

1 **IN THE UNITED STATES DISTRICT COURT**  
2 **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

3 DELAWARE RIVERKEEPER NETWORK )  
4 and MAYA K. VAN ROSSUM, )

5 Plaintiffs, )

6 v. )

) Case No. 2:24-cv-05308

7 UNITED STATES ENVIRONMENTAL )  
8 PROTECTION AGENCY, et al., )

9 Defendants. )

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11 **[PROPOSED] CONSENT DECREE**

12 WHEREAS, on October 2, 2024, Plaintiffs Delaware Riverkeeper Network and Maya  
13 K. van Rossum, the Delaware Riverkeeper, filed the above-captioned case against the United  
14 States Environmental Protection Agency, Michael S. Regan, in his official capacity as the  
15 Administrator of the United States Environmental Protection Agency, and Bruno Pigott, in his  
16 official capacity as the Acting Administrator for the Office of Water of the United States  
17 Environmental Protection Agency (hereinafter “EPA”) (Dkt. No. 1);

18 WHEREAS, Plaintiffs filed this action under Clean Water Act (“CWA”) section  
19 505(a)(2), 33 U.S.C. § 1365(a)(2), and the Administrative Procedure Act, 5 U.S.C. § 706(1),  
20 and alleged that EPA has failed to carry out and also unreasonably delayed its nondiscretionary  
21 duty under CWA section 303(c)(4)(B), 33 U.S.C. § 1313(c)(4)(B), to promulgate final revised  
22 water quality standards (“WQS”) within ninety days of proposing them;

23  
24 WHEREAS, on April 29, 2022, Plaintiffs and other groups petitioned EPA under  
25 Administrative Procedure Act section 553(e), 5 U.S.C. § 553(e), and CWA section  
26 303(c)(4)(B), 33 U.S.C. § 1313(c)(4)(B), to revise the WQS for a specific portion of the  
27 Delaware River (“the Petition”);  
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1           WHEREAS, on December 1, 2022, EPA issued an Administrator’s Determination  
2 pursuant to CWA section 303(c)(4)(B), 33 U.S.C. § 1313(c)(4)(B), based on a finding that new  
3 or revised WQS are necessary to meet the requirements of the CWA for miles 108.4 to 70.0 of  
4 the Delaware River;  
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6           WHEREAS, on December 21, 2023, EPA published a rule proposing revised WQS for  
7 miles 108.4 to 70.0 of the Delaware River pursuant to CWA section 303(c)(4)(B),  
8 33 U.S.C. § 1313(c)(4)(B) (“the Proposed Rule”), *see* Water Quality Standards to Protect  
9 Aquatic Life in the Delaware River, 88 Fed. Reg. 88,315 (Dec. 21, 2023);  
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11           WHEREAS, on August 2, 2024, Plaintiff sent EPA a Notice of Intent to Sue pursuant  
12 to CWA section 505(b)(2), 33 U.S.C. § 1365(b)(2), that addressed EPA’s alleged duty to  
13 promulgate final revised WQS for miles 108.4 to 70.0 of the Delaware River;

14           WHEREAS, to date, EPA has not promulgated final revised WQS for miles 108.4 to  
15 70.0 of the Delaware River;  
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17           WHEREAS, the relief requested in the Complaint for this case includes, among other  
18 things, an order from this Court to compel EPA to promulgate final revised WQS for specified  
19 zones of the Delaware River by a date certain;

20           WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without  
21 admission of any issue of fact or law, except as expressly provided herein;

22           WHEREAS, Plaintiffs and EPA, by entering into this Consent Decree (the “Consent  
23 Decree”), do not waive or limit any claim, remedy, or defense, on any grounds, related to any  
24 final EPA action;

25           WHEREAS, Plaintiffs and EPA consider this Consent Decree to be an adequate and  
26 equitable resolution of all claims in this matter and therefore wish to effectuate a settlement;

27           WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial economy to  
28 resolve this matter without protracted litigation;

