PUBLIC JUSTICE
IMPACT SERIES

Environmental Enforcement Project

March 27, 2025

Agenda

1. Introductions
2. Strategic Priorities
3. Case Study: *Chemours Litigation* (Dan Snyder)
4. Case Study: *Deadbeat Dams Campaign* (Haley Nicholson)
5. Questions & Answers

Environmental Enforcement Project

TEAM

Dan Snyder
Director

Jim Hecker
Senior Attorney

Haley Nicholson
Staff Attorney

Kathy Morris
Legal Assistant

Strategic Priorities

Strategic Priorities

The Environmental Enforcement Project focuses its litigation docket on the following issues:

- **Environmental Justice**. Pollution disproportionately impacts communities in the United States that have been and remain underserved and underrepresented. It is in these communities where our work has the greatest impact. Example: coal train petition.
- **Climate Change.** The biggest threat to our continued survival on this planet is Climate Change. We litigate our cases with an eye toward remedies that will slow climate change. Example: WA CAFO General Permit Challenge.
- **Holding Polluters Accountable.** We sue polluters directly in federal court, going toe-to-toe with some of the biggest defense firms in the country. Unlike state or federal regulators, we make polluters pay for their pollution and environmental violations.

CASE STUDY

West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC

West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC – Clean Water Act

- Clean Water Act: No person shall discharge pollutants from a point source into navigable waters unless priorly authorized by a National Pollutant Discharge Elimination System permit.
- Permit requires industry to self-monitor discharges for compliance with permits, report to regulators.
- Permits regulate all sorts of different pollutants that are discharged by industry. In this case, the focus is on PFAS

West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC – PFAS Pollution

- Case focuses on Chemours' violation of its NPDES permit for PFAS discharges from the Chemours Washington Works Plant.
- PFAS - Per- and polyfluoroalkyl substances that are found in virtually every aspect of our industrialized lives. Known as "forever chemicals" because they are extremely resistant to natural degradation. Began with Teflon.
- PFAS pollution is becoming more pervasive in our environment.

PUBLIC JUSTICE IMPACT SERIES

ENVIRONMENTAL ENFORCEMENT PROJECT

West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC – PFAS Pollution

Chemours is subject to a NPDES permit for the Washington Works plant. It includes limits for what are considered "forever chemicals."

EPA set a health advisory standard of 0.004 ppt or ng/L for PFOA (perfluorooctanoic acid) and 10 ppt / ng/L for HFPO-DA (hexafluoropropylene oxide-dimer acid) chemicals.

EPA statements about forever chemicals in 2021 Preliminary Study:

3.3 Environmental Fate and Transport of PFAS

Short- and long-chain PFAS enter the environment through manufacturing and during use and disposal of consumer items. According to ATSDR, PFAS have been found worldwide in surface water, groundwater, finished drinking water, rainwater, soils, sediments, ice caps, outdoor and indoor air, plants, animal tissue, and human blood serum. The highest environmental concentrations of long- and short-chain PFAS are found in surface water, groundwater, soils, and sediments around facilities that have produced or used PFAS (ATSDR, 2021). According to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), fresh waters near

There are a variety of ways that individuals may be exposed to PFAS. Known exposure routes for PFAS include (ATSDR, 2021; EPA, 2016a, 2016b):

- Consumption of drinking water from contaminated public water systems or private wells.
- Consumption of contaminated fish.
- Consumption of crops grown in contaminated soils, particularly in agricultural areas that receive amendments of biosolids from POTWs.
- In utero exposure.
- Consumption of contaminated breast milk by infants.
- Inhalation and ingestion of contaminated indoor dust.
- Direct contact with products treated with PFAS, such as food papers/packaging and treated carpets.

For the general population, contaminated drinking water and food are the most frequently documented routes of exposure to long- and short-chain PFAS. There is evidence that exposure to certain PFAS can lead to adverse health outcomes in animals and humans. If animals or humans ingest PFAS-contaminated food or water, the PFAS are absorbed, and can accumulate in the body. Certain PFAS, such as PFOA and PFOS, may stay in the human body for longer than 10 years. As individuals become exposed to PFAS from different sources over time, the level of PFAS in their bodies may increase to the point where they suffer from adverse health effects (ATSDR, 2021).

