

SUPER LAW GROUP, LLC

January 23, 2018

Via Certified Mail, Return Receipt Requested

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Re: Notice of Intent to File Suit under Section 505(a)(2) of the Clean Water Act
for Failure to Perform Non-Discretionary Duties**

Dear Administrator Pruitt:

We are writing on behalf of Waterkeeper Alliance, Inc.¹ to notify you of its intent to file suit, sixty days after service of this notice, against the United States Environmental Protection Agency ("EPA") and you in your official capacity as EPA Administrator pursuant to section 505(a)(2) of the Clean Water Act ("CWA"). 33 U.S.C. § 1365(a)(2). EPA has failed to comply with the mandatory statutory requirement to review and, as necessary, revise its 2012 Recreational Water Quality Criteria, in accordance with the CWA, as amended by the Beaches Environmental Assessment and Coastal Health Act of 2000 (the "BEACH Act").

EPA's non-discretionary duty to conduct a review of, and revise as necessary, water quality criteria published pursuant to the BEACH Act is set forth in section 3(b) of the Beach Act, which requires:

Not later than the date that is 5 years after the date of publication of water quality criteria under this paragraph, and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria.

33 U.S.C. § 1314(a)(9)(B).

Pursuant to a court order, on November 26, 2012, EPA issued Recreational Water Quality Criteria under section 3(b) of the BEACH Act, 33 U.S.C. § 1314(a)(9)(A). The Recreational Water Quality Criteria were published in the Federal Register three days later. 77 Fed. Reg. 71191 (Nov. 29, 2012). Accordingly, the CWA and the BEACH Act required EPA to review and, as necessary, revise the 2012 Recreational Water Quality Criteria by a date not later than November 29, 2017. EPA has failed to review and, as necessary, revise the water quality criteria within the deadline mandated by Congress.

Section 505 of the CWA provides that any citizen may sue EPA in federal court "where there is alleged a failure of the Administrator to perform any act or duty under [the CWA] which

¹ Waterkeeper Alliance is a not-for-profit environmental organization headquartered in New York City which unites more than 300 Waterkeeper organizations and affiliates around the world and focuses citizen advocacy on the goal of swimmable, fishable, and drinkable waters.

is not discretionary with the Administrator.” 33 U.S.C. § 1365(a)(2). In such a case, the district court has jurisdiction to order the EPA Administrator “to perform such act or duty.” *Id.* Because EPA has failed to review and, as necessary, revise the 2012 Recreational Water Quality Criteria, Waterkeeper Alliance intends to sue the EPA in federal court to enforce the requirements of the CWA and section 3 of the BEACH Act. Waterkeeper Alliance will seek declaratory relief, injunctive relief, litigation costs, and other appropriate relief from the Court.

The full name, address, and telephone number of the person giving notice is:

Waterkeeper Alliance, Inc.,
180 Maiden Lane, Suite 603
New York, NY 10038
(212) 747-0622,
Attn: Daniel Estrin, Esq., General Counsel

Waterkeeper Alliance is represented by outside counsel, and all communications should be addressed to:

Reed W. Super, Esq.
Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, NY 10038
(212) 242-2273
reed@superlawgroup.com

Please do not hesitate to contact us if you would like to discuss this matter.

Very truly yours,



Reed W. Super
Nicholas W. Tapert

cc (via certified mail, return receipt requested):

Jefferson Beauregard Sessions III, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530