



May 15, 2017

VIA Email and Online Submission to Laws-Regs@epa.gov and www.regulations.gov

Office of Policy Regulatory Reform
Mail Code 1803A
1200 Pennsylvania Ave NW
Washington, DC 20460

Re: Comments of Waterkeeper Alliance and Waterkeeper Organizations - Evaluation of Existing Regulations under E.O. 13777 Docket ID No. EPA-HQ-OA-2017-0190

To Whom it May Concern:

Waterkeeper Alliance, and the Waterkeeper Organizations and Affiliates identified below, submit the following comments on a “Proposed Rule” entitled “Evaluation of Existing Regulations,” published in the Federal Register by the U.S. Environmental Protection Agency (“EPA”) on April 13, 2017 (hereinafter “E.O. 13777 Notice.”),¹ which seeks “input from the public to inform its [Regulatory Reform] Task Force’s evaluation of existing regulations” for “repeal, replacement, or modification” under Executive Order 13777.²

INTRODUCTION

Waterkeeper Alliance (“Waterkeeper”) strengthens and grows a global network of grassroots leaders protecting everyone’s right to clean water. We are the largest and fastest growing non-profit solely focused on clean water, and are comprised of 320 Waterkeeper Organizations and Affiliates in 35 countries on 6 continents, covering over 2.5 million square miles of watersheds. Our goal is drinkable, fishable and swimmable water everywhere. Waterkeeper Alliance, and our 169 Waterkeeper Organizations and Affiliates (“Waterkeeper Organizations”) across the United States, work closely with communities to protect and preserve local waterways. Part scientist, part teacher and part legal advocate, Waterkeepers combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and the rule of law. Whether on the water, in a classroom or in a courtroom, Waterkeepers speak for the

¹ Proposed Rules: Environmental Protection Agency, 40 CFR Chapters I, IV, V, VI, and VII, EPA-HQ-OA-2017-0190, 82 Fed.Reg. 17793-01 (April 13, 2017).

² Enforcing the Regulatory Reform Agenda, Exec. Order No. 13777, 82 Fed.Reg. 12285 (Feb. 24, 2017).

waters they defend with the backing of their local community, the power of federal environmental laws and the collective strength of Waterkeeper Alliance.

Waterkeeper, its 169 U.S. Waterkeeper Organizations and our collective members and supporters, are all significantly affected by EPA's regulations and, thus, are "entities" from which EPA is directed to seek input regarding the repeal, replacement and modification of regulations under Section 3(e) of Executive Order 13777. Waterkeeper and Waterkeeper Organizations have in-depth knowledge of how essential our nation's environmental statutes, and the EPA regulations that implement them, are for the protection of human health and the environment. All of our Waterkeeper Organizations, our collective individual members and supporters, and hundreds of millions of Americans who depend on clean water could be adversely impacted by purported "reforms" that remove, modify or weaken long-standing, existing regulations that protect and preserve water resources across the country.

While Waterkeeper Alliance works with many of the federal environmental statutes and regulations on a regular basis, the federal Clean Water Act ("CWA") is the bedrock of our work to protect waterways such as rivers, streams, lakes, wetlands, bays, and channels for the benefit of their communities. We use CWA water quality standards and the Section 303(d) List of impaired waters to evaluate pollution levels in the nation's waterways. We work with broad coalitions of government, private, non-profit, and individual partners to restore these waters through the Total Maximum Daily Load ("TMDL") process, participate in permitting and rulemaking processes, and develop innovative pollution control and cleanup projects. We use the CWA's citizen suit provisions to enforce CWA permits and regulatory standards against facilities that would otherwise pollute our waterways in violation of the law.

In these and in many other ways, Waterkeeper and its Waterkeeper Organizations depend on the CWA, other federal environmental statutes and EPA's existing regulations to protect waterways and the people who depend on clean water for drinking, recreation, fishing, economic growth, food production, and all of the other water uses that sustain our way of life, health and well-being. As explained in detail below, we vehemently oppose the withdrawal, modification or revocation of any EPA regulation that results from the EPA's E.O. 13777 Notice itself and/or the process and criteria set forth in that notice.

