

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Natural Resources Defense Council,)
)
Plaintiff,)
)
v.)
)
Andrew Wheeler, Administrator of the U.S.)
Environmental Protection Agency, and)
U.S. Environmental Protection Agency,)
)
Defendants.)
)
_____)

Case No. 21-cv-461
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Under the Safe Drinking Water Act, community water systems must provide reports about drinking water safety to the more than 300 million public drinking water consumers across the country.

2. These reports, called consumer confidence reports in the statute, must give consumers important information about the presence of contaminants in their tap water and any violations of national drinking water standards.

3. In practice, consumer confidence reports are often technical, confusing, long, and full of jargon. This undermines their intended purpose, and the public may not get timely, clear information about potential risks from contaminated drinking water.

4. In recent amendments to the Safe Drinking Water Act, Congress directed the Environmental Protection Agency (EPA) to revise the regulations governing consumer confidence reports by October 23, 2020, to make the reports more accurate, readable, and understandable, and to increase reporting frequency for many consumers.

5. Despite this mandate from Congress, EPA has not published or proposed the required revisions to its regulations. EPA has therefore failed to perform a nondiscretionary duty.

6. By failing to issue the revised rules required by law, EPA is denying members of the public important information about health threats they may face from drinking water contamination.

7. Plaintiff Natural Resources Defense Council (NRDC) asks this Court to order EPA to issue the overdue revision to its regulations as soon as practicable.

PARTIES

8. Plaintiff NRDC is a national, not-for-profit environmental and public health organization with hundreds of thousands of members nationwide. For decades, NRDC has worked to protect the public from health threats posed by drinking water contamination. NRDC has long supported public right-to-know requirements, as embodied in consumer confidence reports and other public disclosure mechanisms. By letter dated November 12, 2020, NRDC provided the EPA Administrator with written notice, pursuant to 42 U.S.C. § 300j-8(b)(2) and 40 C.F.R. § 135.11(b), of the statutory violation challenged in this Complaint.

9. Defendant Administrator Andrew Wheeler is the highest-ranking official in the U.S. Environmental Protection Agency. He is sued in his official capacity.

10. Defendant U.S. Environmental Protection Agency is an agency of the United States government. Defendants are referred to collectively in this Complaint as EPA.

11. NRDC brings this action on behalf of its members, who are harmed by EPA's failure to comply with its nondiscretionary duty. EPA's violation of the law means NRDC's

members served by community water systems are deprived of more readable, clear, understandable, accurate, and timely consumer confidence reports. NRDC's members are entitled to that information, and NRDC's members would benefit from more readable, clear, understandable, accurate, and timely information about the quality of their drinking water. The requested relief mandating that EPA comply with its statutory obligations will redress these harms to NRDC's members.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 42 U.S.C. § 300j-8(a)(2), because NRDC challenges EPA's failure to perform a nondiscretionary duty.

13. The Court has authority to order EPA to perform a nondiscretionary duty. 42 U.S.C. § 300j-8(a).

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1), because NRDC resides in this judicial district and no real property is involved in this action.

BACKGROUND AND LEGAL FRAMEWORK

15. All community water systems must send their customers annual reports about the source and quality of the drinking water they provide, including information about detected contaminants, possible health risks from those contaminants, and any violations the water system may have committed. 42 U.S.C. § 300g-3(c)(4)(B). EPA regulations governing these consumer confidence reports are published at 40 C.F.R. §§ 141.151 to 141.155, and at Appendix A to 40 C.F.R. Part 141, Subpart O.

16. Under recent amendments to the Safe Drinking Water Act—enacted through America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, 132 Stat. 3765 (2018)—EPA is required to revise the regulations governing consumer confidence reports to make

the reports more useful and accessible. 42 U.S.C. § 300g-3(c)(4)(F). Specifically, EPA must “issue revisions to the regulations” to increase “the readability, clarity, and understandability of the information presented in consumer confidence reports” and to increase “the accuracy of information presented, and risk communication, in consumer confidence reports.” *Id.* § 300g-3(c)(4)(F)(i)(I)(aa)-(bb).

17. In issuing the required revisions to its rules, EPA must consult with “public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties.” *Id.* § 300g-3(c)(4)(F)(i) (cross-referencing § 300g-3(c)(4)(A)).

18. EPA must also require that community water systems serving more than 10,000 customers provide consumer confidence reports at least twice a year, instead of once a year. *Id.* § 300g-3(c)(4)(F)(i)(II).

19. The deadline for EPA to issue these revised regulations is “[n]ot later than 24 months after October 23, 2018,” or October 23, 2020. *Id.* § 300g-3(c)(4)(F)(i). That deadline has now passed.

20. EPA has not proposed—let alone finalized—new regulations. Nor has EPA listed this rule on its Semiannual Regulatory Agenda, which is generally the first step towards proposing a new rule.

21. On information and belief, EPA has not consulted with public water systems, environmental groups, public interest groups, risk communication experts, States, or other interested parties about revisions to the consumer confidence report regulations, as required by law.

22. NRDC provided the EPA Administrator with advance written notice of NRDC's intent to sue for failure to perform a nondiscretionary duty.

23. NRDC served that notice letter on the EPA Administrator by certified mail, return receipt requested, on November 12, 2020. On the same date, NRDC sent a copy of the notice by certified mail to the Attorney General of the United States. A copy of that notice letter is attached to this Complaint as Exhibit A.

24. The EPA Administrator received NRDC's notice letter on November 20, 2020.

CLAIM FOR RELIEF

25. The Safe Drinking Water Act required EPA to issue revised regulations governing consumer confidence reports not later than October 23, 2020.

26. EPA has not published or proposed the required regulations. EPA has therefore unlawfully failed to perform a nondiscretionary duty.

27. EPA's violation of the law has harmed and continues to harm NRDC's members.

REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against EPA as follows:

A. Declaring that EPA has violated a nondiscretionary duty by failing to meet the statutory deadline to issue revised regulations governing consumer confidence reports;

B. Ordering EPA to issue the overdue revised regulations by a date certain determined by the Court;

C. Awarding NRDC its costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 300j-8(d); and

D. Granting such other relief that the Court considers just and proper.

Dated: January 19, 2021

Respectfully submitted,

/s/ Aaron Colangelo

Aaron Colangelo (*pro hac vice* motion pending)

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