West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC – Complaint

119	Mar-23	001	HFPO-DA	Avg	1.4	6.35	ug/L	354
120	Mar-23	002	pH	Min	6	3.13	S.U.	
121	Mar-23	205	TSS	Max	3952	15238.3	lbs/day	286
122	Mar-23	205	TSS	Avg	1217	2226.11	lbs/day	83
123	Apr-23	006	HFPO-DA	Max	0.204	1.69	ug/L	728
124	Apr-23	006	HFPO-DA	Avg	0.14	1.69	ug/L	1107
125	May-23	001	HFPO-DA	Max	2	11.70	ug/L	485
126	May-23	001	HFPO-DA	Avg	1.4	11.70	ug/L	736
127	May-23	002	HFPO-DA	Max	2.3	2.990	ug/L	30
128	May-23	002	pH	Max	9	9.07	S.U.	
129	May-23	002	pH	Min	6	4.58	S.U.	
130	May-23	005	PFOA	Max	0.7	0.73	ug/L	4
131	May-23	006	HFPO-DA	Max	0.204	2.82	ug/L	1282
132	May-23	006	HFPO-DA	Avg	0.14	2.82	ug/L	1914
133	Jun-23	002	pH	Min	6	5.10	S.U.	
134	Jun-23	006	HFPO-DA	Max	0.204	3.71	ug/L	1719
135	Jun-23	006	HFPO-DA	Avg	0.14	3.71	ug/L	2550
136	Jun-23	205	TSS	Max	3952	3975.4	lbs/day	1
137	Jul-23	006	HFPO-DA	Max	0.204	1.23	ug/L	503
138	Jul-23	006	HFPO-DA	Avg	0.14	1.23	ug/L	779
139	Aug-23	002	HFPO-DA	Max	2.3	9.08	ug/L	295
140	Aug-23	002	HFPO-DA	Avg	1.4	3.6	ug/L	157
141	Aug-23	002	pH	Min	6	3.26	S.U.	
142	Sep-23	001	HFPO-DA	Max	2	3.16	ug/L	58
143	Sep-23	001	HFPO-DA	Avg	1.4	3.16	ug/L	126
144	Sep-23	002	HFPO-DA	Max	2.3	13.6	ug/L	491
145	Sep-23	002	HFPO-DA	Avg	1.4	5.01	ug/L	258
146	Sep-23	002	pH	Max	9	9.61	S.U.	
147	Sep-23	002	pH	Min	6	2.96	S.U.	
148	Sep-23	005	PFOA	Avg	0.3	0.44	ug/L	47

- Based on the ongoing discharges from the Chemours facility that violate the terms of its NPDES permit, West Virginia Rivers Coalition notified Chemours of its intent to sue, and then filed suit on December 5, 2024, in the Southern District of West Virginia (Case No. 2:24-cv-00701).
- Complaint alleges that Chemours violated its NPDES permit at least 199 times between 2019 and the present. These include violations for HFPO-DA (used to manufacture GenX), PFOA, TSS, and pH.
- Case is being litigated with attorneys at Appalachian Mountain Advocates, a public interest environmental law firm that EEP has worked with extensively in other cases.