EPA'S PROCESS, CRITERIA AND PUBLIC PARTICIPATION OPPORTUNITIES FOR "REVIEWING EXISTING REGULATIONS" ARE INADEQUATE AND CONTRARY TO LAW

Waterkeeper³ has several serious objections and concerns regarding the process, criteria and public participation opportunities that EPA has identified for evaluation of its existing regulations as set forth in the E.O. 13777 Notice. As an initial matter, the E.O. 13777 Notice indicates that EPA is proposing a rule, but no regulation is actually proposed; no text, subject matter or associated analysis is provided; and none of the statutory and regulatory requirements for

³ For the purposes of these comments, hereinafter, "Waterkeeper" will be used as inclusive of Waterkeeper Alliance, Waterkeeper Members and Waterkeeper Affiliates.

rulemaking have been met. Rather, the text of the E.O. 13777 Notice indicates only that, “[t]hrough this notice, EPA is soliciting such input from the public to inform its Task Force’s evaluation of existing regulations.” To the extent EPA actually purports to be proposing a rule or multiple rules, among many other mandatory requirements for rulemaking, EPA must follow a process, propose a the text of a regulation and provide a Federal Register Notice that meets the requirements of the statute authorizing the rule(s) (e.g. CWA, RCRA, CERCLA, etc.), the federal Administrative Procedure Act,⁴ any applicable executive order (e.g. E.O. 13563), and EPA’s own regulations (e.g. 40 C.F.R. Pt. 25 - Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act). EPA has not complied with any of the mandatory requirements for notice and comment rulemaking in this instance, and accordingly, Waterkeeper objects to the purported “Proposed Rule” on all those bases.

Despite its designation as a Proposed Rule, the E.O. 13777 Notice is plainly and indisputably lacking with regard to the legal and informational requirements for rulemaking. As such, the following comments are premised on our understanding that EPA is not actually attempting to propose a rule in this notice or based upon this notice. Rather, Waterkeeper assumes that EPA, as indicated by the extremely limited substantive information in the notice, is only seeking input on EPA’s regulations that may be appropriate for repeal, replacement, or modification to “inform its Task Force’s evaluation of existing regulations.”

Further, since the E.O. 13777 Notice does not identify any other statutes, regulations, executive orders, or other criteria that will be employed during the Task Force’s review of EPA’s regulations, Waterkeeper’s comments are premised on the belief that EPA’s Regulatory Review Task Force will only evaluate EPA’s existing regulations under the criteria identified in the E.O. 13777 Notice, i.e., the six criteria listed in Section 3(c) of Executive Order. 13777. If EPA’s Task Force will be utilizing other statutes, regulations, executive orders, or other criteria to review EPA’s regulations, EPA must provide this information to the public through a corrected Federal Register Notice and other appropriate means, to fairly provide the public with a meaningful opportunity to comment on that modified review process and set of criteria.

1. *The E.O. 13777 Notice Contains Inadequate Information About EPA’s Process for Conducting, and Opportunity for Public Participation in, this Regulatory Review.*

Scant information has been provided to the public about EPA’s plans to evaluate its existing regulations, and the information that has been provided is impossible to square with any cognizable and legally adequate regulatory review process, including the regulatory review processes set forth in Executive Orders 12866 and 13563, which EPA is expressly directed to follow during this review by the terms of Executive Order 13777. The public currently has three sources of information regarding how EPA intends to implement Executive Order 13777: (1) The two-page E.O. 13777 Notice in the Federal Register, (2) A one-and-a-quarter page

⁴ 5 U.S.C. §551 et seq. (“APA”).

Memorandum from E. Scott Pruitt to Acting Deputy Administrator, et al., with the subject line: Executive Order 13777: Enforcing the Regulatory Reform Agenda dated March 24, 2017 (“March 24 Memo”),⁵ and (3) A web page established on EPA’s website entitled Regulatory Reform.⁶ This information does not establish or describe the process, standards or timelines for completion of EPA’s, or its Regulatory Reform Task Force’s, review of EPA’s existing regulations in accordance with Executive Order 13777, nor does it provide any information on the process that EPA will follow to address the findings of the review. The public has not been informed whether EPA will be providing the public with a meaningful opportunity to comment on regulations that either the Task Force or the EPA Administrator ultimately identifies as worthy of consideration for repeal, modification or revocation. This is all basic information that must be provided to the public before EPA proceeds with its review of existing regulations.