1           WHEREAS, Plaintiffs and EPA agree that this Court has jurisdiction over the matters  
2 resolved in this Consent Decree, pursuant to CWA section 505(a)(2), 33 U.S.C. § 1365(a)(2),  
3 and that venue is proper in the Eastern District of Pennsylvania, pursuant to CWA section  
4 505(c), 33 U.S.C. § 1365(c); and

5           WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree  
6 is fair, reasonable, in the public interest, and consistent with the Clean Water Act;

7           NOW THEREFORE, before the taking of testimony, without trial or determination of  
8 any issues of fact or law, and upon the consent of Plaintiffs and EPA, it is hereby ordered,  
9 adjudged and decreed that:

10           1.       The EPA Administrator shall sign a final rule promulgating revised WQS for  
11 miles 108.4 to 70.0 of the Delaware River on or before June 30, 2025, unless the States of  
12 Delaware and New Jersey and the Commonwealth of Pennsylvania each adopt revised WQS  
13 for the portion of the Delaware River between miles 108.4 to 70.0 of the Delaware River under  
14 their jurisdiction and EPA determines the WQS meet the requirements of the Clean Water Act,  
15 on or before June 30, 2025.

16           2.       EPA shall file status reports with the Court as follows:

17           a.       EPA will file its first status report no later than thirty days from the date the  
18           Court enters this Consent Decree.

19           b.       Thereafter, EPA shall file a status report every thirty days until EPA takes one  
20           of the final agency actions set forth in Paragraph 1.

21           c.       Status reports shall include a description of EPA's progress toward signature of  
22           a final rule promulgating WQS for miles 108.4 to 70.0 of the Delaware River.

23           d.       Nothing in this Consent Decree requires EPA to disclose internal, deliberative,  
24           or confidential information.

25           3.       After EPA has completed the action set forth in Paragraphs 1 and 2 of this  
26 Consent Decree and the issue of costs of litigation (including reasonable attorney fees) has  
27 been resolved, the above-captioned matter shall be dismissed with prejudice and this Consent  
28 Decree shall terminate.

1           4.       The deadlines established by this Consent Decree may be extended (a) by  
2 written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court upon  
3 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and  
4 upon consideration of any response by Plaintiffs and any reply by EPA. Any other provision of  
5 this Consent Decree also may be modified by the Court following motion of an undersigned  
6 party for good cause shown pursuant to the Federal Rules of Civil Procedure and upon  
7 consideration of any response by a non-moving party and any reply.

8           5.       The possibility exists that circumstances outside the reasonable control of EPA  
9 could delay EPA's ability to comply with the deadlines in this Consent Decree. Such situations  
10 include, but are not limited to, a government shutdown; catastrophic environmental events  
11 requiring immediate and/or time-consuming response by EPA; and extreme weather events.  
12 Should a delay occur due to such circumstances, any resulting failure to fulfill any obligation  
13 set forth herein shall not constitute a failure to comply with the terms of this Consent Decree,  
14 and any deadline so affected shall be extended one day for each day of the delay. EPA will  
15 provide Plaintiffs with reasonable notice if EPA invokes this Paragraph. Any dispute regarding  
16 such invocation shall be resolved in accordance with the dispute resolution process set forth in  
17 Paragraphs 8 and 9.

18           6.       If a lapse in EPA appropriations occurs within one hundred twenty (120) days  
19 prior to a deadline in Paragraphs 1 and 2 in this Consent Decree, that deadline shall be  
20 extended automatically one day for each day of the lapse in appropriations. Nothing in this  
21 Paragraph shall preclude EPA from seeking an additional extension of time through  
22 modification of this Consent Decree pursuant to Paragraph 4.

23           7.       Plaintiffs and EPA agree that this Consent Decree constitutes a complete  
24 settlement of all claims as described in the Complaint, Dkt. No. 1.