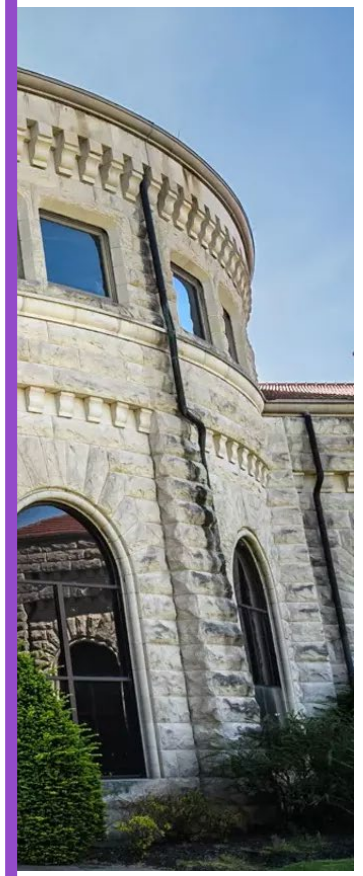
West V
Inc. v.
FC, LL

Many of
outfall ir
the sour
approxir
Wikiped

Significa
dischar
water tr
water to

Based o
filed a M
the case
type of r
immedi

compliance with the conditions of this permit." Ex. 6 at 97 (Appx. A, Part II.2). Federal regulations contain the same language. 40 C.F.R. § 122.41(c). Chemours's process wastewater discharges at Outlets 002 and 005 are a major contributor of the HFPO-DA in its discharges, and usage of that chemical is under Chemours's control and proportional to amount of fluoropolymers the plant produces. This Court should therefore prohibit Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005 by any means necessary, including (1) cutting back the production that generates process wastewater containing HFPO-DA, and/or (2) sending process wastewater off-site for disposal by deep-well injection or incineration, as Chemours does for its PFAS-contaminated wastewater at its Fayetteville, NC plant.[2] West Virginians deserve no less protection from PFAS than do North Carolinians. Without an injunction, Chemours will effectively have an unlimited license to pollute the Ohio River and downstream drinking water indefinitely.



West Virginia Rivers Coalition, Inc. v. The Chemours Company FC, LLC – Preliminary Injunction

In support of the PI motion, declarations were provided on bel… Works and Loui… water utilities t… approximately …

PI Motion has b… awaiting furthe… admits it has vi… that it will come… now once it cor… treatment syste…

Chemours primary defenses: standing, no harm because monitored levels do not rise to SDWA limits, and an injunction would not be in the public interest because it would disrupt the plant and, therefore, the workers' lives that work there.

12. GCWW is concerned that the current elevated levels of GenX reportedly being discharged by Chemours from its Washington Works Plant in West Virginia may present an increased public health risk to communities in … of their drinking …

INTRODUCTION

With speculative assertions of harms that do not exist, Plaintiff seeks extraordinary relief that would dramatically undermine Chemours' integral role in the national and global supply chain. Yes, Chemours has had exceedances of its permit discharge limits for HFPO-DA, a PFAS, primarily during wet weather conditions. *But* three overarching points bear special emphasis:

… of GenX reportedly …, West Virginia will … including Louisville … and may results in … rules, regardless of the use of advanced treatment, thus presenting an adverse health risk to the communities that use the Ohio River as their source of drinking water.