The extraordinarily sparse E.O. 13777 Federal Register Notice, which is oddly denominated as a “Proposed Rule,” summarizes portions of Executive Order 13777 and states that this Executive Order “established a federal policy ‘to alleviate unnecessary regulatory burdens’ on the American people.” The Notice then indicates that EPA’s Regulatory Reform Task Force is evaluating all of EPA’s existing regulations, with the minor exception of Chapter VIII, and will be making recommendations regarding which EPA regulations should be repealed, replaced or modified. The only criteria set forth in the Notice for the Task Force’s evaluation are those set forth in Section 3(c) of Executive Order 13777. The public is provided a 30-day window of opportunity to provide written “input” on EPA’s existing regulations that “meet some or all” of the criteria in Section 3(c) of Executive Order 13777 to “inform its Task Force’s evaluation,” including any supporting data or other information such as cost information, Federal Register or Code of Federal Regulations citations when referencing a specific regulation, and specific suggestions regarding repeal, replacement or modification. The E.O. 13777 Notice also indicates that EPA will conduct other unspecified outreach, and that opportunities for engagement with the agency “will be” available on EPA’s website.

Although EPA is expressly required by Executive Order 13777 to seek input from the public, without a crystal ball, the process set up in the E.O. 13777 Notice provides only an illusory opportunity. It is impossible for the public to provide meaningful input on the regulations that will actually be targeted because all of EPA’s regulations in Chapters I, IV, V, VI and VII are under consideration for “repeal, replacement, or modification” in this process. This includes more than 27,000 pages of regulations in the official Code of Federal Regulations⁷ that cover, for example:

- General Rules, including Public Information and Public Participation
- Grants and Other Financial Assistance
- Air Programs

⁵ https://www.epa.gov/sites/production/files/2017-04/documents/regulatory_reform_agenda.pdf.

⁶ <https://www.epa.gov/laws-regulations/regulatory-reform>.

⁷ U.S. Government Bookstore, CFR Title 40, Protection of Environment, available at: <https://bookstore.gpo.gov/catalog/laws-regulations/code-federal-regulations-cfrs-print/cfr-title-40-protection-environment>.

- Water Programs
- Pesticide Programs
- Radiation Protection Programs
- Noise Abatement Programs
- Ocean Dumping
- Solid Wastes
- Superfund, Emergency Planning, and Community Right-to-Know
- Effluent Guidelines and Standards
- Sewage Sludge
- Energy Policy
- Toxic Substances Control Act
- Air Pollution Controls
- The Council on Environmental Quality
- The Chemical Safety and Hazard Investigation Board
- Uniform Discharge Standards for Vessels of the Armed Forces

Within each of these areas, there are untold numbers of detailed, highly technical and interrelated regulations that were adopted via the proper administrative procedures, after adequate public notice and opportunity for comment, as authorized and directed by complex federal statutes with diverse standards, requirements, stakeholders, and goals. Many of these regulations have been in place for decades and were adopted after years of scientific, cost-benefit and legal evaluation, including lengthy consultation with the states and stakeholders, followed by years of litigation resulting in judicial opinions upholding the regulations as consistent with the governing statute and other requirements.

Anyone familiar with EPA's regulations and rulemaking processes would readily admit that 30 days is often inadequate time to reasonably evaluate and provide comment on a single EPA regulation, and that it is beyond question that no one could possibly evaluate and comment on all of the roughly 27,000 pages of EPA's regulations at one time, in 30-days. Members of the public, the majority of whom are concerned about pollution of drinking water, rivers, lakes, and reservoirs,⁸ are essentially being forced to comment "in a vacuum," as no one can know in advance which regulations the Task Force or the Administrator will later deem "appropriate for repeal, replacement, or modification." Countering such designations for all of EPA's regulations in advance of that determination is an insurmountable and unreasonable burden for EPA to place upon the public, even more so since the existing regulations were adopted following fair and legally sound processes for all stakeholders.