25           8.       In the event of a dispute between Plaintiffs and EPA concerning the  
26 interpretation or implementation of any aspect of this Consent Decree, the disputing party shall  
27 provide the other party with a written notice, via electronic mail or other means, outlining the  
28 nature of the dispute and requesting informal negotiations. The Parties shall meet and confer in

1 order to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten  
2 (10) business days after receipt of the notice, either party may petition the Court to resolve the  
3 dispute.

4 9. No motion or other proceeding seeking to enforce this Consent Decree or for  
5 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 8 has been  
6 followed, and the moving party has provided the other party with written notice received at  
7 least ten (10) business days before the filing of such motion or proceeding.

8 10. The deadline for filing a motion for costs of litigation (including attorney fees)  
9 for activities performed prior to entry of the Consent Decree is hereby extended until one-  
10 hundred and twenty (120) days after this Consent Decree is entered by the Court. During this  
11 period, the Parties shall seek to resolve any claim for costs of litigation (including attorney  
12 fees), and if they cannot, Plaintiffs will file a motion for costs of litigation (including attorney  
13 fees) or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the  
14 right to oppose any such request.

15 11. This Court shall retain jurisdiction over this matter to enforce the terms of this  
16 Consent Decree and to consider any requests for costs of litigation (including attorney fees).

17 12. Nothing in this Consent Decree shall be construed to limit or modify any  
18 discretion accorded EPA by the Clean Water Act or by general principles of administrative law  
19 in taking the actions that are the subject of this Consent Decree, including the discretion to  
20 alter, amend, or revise any final actions promulgated pursuant to this Consent Decree. EPA's  
21 obligation to perform each action specified in this Consent Decree does not constitute a  
22 limitation or modification of EPA's discretion within the meaning of this Paragraph.

23 13. Except as expressly provided herein, nothing in this Consent Decree shall be  
24 construed as an admission of any issue of fact or law or to waive or limit any claim, remedy, or  
25 defense, on any grounds, related to any final action EPA takes with respect to the actions  
26 addressed in this Consent Decree.

27 14. It is hereby expressly understood and agreed that this Consent Decree was  
28 jointly drafted by Plaintiffs and EPA. Accordingly, the Parties hereby agree that any and all

1 rules of construction to the effect that ambiguity is construed against the drafting party shall be  
2 inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent  
3 Decree.

4 15. Any notices required or provided for by this Consent Decree shall be in writing,  
5 via electronic mail, and sent to the following (or to any new address of counsel as filed and  
6 listed in the docket of the above-captioned matter, at a future date):

7 For Plaintiffs:

Kacy C. Manahan  
Delaware Riverkeeper Network  
925 Canal Street  
Suite 3700  
Bristol, PA 19007  
Tel: (215) 369-1188 x 115  
E-mail: kacy@delawareriverkeeper.org

12 For EPA:

Jeffrey Hammons  
Mario Luna  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
Tel: (202) 598-6925 (Hammons)  
Tel: (202) 305-0733 (Luna)  
Email: jeffrey.hammons@usdoj.gov  
mario.luna@usdoj.gov

19 16. EPA and Plaintiffs recognize and acknowledge that the obligations imposed  
20 upon EPA under this Consent Decree can only be undertaken using appropriated funds legally  
21 available for such purpose. No provision of this Consent Decree shall be interpreted as or  
22 constitute a commitment or requirement that the United States obligate or pay funds in  
23 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision  
24 of law.

25 17. If for any reason the Court should decline to approve this Consent Decree in the  
26 form presented, this agreement is voidable at the sole discretion of either party and the terms of  
27 the proposed Consent Decree may not be used as evidence in any litigation between the  
28 Parties.

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18. The undersigned representatives of Plaintiffs and EPA certify that they are fully authorized by the party they represent to consent to the Court’s entry of the terms and conditions of this Consent Decree.

IT IS SO ORDERED on this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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COUNSEL FOR PLAINTIFFS: KACY C. MANAHAN, ESQ.

/s/ [DRAFT]

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COUNSEL FOR EPA:

TODD KIM  
Assistant Attorney General  
Environment & Natural Resources Division

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