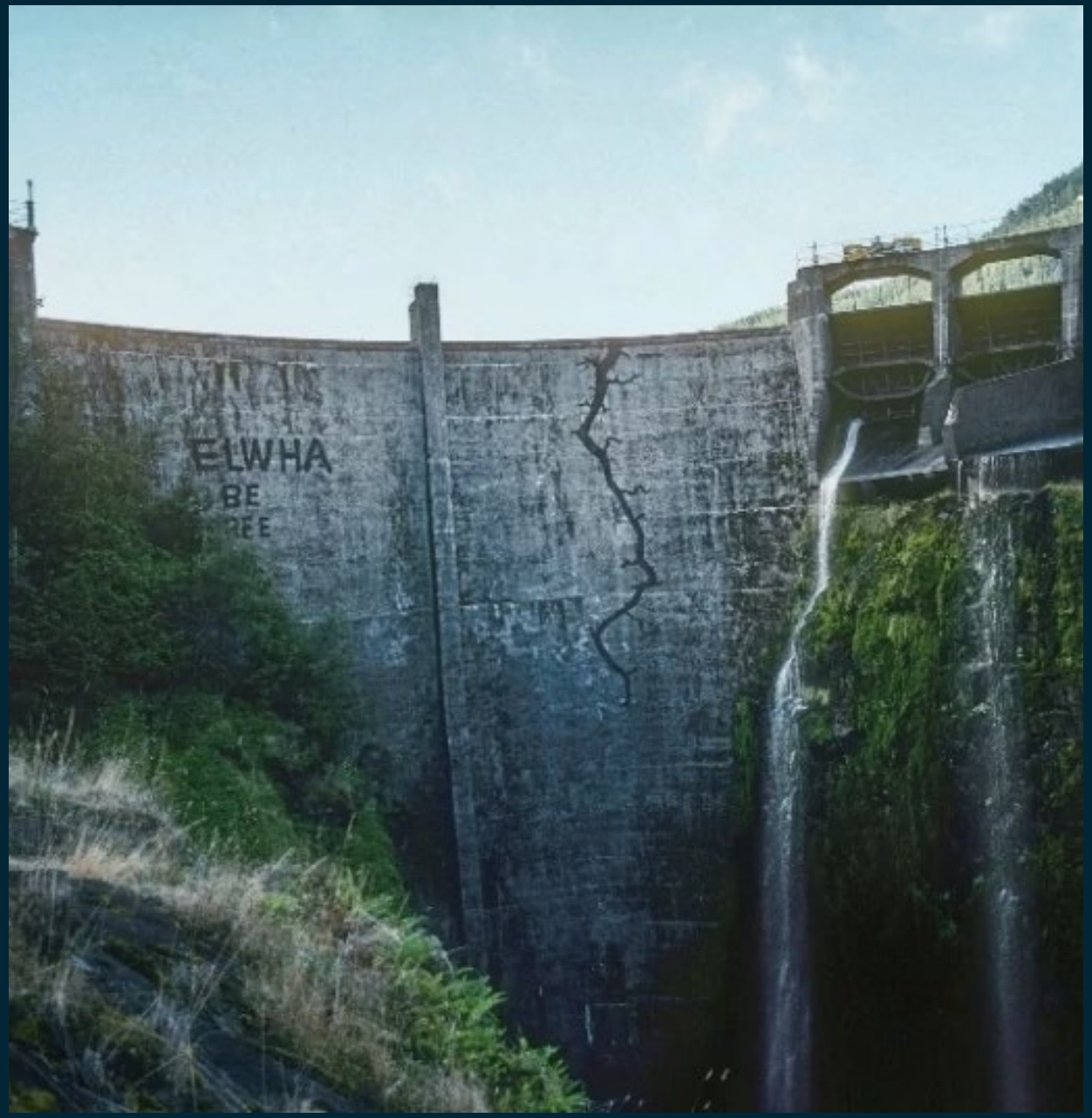
Deadbeat Dams

PUBLIC JUSTICE IMPACT SERIES

ENVIRONMENTAL ENFORCEMENT PROJECT

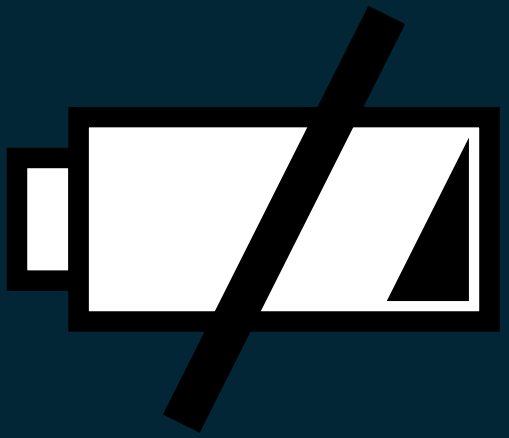
Table Of Contents

1. The Campaign

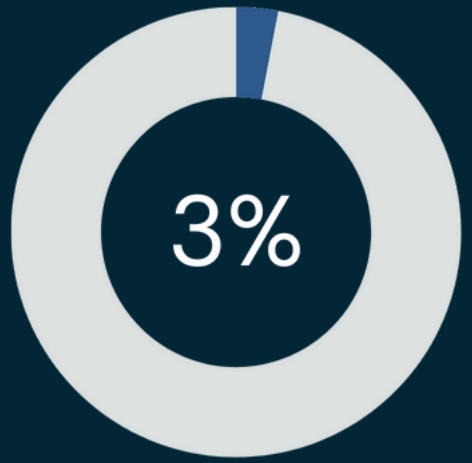


What is a Deadbeat Dam?