The only additional information on the process that EPA will follow to evaluate all of its regulations is found in Administrator Pruitt's March 24 Memo, which states "by May 15, 2017, the Offices of Air and Radiation, Land and Emergency Management, Chemical Safety and

⁸ A March 31, 2017 Gallup Poll found that "[m]ore Americans are more concerned about water pollution than they have been since 2001" - 85% of Americans are worried about pollution of drinking water, rivers, lakes and reservoirs. (Drinking Water - "a Great Deal" (63%) or a "Fair Amount" (22%) and Rivers, Lake and Reservoirs "Great Deal" (57%) or a "Fair Amount" (28%), available at: <http://www.gallup.com/poll/207536/water-pollution-worries-highest-2001.aspx>.

Pollution Prevention, Water, Environmental Information, Congressional and Intergovernmental Relations and Small and Disadvantaged Business should provide the Task Force with recommendations regarding specific rules that should be considered for repeal, replacement or modification,” and that their recommendations should be “informed by consultation with their particular stakeholders.” EPA Regional Offices and headquarters offices that received the March 24 Memo were also directed to “provide their recommendations to the Task Force” by May 15. Thus, all of these EPA Offices were directed to review EPA’s regulations, consult with their stakeholders and recommend which EPA regulations should be repealed, replaced or modified in less than 60 days. It is impossible for EPA to responsibly conduct such a review, and to seriously consider the informed views of the public, in less than two months. The unreasonableness of this directive is exacerbated by the fact that EPA Offices’ recommendations are required to be submitted by May 15, the same day as the deadline for the public to submit written comments under the E.O. 13777 Notice. These coextensive deadlines preclude full and reasonable consideration of the public’s input by these EPA Offices.

Besides the 30-day written “input” opportunity, some of the EPA Offices placed running announcements of seven meetings or teleconferences on limited topics for the public to provide oral comments during the 30-day period on a “Regulatory Reform” page set up on EPA’s website.⁹ These sessions took place between April 24 and May 11. To the best of our knowledge, the public was not provided any opportunity to have a dialogue with the EPA about this evaluation of its existing regulations and opportunities to provide oral comments were severely limited.

For example, the only opportunity for the public to provide oral comments on regulations within the purview of the Office of Water was a 3-hour “Listening Session” entitled “Office of Water: Feedback on Reducing Regulatory Burden” that was held on May 2, 2017.¹⁰ The details necessary to participate in that “feedback” session were not provided until April 26, 2017, only 150 telephone lines were set aside for people that wanted to speak, members of the public that got invited to utilize those telephone lines were selected at random from people who registered, speakers were only allowed one to two minutes for commenting, only 1,000 people could join via web conference to provide written comments through a chat box, and EPA staff was present only for “brief remarks” and then to only to “listen.” While the EPA should take note of the fact that the majority of the comments opposed repeal, replacement and modification of EPA’s regulations, the Office of Water Listening Session did not provide an adequate opportunity for the Office of Water to confer with and receive input from its stakeholders.

Additionally, unlike prior regulatory actions undertaken in accordance with applicable legal requirements, EPA has expressly stated that “will not respond to individual comments” submitted orally or in writing pursuant to the E.O. 13777 Notice. Accordingly, the public will have no way to know whether or how their input, and the input of others, was actually considered by the EPA. EPA should reconsider this position, and at minimum, publish a

⁹ <https://www.epa.gov/laws-regulations/regulatory-reform>.

¹⁰ <https://www.epa.gov/aboutepa/office-water-feedback-reducing-regulatory-burden>.

summary of the comments, and EPA's responses thereto, to demonstrate how the agency evaluated public comments and the recommendations of its various offices. Additionally, at a minimum and as described in more detail below, EPA must develop a regulatory review process in accordance with all applicable legal requirements, including providing the public with reasonable notice of, and opportunity to comment on, regulations that may be recommended to the Task Force for repeal, replacement or modification prior to submission any such recommendations to the Task Force and/or the Administrator.

2. EPA's Regulatory Review Cannot Legally be Limited to the Single Policy Objective and Six Criteria set forth in the E.O. 13777 Notice.

EPA is statutorily obligated to adopt regulations pursuant to myriad complex federal environmental statutes including, but not limited to, the Federal Water Pollution Control Act ("CWA"),¹¹ the Safe Drinking Water Act ("SDWA"),¹² the Resource Conservation and Recovery Act ("RCRA"),¹³ the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"),¹⁴ the Emergency Planning and Community Right-to-Know Act ("EPCRA"),¹⁵ and the Clean Air Act ("CAA").¹⁶ Each of these statutes contains distinct requirements for, and limitations upon, regulations adopted by EPA to carry out the objectives of the Acts and the intent of Congress. All of the federal environmental laws EPA is charged with implementing through regulations have overarching policy statements and goals that are implemented through similarly complex and interrelated statutory provisions. Accordingly, all of these statutes establish diverse standards for the regulations adopted by EPA that depend on complex legal, technical, scientific, and other mandatory considerations.

