

(59) 23-241367

EMRD



ENVIRONMENTAL
ADVOCATES
Attorneys at Law

5135 Anza Street
San Francisco, CA 94121
(415) 533-3376
Fax: (415) 358-5695
E-mail: csroul@enviroadvocates.com

November 10, 2023

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL
RESOURCES DIVISION

NOV 30 2023

EXECUTIVE OFFICE

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

Dear Administrator Regan:

We are writing on behalf of Our Children's Earth Foundation ("OCE) and Ecological Rights Foundation ("EcoRights") (collectively, the "Noticing Parties") to give notice that the Noticing Parties intend to file a civil action against the United States Environmental Protection Agency (hereinafter "EPA") and yourself as Administrator of EPA (together with EPA, "You"), for Your violations of the Clean Water Act ("CWA") relating to Your failure to publish, and annually revise, a list of all applicable water quality standards as required by Section 304(a)(6), 33 U.S.C. § 1314(a)(6) of the CWA.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a)(2), 33 U.S.C. § 1365(a)(2), a citizen must give notice of his/her intent to file suit. Notice must be given to the alleged violator, EPA, and the state

in which the violations occur. As required by the CWA, You are hereby placed on formal notice from the Noticing Parties that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, the Noticing Parties intend to file suit in federal court against You under CWA section 505(a)(2), 33 U.S.C. § 1365(a)(2), for violations of the CWA as set forth herein.

I. The Noticing Parties

OCE is a non-profit public benefit corporation organized under the laws of the State of California, with members dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving water quality for the public benefit. Another aspect of OCE's mission is to participate in environmental decision-making, enforce environmental laws, both federal and state, to reduce pollution, and to educate the public concerning those laws and their enforcement. OCE's address is 1625 Trancas St. #2218, Napa, CA 94558 and telephone number is (510) 910-4535.

EcoRights is a non-profit public benefit corporation organized under the laws of California, with its main office at 2011 Sunset Ridge Rd., Blocksburg, CA 95514 (mailing address: P.O. Box 100, Blocksburg, CA 95514-0100). EcoRights' telephone number is (707) 845-8888. EcoRights' purpose is to educate the public about environmental practices that cause harm to human health, the environment, and other natural resources and to seek redress from those harms through litigation or alternative dispute resolution. EcoRights represents citizens in protecting public waterways from pollution and securing the multitude of benefits that flow from clean, vibrant waters: safe drinking water; abundant and diverse wildlife populations; healthy recreational opportunities; and economic prosperity from commercial fishing, tourism, and other commercial activities that depend on clean water. To further its goals, EcoRights actively seeks federal and state agency implementation of state and federal environmental and water quality laws, including water quality standards under the CWA, and, as necessary, directly initiates enforcement actions on behalf of itself and its members.

II. Violations of the Clean Water Act

The CWA aims "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." CWA § 101(a), 33 U.S.C. § 1251(a). To this end, the CWA requires that every state must adopt, periodically update, and submit to EPA proposed water quality standards applicable to waters in that state. *See* 33 U.S.C. § 1313(a)-(c). Water quality standards consist of designated uses, *i.e.*, the beneficial uses to which waters are put, and water quality criteria, *i.e.*, the maximum levels of pollutants that a water body can have and still sustain designated uses, and are issued by states and by EPA at the federal level. 33 U.S.C. § 1313(c).

In addition, CWA section 304(a)(6), 33 U.S.C. § 1314(a)(6), requires the following:

The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

This provision requires You to identify, publish, and annually update a list of state and federal water quality standards as well as the pollutants associated with such standards and the particular waters to which such standards apply. This is a mandatory (non-discretionary) duty imposed on You by the CWA for purposes of CWA section 505(a)(2), 33 U.S.C. § 1365(a)(2). However, You are in violation of the requirements of CWA section 304(a)(6), 33 U.S.C. § 1314(a)(6). You have not identified, published, and annually updated the list of state and federal water quality standards in effect nationwide, as well as the pollutants associated with such standards and the particular waters to which such standards apply. While You have periodically published such a partial list, You have not annually published an updated such list as required by Section 304(a)(6), 33 U.S.C. § 1314(a)(6). The water quality standard list You have last published is incomplete, substantially out of date and inaccurate, which is worse than not having a published list at all in that Your list is potentially misinforming and misleading the public and the regulated community as to what are the in effect water quality standards in various states. This deprives members of the public from having access to an up-to-date and comprehensive compilation of applicable water quality standards around the country, which is an important public resource that You are required by law to publish.

III. Counsel

The Noticing Parties have retained legal counsel to represent them in this matter. Please direct all communications to:

Christopher Sproul
Brian Orion
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
(415) 533-3376
csproul@enviroadvocates.com
borion@enviroadvocates.com

IV. Remedies

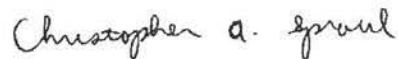
The Noticing Parties intend to seek declaratory and injunctive relief preventing further violations of the CWA pursuant to CWA Section 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as is permitted by law. In addition, the Noticing Parties will seek to recover their attorneys, expert fees and costs pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

AVIS: 07/02/2015

Notice of Violation and Intent to File Suit
November 8, 2023
Page 4 of 4

The Noticing Parties are interested in discussing effective remedies for the violations noted in this letter. If You wish to pursue such discussions in the absence of further litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. Although the Noticing Parties are always interested in avoiding unnecessary litigation, we do not intend to delay the filing of a complaint in federal court if discussions are continuing when the notice period ends.

Sincerely,



Christopher Sproul
Environmental Advocates
Counsel for the Noticing Parties

cc: *Via Certified Mail, Return Receipt Requested*

Merrick Garland, U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001	Jared Blumenfeld, Regional Administrator U.S. EPA Region IX 75 Hawthorne Street San Francisco, California 94105
--	--

REFERRED
MAIL REFERRAL UNIT

NOV 28 2023

READER #2