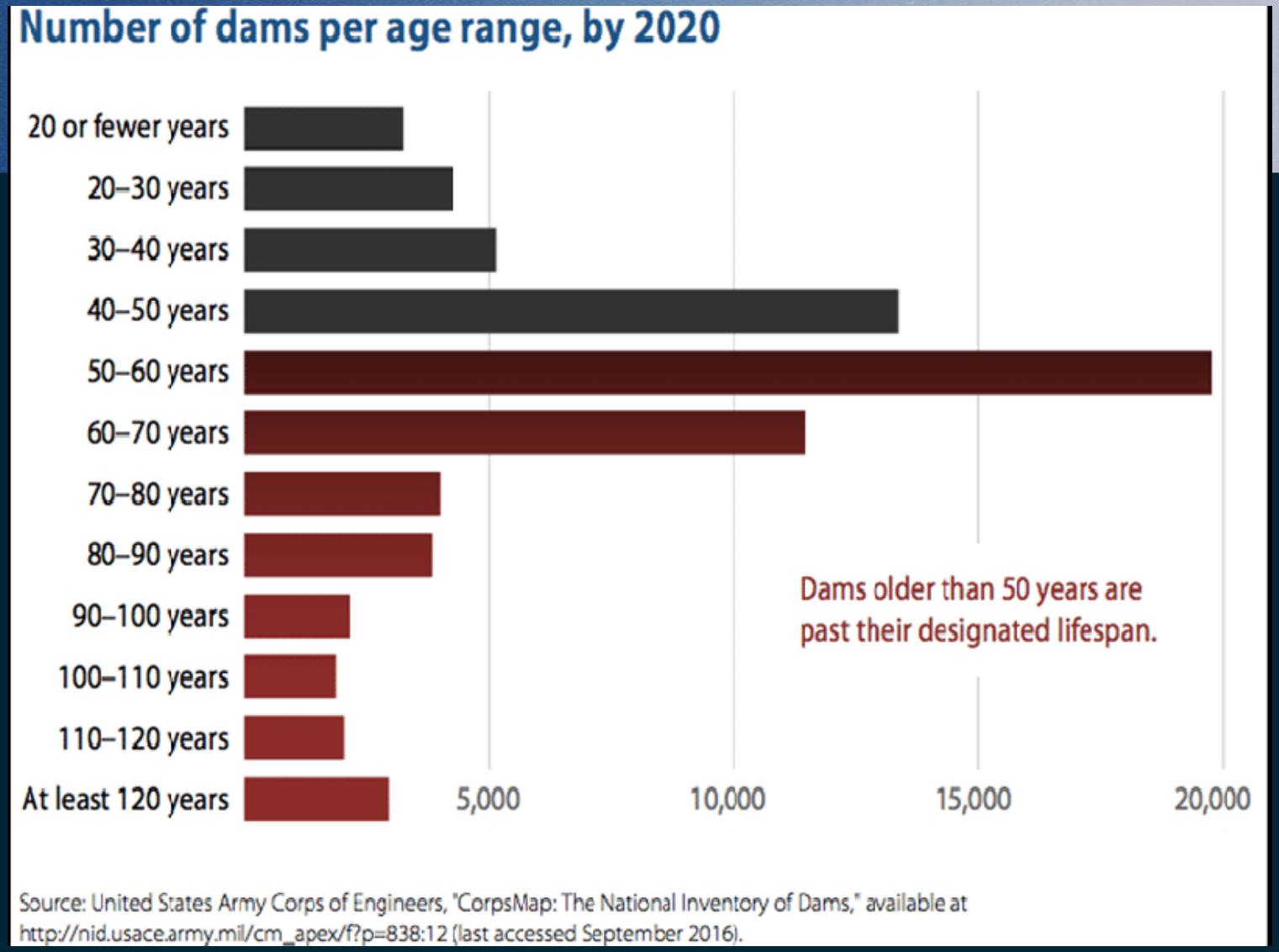
Any dam that no longer produces any hydropower benefit.



The U.S. has 92,000 dams.



Only three percent of dams generate hydropower.



Hydropower Licenses

FERC issues a Federal Power Act License.

Company engages in the re-licensing process.

