



## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

August 10, 2022

**BY ECF**

The Honorable Vernon S. Broderick  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, New York 10007

APPLICATION GRANTED

SO ORDERED *Vernon S. Broderick*

VERNON S. BRODERICK

U.S.D.J. 08/12/22

Re: *Riverkeeper, Inc. v. Regan*, No. 17 Civ. 4916 (VSB)

Dear Judge Broderick:

On behalf of defendants, I write to inform the Court of recent developments regarding the Clean Water Act water quality criteria at issue in this matter. On April 27, 2022, defendant U.S. Environmental Protection Agency (“EPA”) transmitted a draft proposed rule to the Office of Information and Regulatory Affairs in the White House Office of Management and Budget (“OMB”), for review under Executive Order 12866. Pursuant to 33 U.S.C. § 1313(c)(4), the draft proposed rule would set forth Clean Water Act primary contact recreation water quality criteria for New York State’s Class I and SD waters. As of July 25, 2022, OMB has concluded its regulatory review of the draft proposed rule. *See* <https://go.usa.gov/xSsDk>.

However, on July 27, 2022, intervenor-defendant New York State Department of Environmental Conservation (“NYSDEC”) published an advanced notice of proposed rulemaking (“ANPRM”) in the New York State Register seeking information that NYSDEC would rely on to analyze the uses of those waters, and based on those analyses, propose and finalize NYSDEC rules setting out appropriate uses and water quality criteria for the waters. *See* <https://dos.ny.gov/system/files/documents/2022/07/072722.pdf>. On August 8, 2022, defendants and intervenor-defendant NYSDEC met with plaintiffs in an effort to initiate discussions regarding NYSDEC’s ANRPM.

To allow the parties to continue these discussions, defendants respectfully request that the Court hold in abeyance any action on the parties’ pending cross-motions for summary judgment and NYSDEC’s motion to amend its answer to assert a cross-claim against EPA [ECF Nos. 128, 150, 145, 154, 173], until **September 16, 2022**. Defendants further propose that the parties submit a joint status letter to the Court on or before **September 14, 2022**. This is the defendants’ first request for the Court to hold in abeyance these motions. Plaintiffs and intervenor-defendant NYSDEC consent to this request for an abeyance and the submission of a joint letter. As of the writing of this letter, the City of New York has not taken a position on this request.

We thank the Court for its consideration of this request.

Hon. Vernon S. Broderick  
August 10, 2022

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Respectfully,

DAMIAN WILLIAMS  
United States Attorney

*/s/ Tomoko Onozawa* \_\_\_\_\_

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cc (via ECF): All counsel of record