For example, in 1972 Congress adopted lengthy and complex amendments to the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). The 1972 amendments established, among other things, a national goal "of eliminating all discharges of pollutants into navigable waters by 1985" and an "interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water . . . by 1983." 33 U.S.C. §1251(a). Thus, rather than attempting to minimize industry's burden to stop polluting our nation's waterways, Congress intentionally imposed "on American industry (and the American public through passed-on product costs) the economic burden of ending all discharges of pollutants by the year 1985." Am. Frozen Food Inst. v. Train, 539 F.2d 107,113 (D.C. Cir. 1976); 33 U.S.C. §1251(a)).

¹¹ 33 U.S.C. §1251 et seq. (1972).

¹² 42 U.S.C. §300f et seq. (1974).

¹³ 42 U.S.C. §6901 et seq. (1976).

¹⁴ 42 U.S.C. §9601 et seq. (1980).

¹⁵ 42 U.S.C. §11001 et seq. (1986).

¹⁶ 42 U.S.C. §7401 et seq. (1970).

To accomplish this, among other things, CWA section 301(a) prohibits the discharge of pollutants into waters of the United States by any person, unless such discharges comply with the terms of any applicable permits, and sections 301, 302, 306, 307, 318, 402, and 404 of the Act. Section 402 establishes the statutory permitting framework for regulating pollutant discharges under the National Pollutant Discharge Elimination System (“NPDES”) program. See 33 U.S.C. §§1311(a) and 1342. Additionally, Congress established criteria of varying stringency regarding consideration of costs and the availability of technology for EPA’s regulations establishing technology-based effluent limitations for NPDES permits. See Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208, 221 (2009); Am. Iron & Steel Inst. v. EPA, 526 F.2d 1027, 1051 (3d Cir. 1975), amended, 560 F.2d 589 (3d Cir. 1977). By contrast, Congress mandated that water quality-based effluent limitations in NPDES permits must be established without regard to cost or technology availability. See Nat. Res. Def. Council v. EPA, 808 F.3d 556, 564–65 (2d Cir. 2015) (“WQBELs are set without regard to cost or technology availability”); NRDC v. EPA, 859 F.2d 156, 208 (D.C. Cir. 1988) (“A technology-based standard discards its fundamental premise when it ignores the limits inherent in the technology. By contrast, a water quality-based permit limit begins with the premise that a certain level of water quality will be maintained, come what may, and places upon the permittee the responsibility for realizing that goal.” (*footnote omitted*)).

These types of standards and limitations on EPA’s rulemaking authority are common throughout the federal environmental statutes. For example, EPA is required to set national ambient air quality standards at levels “requisite to protect the public health” with an “adequate margin of safety” under section 109(b) of the CAA, 42 U.S.C. § 7409(b), and EPA cannot consider costs when it sets these standards in its regulations. See Whitman v. Am. Trucking Associations, 531 U.S. 457, 471, (2001) (“The text of § 109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS-setting process, and thus ends the matter for us as well as the EPA.”). Similarly, under Section 121 of CERCLA, EPA regulations must be consistent with the requirement that remedial actions achieve a level of protectiveness “at a minimum which assures protection of human health and the environment,” and EPA cannot consider costs when determining the level of protectiveness to be achieved by a remedial action. State of Ohio v. EPA, 997 F.2d 1520, 1531 (D.C. Cir. 1993); 42 U.S.C. §9621(d)(1). However remedial actions that are ultimately selected to achieve that level of protectiveness are required to be cost-effective under a different statutory provision. Id.; 42 U.S.C. §9621(b)(1). EPA regulations implementing these CERCLA provisions for the National Contingency Plan must be consistent with these divergent standards and limitations.