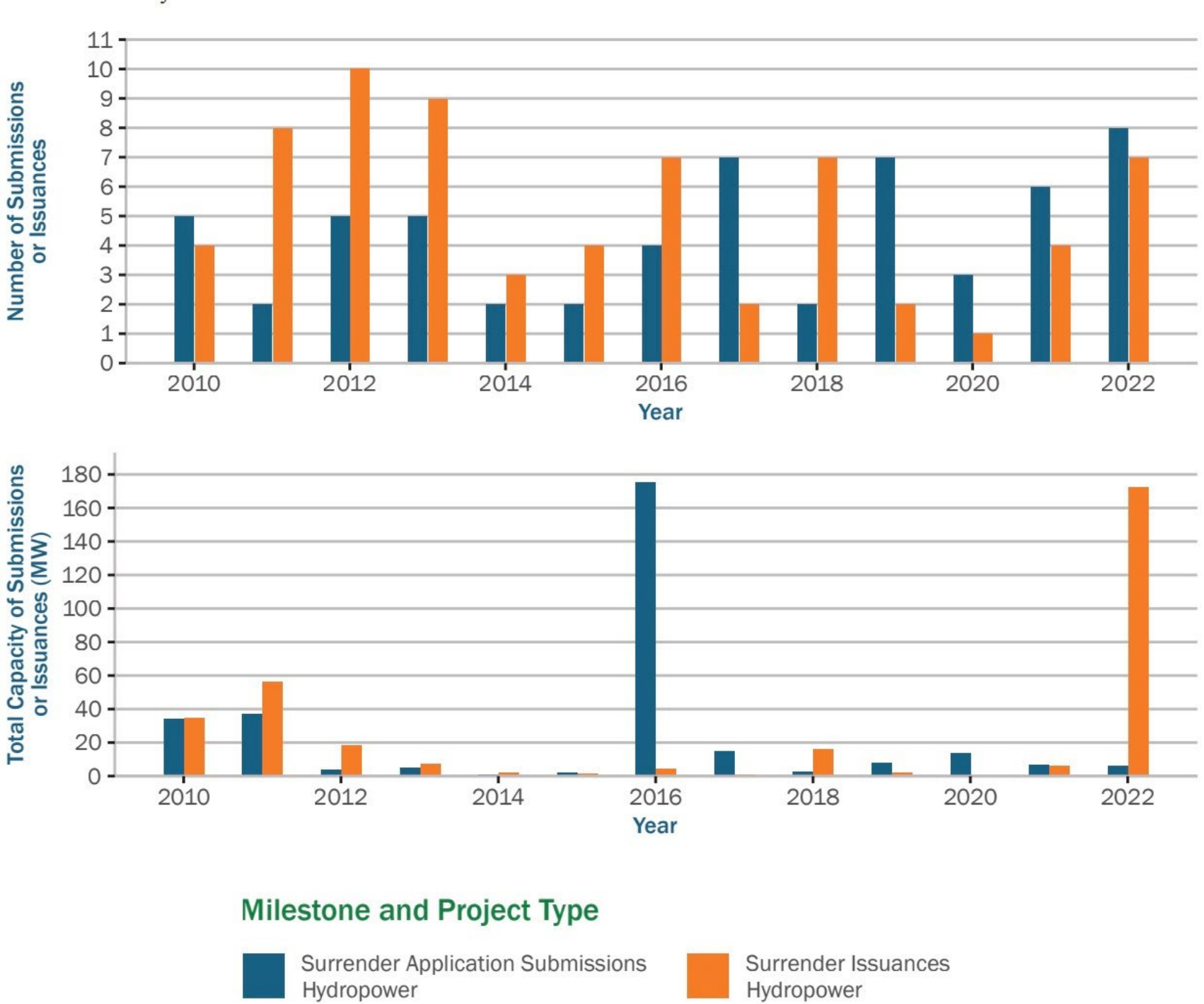
OR

Company surrenders their license.

