July 15, 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 failed to comply with its nondiscretionary duty to act on the State of Montana's June 12, 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. § 13 l 3(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)(l).

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.

Under 33 U.S.C. § 1313(d)(2), U.S. EPA had a nondisretionary duty to act on that submission by July 12, 2026, or (since that was a Sunday), at least by the next business day, July 13, 2026. The Agency did not do so, and has not yet taken any action to approve or disapprove Montana's impaired waters list as of the writing of this letter. 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 that failure under CWA section 505(a)(2).

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,

Guy Alsentzer
Attorney
Upper Missouri Waterkeeper

Copies by first class mail or email where available:

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