These examples are but a minute sampling of the diverse standards and requirements for EPA regulations implementing federal environmental laws, but help illustrate a key problem with the instant review of EPA’s existing regulations as contemplated by Administrator Pruitt’s March 24 Memo and the E.O. 13777 Notice. EPA is conducting a review of its existing regulations and identifying regulations that it believes should be repealed, replaced or modified based solely on whether it would reduce “regulatory burden.” Not a single federal environmental statute directs EPA to adopt, revise, modify or revoke its regulations based solely on the goal of “reducing

regulatory burden” and/or the limited criteria specified in Section 3(c) of Executive Order 13777. The policy of alleviating “unnecessary regulatory burdens” announced in Executive Order 13777 does not, and cannot, supersede or modify any of the Congressional statements of policy and associated legal requirements set forth in the federal environmental statutes. Repealing, replacing or modifying an EPA regulation on the sole basis that it would reduce “regulatory burden” is thus contrary to law.

In his March 24 Memo, Administrator Pruitt states that “[t]he Task Force is charged with evaluating existing regulations and making recommendations to me regarding those that can be repealed, replaced or modified to make them less burdensome.” In the E.O. 13777 Notice, EPA ignores all of the provisions in Executive Order 13777 that purport to govern the regulatory review besides Section 3, focuses the review solely on the policy objective of alleviating “unnecessary regulatory burdens,” and states that its Task Force will review EPA’s regulations based on the criteria set forth in Section 3(c) of Executive Order 13777. None of these criteria relate to statutory requirements, or standards for EPA’s regulations, or any other legal requirement applicable to EPA’s regulatory review.

By contrast, Executive Order 13777 contains a number of requirements in addition to those set forth in Section 3(c) that are applicable to EPA’s regulatory review, but that are not mentioned or addressed in the E.O. 13777 Notice or elsewhere. Foremost amongst those requirements is the mandate that “agencies effectively carry out regulatory reforms, consistent with applicable law” and implement “regulatory reform initiatives and policies” including without limitation Executive Orders 12866 and 13563. First, “applicable law” includes the requirements of the federal environmental statutes themselves, as well as the requirements of other federal Acts of Congress such as the federal APA, Regulatory Flexibility Act (5 U.S.C. §§601-612), and EPA’s own regulations for undertaking regulatory actions.¹⁷ Additionally, Executive Order 12866 established detailed requirements for the regulatory process applicable to new and existing regulations, including a mandate that the regulatory process “be conducted so as to meet applicable statutory requirements.” Executive Order 13563 directs agencies to subject their existing regulations to a systematic regulatory review process, including a long-term retrospective review process.

Nothing in the E.O. Notice or elsewhere indicates that EPA intends to meet its legal obligations for conducting this review of its existing regulations in accordance with these statutes and executive orders. In fact, the process and criteria set forth in the E.O. 13777 Notice are

¹⁷ To the extent any provision of Executive Order 13777 would require a regulatory action that is inconsistent with or prohibited by a federal law, EPA must follow the law and comply with its requirements rather than follow the dictate of the Executive Order. See e.g. Building & Construction Trades Department, AFL-CIO v. Allbaugh, 295 F.3d 28, 32-33 (D.C. Cir. 2002); Cty. of Santa Clara v. Trump, No. 17-CV-00485-WHO, 2017 WL 1459081, at *21 (N.D. Cal. Apr. 25, 2017) (“[The President] cannot ‘repeal[] or amend[] parts of duly enacted statutes’ after they become law.” citing *City of New York*, 524 U.S. at 438, 439 (1998)); United States v. Rhode Island Dep’t of Corr., 81 F. Supp. 3d 182, 188 (D.R.I. 2015) (“Meanwhile, if an executive order conflicts with an existing statute, the executive order must fall. See *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322, 1332–34 (D.C.Cir.1996)”).

inconsistent with these mandatory requirements. None of these federal statutes or Executive Orders are acknowledged or referenced in the E.O. 13777 Notice, and no additional information on how these requirements will be utilized and evaluated during review by the Task Force or the EPA Administrator has been made available to the public. All of the available information relates to what the EPA will do prior to the May 15, 2015 comment deadline, and public comment was requested solely based on reducing regulatory burden and the Executive Order 13777 Section 3(c) criteria.

