

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

)
WATERKEEPER ALLIANCE, CENTER)
FOR BIOLOGICAL DIVERSITY,)
CLEAN WATER ACTION, FOOD)
& WATER WATCH, SURFRIDER)
FOUNDATION, ENVIRONMENT)
AMERICA, BAYOU CITY)
WATERKEEPER, BLACK WARRIOR)
RIVERKEEPER, HEALTHY GULF,)
SAN ANTONIO BAY ESTUARINE)
WATERKEEPER, TENNESSEE)
RIVERKEEPER and SAN FRANCISCO)
BAYKEEPER,)

Plaintiffs,)

v.)

U.S. ENVIRONMENTAL PROTECTION)
AGENCY and MICHAEL S. REGAN,)
Administrator, in his official capacity as)
Administrator of the United States)
Environmental Protection)
Agency)

Defendants.)
_____)

No. _____

PETITION FOR REVIEW

PETITION FOR REVIEW OF AN ACTION
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Pursuant to Clean Water Act Section 509(b)(1), 33 U.S.C. § 1369(b)(1),
Federal Rule of Appellate Procedure 15, and Ninth Circuit Local Rule 15-1,
Waterkeeper Alliance, Center For Biological Diversity, Clean Water Action, Food

& Water Watch, Healthy Gulf, Environment America, Surfrider Foundation, Bayou City Waterkeeper, Black Warrior Riverkeeper, San Antonio Bay Estuarine Waterkeeper, Tennessee Riverkeeper, and San Francisco Baykeeper (“Petitioners”) petition the United States Court of Appeals for the Ninth Circuit for review of the final actions of Respondents U.S. Environmental Protection Agency (“EPA”) and EPA Administrator Michael S. Regan in Effluent Guidelines Program Plan 15 determining that revision of the effluent limitations, effluent limitation guidelines, standards of performance for new sources, and promulgation of pretreatment standards is not appropriate at this time for the Petroleum Refining, 40 C.F.R. Part 419; the Inorganic Chemicals Manufacturing, 40 C.F.R. Part 415; the Organic Chemicals, Plastics, and Synthetic Fibers (“OCPSF”), 40 C.F.R. Part 414 (with the exception of per-and polyfluoroalkyl substances (“PFAS”) discharged from PFAS manufacturing facilities);¹ the Fertilizer Manufacturing, 40 C.F.R. Part 418; the Pesticide Chemicals, 40 C.F.R. Part 455; the Plastics Molding and Forming, 40

¹ To the extent that Final Plan 15 constitutes a final agency decision that revision of the OCPSF effluent limits, effluent limit guidelines, and pretreatment standards to limit the wastewater discharge of PFAS from PFAS manufacturing facilities is appropriate, Petitioners do not seek judicial review of this decision. *See* EPA, Effluent Guidelines Program Plan 15 at 7-3.

C.F.R. Part 463; and the Nonferrous Metals Manufacturing, 40 C.F.R. Part 421 industrial point source categories.

EPA announced this action in a Federal Register notice published at 88 Fed. Reg. 6258 (Jan. 31, 2023), titled “Effluent Guidelines Program Plan 15” (Exhibit A). EPA published Plan 15 on its website on January 19, 2023 (Exhibit B). EPA’s docket number for Plan 15 is EPA-HQ-OW-2021-0547.

Specifically, Petitioners bring this challenge under 33 U.S.C. § 1369(b)(1)(A) (promulgation of standards of performance under 33 U.S.C. § 1316); 33 U.S.C. § 1369(b)(1)(C) (promulgation of pretreatment standards under 33 U.S.C. § 1317); 33 U.S.C. § 1369(b)(1)(E) (promulgation of effluent limitations or other limitations under 33 U.S.C. §§ 1311, 1312, and 1316). Petitioners allege that EPA’s decisions in Plan 15 not to revise the effluent limitations, effluent limitation guidelines, standards of performance for new sources, and pretreatment standards for the seven industrial point source categories identified above, made pursuant to 33 U.S.C. §§ 1311, 1312, 1316, and 1317 are “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law,” under the federal Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

Petitioners have standing to seek judicial review of this decision because they and their members have been injured by EPA’s Plan 15 decisions not to revise

the effluent limitations, effluent limitation guidelines, standards of performance for new sources, and promulgation of pretreatment standards for the seven industrial point source categories identified above, and those injuries can be redressed by a favorable decision by this Court. Examples are described in the attached declarations. *See* Exhibit C.

Respectfully submitted on the eleventh of April, 2023.

s:/ Jennifer Duggan

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

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9th Cir. Case Number(s) _____

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email Saddress*):

Bayou City Waterkeeper (kristen@bayoucitywaterkeeper.org), Black Warrior Riverkeeper (edillard@blackwarriorriver.org), Center for Biological Diversity (bhartl@biologicaldiversity.org), Clean Water Action (jpeters@cleanwater.org), Environment America (jrumpler@environmentamerica.org), Food and Water Watch (edoran@fwwatch.org), Healthy Gulf (matt@healthygulf.org), San Antonio Bay Estuarine Waterkeeper (wilsonalamobay@aol.com), Tennessee Riverkeeper (DWhiteside@TennesseeRiver.org), San Francisco Baykeeper (eric@baykeeper.org), Surfrider Foundation (sprom@surfrider.org), Waterkeeper Alliance (kfoster@waterkeeper.org)

Description of Document(s) *(required for all documents):*

Petition for Review

Exhibit A: Federal Register Volume 58/ January 31, 2023, titled “Effluent Guidelines Program Plan 15”

Exhibit B: Effluent Guidelines Program Plan 15

Exhibit C: Examples of Standing

Signature s/Margaret Parish **Date** April 11, 2023
(use “s/[typed name]” to sign electronically-filed documents)