

SUPER LAW GROUP, LLC

January 22, 2018

Via Certified Mail, Return Receipt Requested

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
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 letter, 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 fulfill its quadrennial reporting requirements to Congress under the CWA, as amended by the Beaches Environmental Assessment and Coastal Health Act of 2000 (the "BEACH Act").

EPA's duty to report to Congress is set forth in section 7 of the BEACH Act, which requires:

Not later than 4 years after the date of the enactment of this Act [Oct. 10, 2000], and every 4 years thereafter, the Administrator of the [EPA] shall submit to Congress a report that includes—

- (1) recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions that should be taken to improve the quality of coastal recreation waters;
- (2) an evaluation of Federal, State, and local efforts to implement this Act, including the amendments made by this Act; and
- (3) recommendations on improvements to methodologies and techniques for monitoring of coastal recreation waters.

33 U.S.C. § 1375a.

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.

Accordingly, the CWA and the BEACH Act required EPA to prepare and submit the first report to Congress by 2004, and subsequent reports would have been due to Congress in 2008, 2012 and 2016. As described in a January 18, 2018 report by EPA's Office of Inspector General, EPA submitted a delayed first report to Congress in 2006, and has not submitted a report since.²

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 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 prepare and submit to Congress the reports required under the CWA and section 7 of the BEACH Act, Waterkeeper Alliance intends to sue the EPA in federal court to enforce those requirements. 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

² EPA, Office of Inspector General, *Ensuring Clean and Safe Water Compliance with the Law: EPA Has Not Reported to Congress on BEACH Act Progress as Statutorily Required or Fully Documented Budget Decisions* at 9 (Report No. 18-P-0071) (Jan. 18, 2018).

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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

