. Collectively, this rulemaking is known as the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“Rule”). For further information on the Rule, see 80 FR 67838 (Nov. 3, 2015).

EPA received seven petitions for review of the Rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit. Petitioners have filed their briefs, and EPA’s brief is currently due by May 4, 2017.

In a letter dated March 24, 2017, the Utility Water Act Group (“UWAG”) ¹ submitted a petition for reconsideration of the Rule and requested that EPA suspend the Rule’s approaching deadlines. In a letter dated April 5, 2017, the Small Business Administration Office of Advocacy also petitioned the EPA for reconsideration of the Rule. The petitions raise wide-ranging and sweeping objections to the Rule, some of which overlap with the claims in the ongoing litigation challenging the Rule in the U.S. Court of Appeals for the Fifth Circuit.² The UWAG petition also points to new data, claiming that plants burning subbituminous and bituminous coal cannot comply with the Rule’s limitations and standards for FGD wastewater through use of EPA’s model technology. The UWAG petition says that a pilot study has been conducted at the Pleasant Prairie plant that supports petitioner’s request, and that a final report on the pilot study “is likely to [be] publish[ed] . . . within the next few weeks.” Moreover, the petitions say that new data have been collected by American Electric Power that “illustrate[] that variability in wastewater management can also impact performance at bituminous

plants such that additional technologies beyond EPA’s model technology will be needed to achieve the limits.” EPA wishes to review these data.

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the Administrator announced his decision to reconsider the Rule (a copy of this letter is included in the docket for the Rule). As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. Under Section 705 of the APA (“Administrative Procedure Act”), 5 U.S.C. 705, and when justice so requires, an Agency may postpone the effective date of action taken by it pending judicial review. The earliest compliance dates for the new, and more stringent, best available technology economically achievable effluent limitations and pretreatment standards is November 1, 2018, for each of the following wastestreams: Fly ash transport water, bottom ash transport water, flue gas desulfurization wastewater, flue gas mercury control wastewater, and gasification wastewater. These dates have not yet passed, and they are within the meaning of the term “effective date” as that term is used in Section 705 of the APA. In light of the capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet the compliance deadlines for the new, more stringent limitations and standards in the Rule—which are as early as November 1, 2018, for direct dischargers and by November 1, 2018, for indirect dischargers—the Agency finds that justice requires it to postpone the compliance dates of the Rule that have not yet passed, pending judicial review. See 80 FR 67838, 67863–67868 (Nov. 3, 2015) (discussion of costs of the Rule). This will preserve the regulatory status quo with respect to wastestreams subject to the Rule’s new, and more stringent, limitations and standards, while the litigation is pending and the reconsideration is underway. While EPA is not making any concession of error with respect to the rulemaking, the far-ranging issues contained in the reconsideration petitions warrant careful and considerate review of the Rule. EPA will also file a motion requesting the Fifth Circuit to hold the litigation challenging the Rule in abeyance while the Agency reconsiders the Rule, after which it will inform the

¹ UWAG is a voluntary, ad hoc, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

² A copy of each petition is included in the docket for this rule, Docket ID No. EPA-HQ-OW-2009-0819.

Court of any portions of the Rule for which it seeks a remand so that it can conduct further rulemaking. Separately, EPA intends to conduct notice and comment rulemaking to stay the compliance deadlines for the new, more stringent limitations and standards in the Rule.

II. Postponement of Compliance Dates

The EPA hereby issues a postponement of the compliance dates

that have not yet passed contained in the following sections of the Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category under Section 705 of the APA pending judicial review: 40 CFR 423.11(t), 423.13(g)(1)(i), (h)(1)(i), (i)(1)(i), (j)(1)(i), and (k)(1)(i), and 423.16(e), (f), (g), (h), and (i).

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: April 12, 2017.

E. Scott Pruitt,
Administrator.

[FR Doc. 2017-07811 Filed 4-24-17; 8:45 am]

BILLING CODE 6560-50-P

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Administrative Procedure Act, 5 U.S.C. §§ 701-706. Review of unlawful agency action.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 05-03-2017	SIGNATURE OF ATTORNEY OF RECORD: /s/ Jennifer C. Chavez
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Clean Water Action, Environmental Integrity Project, Sierra Club, Waterkeeper Alliance, Inc., PennEnvironment, Inc., Chesapeake Climate Action Network, Physicians for Social Responsibility, Chesapeake, Inc., and Prairie Rivers Network

Plaintiff(s)

v.

Civil Action No. 17-817

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, in his official capacity, and U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Scott Pruitt, Administrator of the U.S. Environmental Protection Agency
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer C. Chavez (DC Bar No. 493421)
Earthjustice
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
202-667-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Clean Water Action, Environmental Integrity Project, Sierra Club, Waterkeeper Alliance, Inc., PennEnvironment, Inc., Chesapeake Climate Action Network, Physicians for Social Responsibility, Chesapeake, Inc., and Prairie Rivers Network

Plaintiff(s)

v.

Civil Action No. 17-817

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, in his official capacity, and U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Correspondence Control Unit Office of General Counsel (2310A) U.S. Environmental Protection Agency William Jefferson Clinton Building 1200 Pennsylvania Avenue, NW Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer C. Chavez (DC Bar No. 493421) Earthjustice 1625 Massachusetts Ave., NW, Ste. 702 Washington, DC 20036 202-667-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Clean Water Action, Environmental Integrity Project, Sierra Club, Waterkeeper Alliance, Inc., PennEnvironment, Inc., Chesapeake Climate Action Network, Physicians for Social Responsibility, Chesapeake, Inc., and Prairie Rivers Network

Plaintiff(s)

v.

Civil Action No. 17-817

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, in his official capacity, and U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jeff Sessions, U.S. Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer C. Chavez (DC Bar No. 493421), Earthjustice, 1625 Massachusetts Ave., NW, Ste. 702, Washington, DC 20036, 202-667-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Clean Water Action, Environmental Integrity Project, Sierra Club, Waterkeeper Alliance, Inc., PennEnvironment, Inc., Chesapeake Climate Action Network, Physicians for Social Responsibility, Chesapeake, Inc., and Prairie Rivers Network

Plaintiff(s)

v.

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, in his official capacity, and U.S. ENVIRONMENTAL PROTECTION AGENCY

Defendant(s)

Civil Action No. 17-817

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Channing D. Phillips, United States Attorney for the District of Columbia, c/o Civil Process Clerk, United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer C. Chavez (DC Bar No. 493421), Earthjustice, 1625 Massachusetts Ave., NW, Ste. 702, Washington, DC 20036, 202-667-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk