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Contact:

Jason Hagey
Vice President of Communications,
Association of Washington Business
360.259.5288
jasonh@awb.org

Washington Employer Groups File Lawsuit over New EPA Water Quality Standards

Rule setting unattainable water quality standards jeopardizes operation of municipal water systems, private businesses

OLYMPIA — Employer groups in Washington state filed a lawsuit in U.S. District Court for the District of Columbia today challenging the Environmental Protection Agency’s (EPA) new water quality standards for Washington state. The suit is the result of more than a decade’s worth of stakeholder discussions and state and federal regulatory activity that had resulted in robust water quality standards adopted in 2016 by the State of Washington and supported by communities and businesses. EPA’s December 2022 decision to override those standards yielded a rule for Washington state that is unattainable, leaving wastewater discharge permittees with no other recourse.

The members of the employer coalition are committed to maintaining and improving water quality in the state, but believe the EPA has undermined this goal by adopting aspirational regulations with no plan for how to implement them.

“For years now, Washington employers and have worked closely with policymakers and regulators to craft new standards that protect human health and improve the quality of the state’s waterways while also ensuring the continued economic vitality of our state,” said Kris Johnson, president of the Association of Washington Business (AWB). “Regrettably, the EPA adopted standards that cannot be met with any existing or reasonably foreseeable future wastewater treatment technology, jeopardizing the operation of not only thousands of private businesses, but municipal wastewater treatment systems, too,” he added. “This aspirational rule threatens the economic well-being of every community in our state by imposing disastrous compliance costs and failing to provide alternative methods to achieve regulatory compliance. If our challenge of the EPA rule for Washington is successful, it will result in reinstatement of the state Department of Ecology’s 2016 water quality standards rule. The 2016 Ecology rule was very stringent and highly protective in its own right, while taking into account the policy considerations from Washington employers and municipalities,” Johnson added.

AWB is joined in the suit by the Northwest Pulp & Paper Association (NWPPA), American Forest & Paper Association (AF&PA), Greater Spokane Inc. (GSI), and the region's largest food processing trade association, Food Northwest.

"NWPPA members are committed to full compliance with environmental standards. However, our member companies cannot operate in states where EPA-driven standards make reliable compliance impossible. This new rule creates an untenable situation for any wastewater discharge permit holder in our state. If permittees are unable to meet their permit limits or requirements based on these water quality standards, every permittee could face legal challenges for non-compliance under the Clean Water Act. And that creates significant uncertainty for employers," said Chris McCabe, executive director of the Northwest Pulp & Paper Association. "EPA has created a no-win situation under this rule. We do not believe Congress intended for EPA to create completely unattainable environmental standards when the Clean Water Act was adopted in 1972. We also believe this new EPA rule will frustrate Washington's recently adopted BEST Act goals of creating 300,000 new manufacturing jobs by 2032. Purely aspirational environmental rules like this in fact put tens of thousands of labor-backed, family-waged jobs at risk in some of Washington's more rural, and economically distressed communities," added McCabe.

"AF&PA has worked with federal and state regulators and the regulated community over many years to promote development of balanced and attainable water quality standards that enhance human health protections. We remain concerned the rule imposes unattainable water quality standards, even with implementation of cost-prohibitive technology," said Paul Noe, vice president of public policy, American Forest & Paper Association.

The suit notes that in the time since the rule took effect in December 2022, neither the EPA, nor the Washington State Department of Ecology, has provided any implementation tools to assist private or public entities in complying with the new rule.

"In 1974, Spokane business leaders championed major cleanup of the Spokane River for the World's Fair and have continued working diligently to protect this community jewel. Businesses have repeatedly invested in cutting-edge technology to remove harmful chemicals from our waterways but they cannot come close to achieving levels mandated by the EPA in its latest regulation," said Alisha Benson, chief executive officer of Greater Spokane Inc. "It's telling that neither the state Department of Ecology nor the EPA has stepped forward to provide implementation tools to assist in these efforts. The technology to meet these new water quality standards simply does not exist."

"At Food Northwest, our mission is simple: We feed people. And we cannot achieve that mission if our members, despite best efforts, are unable to meet water quality standards under their permits," said Dave Dillon, president, Food Northwest. "EPA has adopted an aspirational rule for Washington, and the reality is, we don't know how we are going to meet those standards. Not today, not in the foreseeable future. And that's really worrisome for everyone in our state."