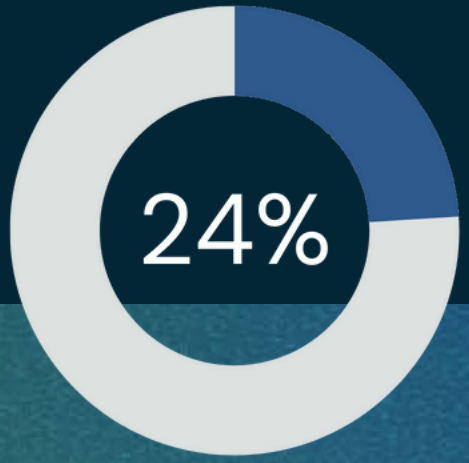
PUBLIC JUSTICE IMPACT SERIES

ENVIRONMENTAL ENFORCEMENT PROJECT

Surrenders


Number of Submissions or Issuances
0
1
2
3
4
5
6
7
8
9
10
11
2010
2012
2014
2016
2018
2020
2022
Year
Total Capacity of Submissions or Issuances (MW)
0
20
40
60
80
100
120
140
160
180
2010
2012
2014
2016
2018
2020
2022
Year
Milestone and Project Type
Surrender Application Submissions Hydropower
Surrender Issuances Hydropower

The Problem



Less than a fourth of all surrenders involve the removal of a dam.

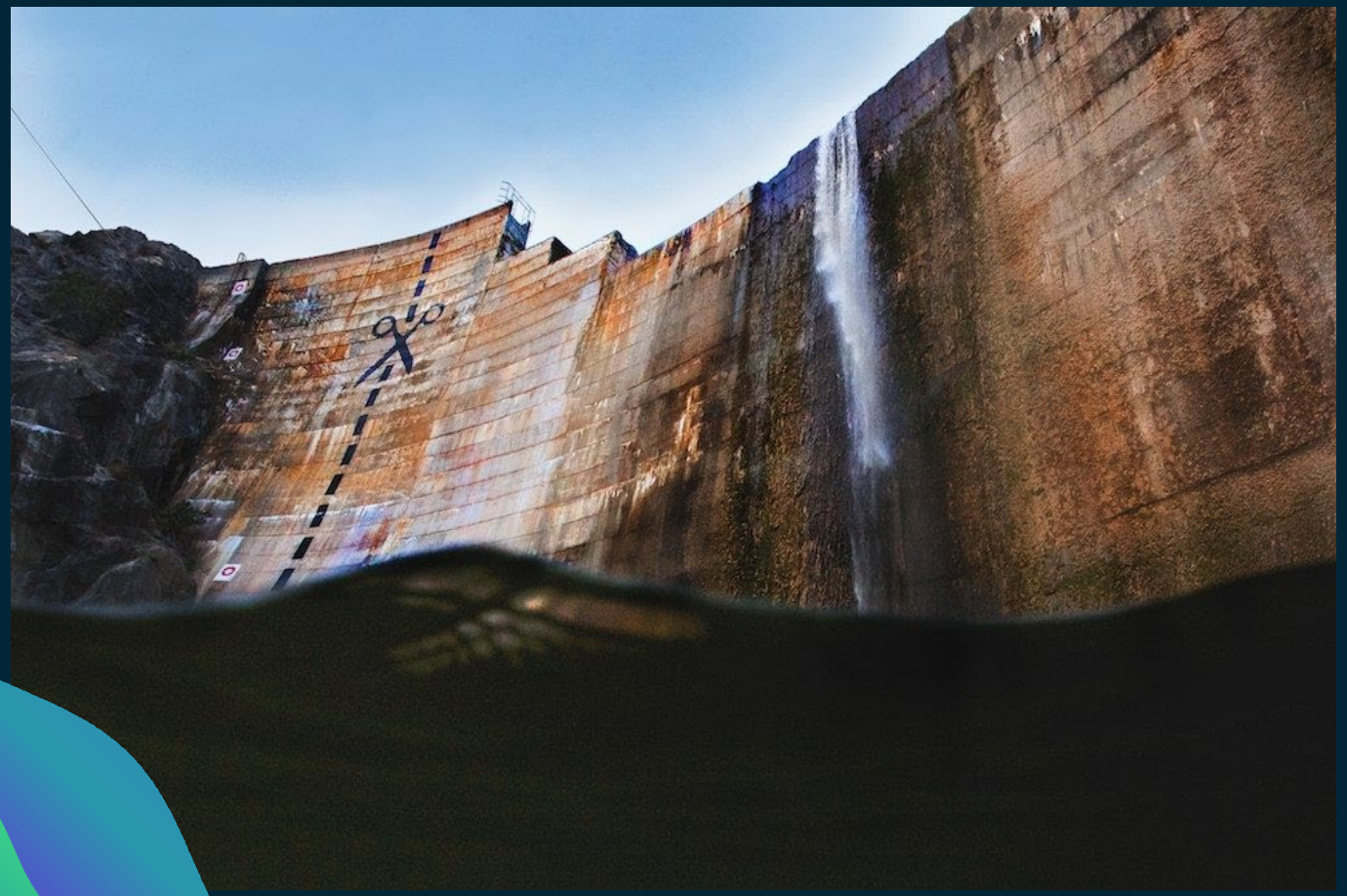
FERC's practice is to keep dams in place upon surrender unless the licensee offers to remove the dams.