EPA must not proceed with a review of its existing regulations until it develops, discloses and implements an internally consistent review process, which must also be consistent with the relevant statutes, regulations and Executive Orders. This cannot be accomplished in 30 or 60 days. For comparison, Executive Order 13563 was issued on January 11, 2011. To meet the requirements of this single executive order, EPA solicited public input on how to design its preliminary plan to implement the review from February 18, 2011 through April 4, 2011 in fifteen different dockets geared toward different issues, impacts and program areas, and by hosting 20 public meetings and listening sessions.¹⁸ On May 26, 2011, EPA posted its preliminary plan on its website, and on <https://www.regulations.gov>, with an identified docket number, and also provided the public with the opportunity to comment on the review plan until June 27, 2011. After considering those comments, EPA issued its 62-page long Final Plan for Periodic Retrospective Reviews of Existing Regulations under Executive Order 13563 in August of 2011.¹⁹ The Final Plan identified a multi-year schedule for reviewing EPA's regulations in accordance with statutory and other criteria, and the agency has provided bi-annual progress reports on its retrospective reviews required by Executive Order 13563 ever since through July of 2016.²⁰ At a minimum, especially considering that Executive Order 13777 expressly directs agencies to comply with Executive Order 13563, EPA must adopt a similar process and timelines for developing and providing for public input into developing the Executive Order 13777 regulatory review plan, and it must adopt review criteria consistent with all applicable federal statutes, regulations and executive orders.

3. EPA's Regulatory Review Must Consider the Importance and Benefits of EPA's Regulations.

As discussed above, the regulatory review process set forth in the E.O. 13777 Notice is focused solely on "regulatory burden." Accordingly, it appears that the EPA is not undertaking any evaluation of the importance of its regulations for the protection of human health and the environment or the benefits to the public, environment and economy associated with those protections. Additionally, it appears the EPA is not considering the burdens and costs to the

¹⁸ <https://www.epa.gov/laws-regulations/retrospective-review-history>.

¹⁹ https://www.epa.gov/sites/production/files/2015-09/documents/eparetroreviewplan-aug2011_0.pdf.

²⁰ It is unclear whether EPA intends to continue complying with Executive Order 13563, as it appears no bi-annual progress report was filed in January of 2017. <https://www.epa.gov/laws-regulations/documents-retrospective-review>.

public associated with the loss or weakening of EPA's regulations. Consideration of these issues is mandatory - not optional.

Throughout our nation's federal environmental statutes, Congress established requirements to regulate and clean up air, land and water pollution for the purpose of protecting human health and the environment. Many of these public protections are imposed by law without regard to the regulatory burden that may be placed on industry. This is because Congress determined certain actions that could harm human health or pollute our air, land and water were simply unacceptable and contrary to the national interest - even when it might be financially beneficial or less "burdensome" to an industry if it were allowed to continue endangering human health or polluting the environment. It is axiomatic that no one should be allowed to endanger or harm a human being or contaminate a community's water supply to create more jobs, avoid paperwork or increase corporate profits.

That is why EPA was established in the first place - to implement these statutes in a manner that protects human health and the environment consistent with Congressional intent. This, rather than trying to create jobs or promote a particular industry, is EPA's mission.²¹ When President Nixon submitted Reorganization Plan No. 3 of 1970 to Congress in order to establish the EPA, and "make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food," he stated his clear intention that "the EPA would be charged with protecting the environment by abating pollution [and] would focus on setting and enforcing pollution control standards."²² EPA's first Administrator, William D. Ruckelshaus, echoed this intent when he stated:

The Environmental Protection Agency became law only two weeks ago today, but several of the most important principles to which we will adhere are already evident . . . EPA is an independent agency. It has no obligation to promote agriculture or commerce; only the critical obligation to protect and enhance the environment. It does not have a narrow charter to deal with only one aspect of a deteriorating environment; rather it has a broad responsibility for research, standard-setting, monitoring and enforcement with regard to five environmental hazards; air and water pollution, solid waste disposal, radiation, and pesticides . . . A clean and healthy environment is up to all of us. So we shall be an advocate for the environment with individuals, with industry, and within government.²³

²¹ <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.

²² Reorganization Plan No. 3 of 1970, Special Message from the President to the Congress About Reorganization Plans to Establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration (July 9, 1970), available at: <https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html>.

