



September 16, 2026

**VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED**

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Notice of Intent to Sue EPA for Failure, Under Clean Water Act Section 303(d), 33 U.S.C. 1313(d), to Approve or Disapprove State of Montana's 2022-24 Combined Integrated Report

Dear Administrator Zeldin:

This is a 60-day Notice under the Clean Water Act ("CWA") 33 U.S.C. § 1365(a)(2) on behalf of Upper Missouri Waterkeeper ("Waterkeeper"). The U.S. Environmental Protection Agency ("EPA") has a nondiscretionary duty to act on the State of Montana's September 11, 2026, submission of a CWA impaired waters list under 33 U.S.C. § 1313(d) within thirty days.

I. Background

a. State Impaired Waters Lists

Under the Clean Water Act, each state must adopt water quality standards that "consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses," in order "to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act. 33 U.S.C. § 1313(c)(2)(B). CWA section 303(d) mandates that the state must then "identify those waters within its -boundaries for which the effluent limitations required by section 131 l(b)(l)(A) and section 131 l(b)(l)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters." 33 U.S.C. § 1313(d)(l)(A). The state must also "establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters." *Id.* The determination that a particular water is not meeting an applicable water quality standard is commonly referred to as an "impairment" finding, and the full ranking as an "impaired waters" list.

Each state must submit this list of impaired waters to U.S. EPA for approval, and the agency must "approve or disapprove" the list "not later than thirty days after the date of submission." *Id.*

§ 1313(d)(2). U.S. EPA regulations require each state to prepare and submit its impaired waters list every two years. 40 C.F.R. § 130.7(d)(1).

b. CWA Citizen Suit Provisions

CWA section 505(a) states that "any citizen may commence a civil action . . . (2) against the Administrator [of U.S. EPA] where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 33 U.S.C. § 1365(a). A plaintiff may not bring a non-discretionary duty suit under CWA section 505(a)(2) unless, at least 60 days prior, the plaintiff has given notice of the action to the Administrator of U.S. EPA. 33 U.S.C. § 1365(b)(2). The notice "shall identify the provision of the Act which requires such act or creates such duty, shall describe with reasonable specificity the action taken or not taken by the Administrator which is alleged to constitute a failure to perform such act or duty, and shall state the full name, address and telephone number of the person giving the notice." 40 C.F.R. 135.3(b). The notice must also "state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice." *Id.* § 135.3(c).

II. Legal Claim

The Montana Department of Environmental Quality ("MDEQ") submitted its 2022-24 Combined Integrated Report to U.S. EPA on behalf of the State of Montana on June 12, 2026, including an impaired waters list. The Integrated Report explicitly declined to use available water quality data for nutrients and dissolved oxygen in Montana waters, or to make impairment determinations on those pollutant parameters for that Integrated Report. Upper Missouri Waterkeeper sent EPA a 60 Day Notice of Intent to Sue regarding the agency's failure to take action within thirty days by letter dated July 15, 2026.

On September 15, 2026, EPA notified the undersigned that, on September 11, 2026, and in response to EPA's request for additional information regarding the basis for the state's 2022-24 303(d) list, MDEQ submitted a revised 2022-24 303(d) list, withdrew the prior list, and requested EPA take action to approve such revised list.

Under 33 U.S.C. § 1313(d)(2), U.S. EPA had a nondiscretionary duty to act on the new submission by October 11, 2026. The Agency did not timely act on the first submission of a 2022-24 303(d) List, and has not yet taken any action to approve or disapprove Montana's revised 2022-24 303(d) list of impaired waters as of the writing of this letter. The undersigned notes that the alleged "revisions" submitted to EPA by MDEQ are in fact non-substantive. Rather, they solely reflect that agency's expanded rationale as to why it chose not to make any impairment determinations on nutrient or dissolved oxygen parameters for more than four years. The undersigned further note that such rationale also arbitrarily and erroneously concludes that state's may permissibly refuse to use best available data in 303(d) list submissions based on regulatory uncertainty created by the same state's unlawful actions. EPA can, and must, take timely action on MDEQ's revised September 11, 2026 303(d) list submission.

CWA section 505(a)(2) authorizes a suit against U.S. EPA where the agency has thus failed to carry out its mandatory duty to approve or disapprove an impaired waters list within thirty days

of submission. *Hayes v. Whiteman*, 264 F.3d 1017, 1023 (10th Cir. 2001). Accordingly, Upper Missouri Waterkeeper is providing this letter as notice of its intent to bring suit against U.S. EPA for a failure under CWA section 505(a)(2) to act on the September 11, 2026 303(d) list submission.

III. Party Giving Notice

The party giving notice under this claim is:

Upper Missouri Waterkeeper
24 S. Willson Ave., Ste. 6-7
Bozeman, MT 59715
(406) 570-2202
Guy@UpperMissouriWaterkeeper.org

We encourage you to contact us as soon as possible should you desire to discuss the allegations set forth in this letter. If this matter is not resolved to our satisfaction, we will file suit on or after the sixtieth day following the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Alsentzer", is written over a light blue rectangular background.

Guy Alsentzer
Attorney
Upper Missouri Waterkeeper

Copies by first class mail or email where available:

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