Problems with leaving dams in place:

- Public safety hazards
- Disruptions to river ecosystems
- Obstructions to fish passage

The Solution

Systematic lawsuits



Lawsuits against FERC's decisions to leave dams in place despite the benefits of removal.

Lawsuits can be under the Federal Power Act, National Environmental Policy Act, Clean Water Act, or the Endangered Species Act.

Our Partners

American Whitewater

Earthrise Law Center

Public Justice

ITAL
ROJECT

2. American Whitewater v. FERC

Somersworth Hydroelectric Project

Pertinent Facts

- Where: On the Salmon Falls River between New Hampshire & Maine
- What: Aclara Meters LLC, the owner of the Somersworth hydroelectric project, filed an application to surrender its hydropower license to FERC without removing the two Project dams

Our Lawsuit

After FERC granted Aclara's surrender, we petitioned for review under the Federal Power Act and National Environmental Policy Act in the D.C. Circuit.

The Good:

- FERC's decision rested on minimal factual support
- Every relevant resource agency urged dam removal for the sake of species and water quality

The Bad:

- The local city partially relied on the dam's impoundment for water supply
- Agency Deference

The Decision

Members' assertions that they would recreate on this portion of the river if the dams were removed is sufficient for standing.

Standing

Aggrieved parties may seek judicial review 60 days after a final denial of relief, even if there was a deemed denial in the interim.

Motion to Dismiss

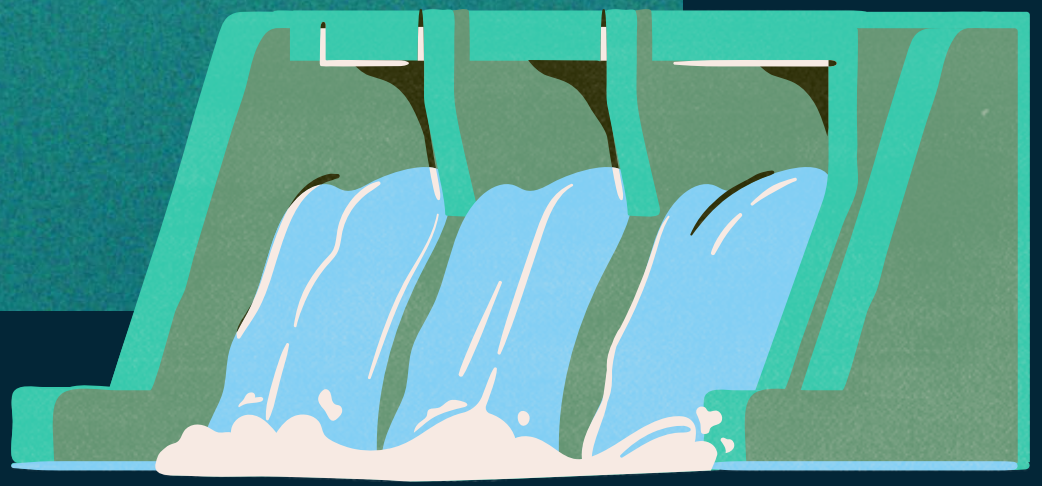
- FERC did not have to verify city's unsubstantiated concerns.
- Agencies have discretion on how to consider alternatives.

Merits

3. Moving Forward

Strategic Lawsuits

- Get involved early
- Avoid lawsuits with water supply concerns
- Pack the administrative proceedings record
- Avoid legal challenges on principal areas of deference for the agency




Thank you!