²³ EPA's First Administrator on the Establishment of EPA by William D. Ruckelshaus [EPA press release - December 16, 1970], available at: <https://archive.epa.gov/epa/aboutepa/epas-first-administrator-establishment-epa.html>.

More recently, Administrator Ruckelshaus authored an opinion piece in the New York Times entitled “A Lesson Trump and the E.P.A. Should Heed,” explaining the severe consequences and public outrage that resulted from EPA abandoning its “basic mission” in the early 1980s, and why strong and credible EPA regulations are “essential to the smooth functioning of our economy.” As Administrator Ruckelshaus elucidated, “without a set of federal standards to protect public health from environmental pollution, states would continue to compete for industrial development by taking short cuts on environmental protection.”²⁴

One need only look to regulations EPA is already attempting to scrap for a clear illustration of the problems that flow from EPA’s efforts to relieve industry of its regulatory “burdens,” at the expense of protecting human health and the environment. In April, at industry’s request, Administrator Pruitt “suspended” the CWA Effluent Limitation Guidelines (ELGs)²⁵ for power plants that EPA had just finalized in 2015²⁶ after an intensive five-year rulemaking process. The suspended regulations would have prevented 1.4 billion pounds of water pollution every year.²⁷ These new ELG’s had replaced 1982 ELGs that lack uniform limits on toxic water pollution, which allowed power plants to become far and away the biggest source of toxic water pollution in the country, and led to harmful contamination of 23,000 miles of rivers and streams with *billions* of pounds of pollutants like arsenic, lead and mercury into our waters every year.²⁸ EPA acknowledges that these pollutants “can cause severe health and environmental problems in the form of cancer and non-cancer risks in humans, lowered IQ among children, and deformities and reproductive harm in fish and wildlife,” and “once in the environment, remain there for years.”²⁹ The new ELGs would do much to protect the public from these ills, yet, because industry claimed the new rule was a “burden,” EPA summarily reversed itself. In this particular instance, EPA neither sought public input nor offered its own independent justification for the change in position. Nor did the agency consider the regulatory chaos and uncertainty this reckless maneuver has created, or the plight of numerous small businesses that have been investing in and developing treatment technologies to meet pollution limits in the new ELGs.

A. Environmental Regulations are Vital to the Public Interest.

EPA itself has concluded that regulations that ensure our nation’s waterways are free from pollution are vitally important to the public, businesses, agriculture, and the economy. For example:

²⁴ William, D. Ruckleshaus, “A Lesson Trump and the E.P.A. Should Heed,” New York Times Editorial (Mar. 7, 2017), available at: <https://www.nytimes.com/2017/03/07/opinion/a-lesson-trump-and-the-epa-should-heed.html>.

²⁵ See EPA Response to UWAG & SBA Petitions - 2015 Steam Electric ELG Final Rule (Apr. 12, 2017), available at: https://www.epa.gov/sites/production/files/2017-04/documents/steam-electric-elg_uwag-sba-petition_epa-response_04-12-2017.pdf; 82 Fed. Reg. 19,005 (Apr. 25, 2017).

²⁶ 80 Fed. Reg. 67,838 (Nov. 3, 2015).

²⁷ EPA, Fact Sheet: Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry (Sept. 2015), available at: https://www.epa.gov/sites/production/files/2015-10/documents/steam-electric-final-rule-factsheet_10-01-2015.pdf.

²⁸ *Id.*

²⁹ *Id.*

- EPA's Recreation Fact Sheet: Millions of Americans enjoy fishing, hunting, and recreation around water, whether it is fishing at a stream, kayaking on a river, or surfing in the ocean. Consider that each year about 33 million Americans go fishing and about 19 million people go paddling in kayaks, canoes, rafts, or standup paddleboards. Each year 3.3 million people surf in coastal waters, which are directly impacted by the health of upstream waterways. As a whole, outdoor recreation generates \$646 billion in consumer spending and supports 6.1 million direct jobs. Fishermen, hunters, and wildlife watchers spent \$144.7 billion in 2011 on activities, equal to 1 percent of the Gross Domestic Product. Fishing itself is a \$48 billion per year industry that supports nearly a million family wage jobs. Paddling gear and trips contribute \$86 billion a year to the American economy. Surfing contributes up to \$3 billion to the economy each year.³⁰
- EPA's Communities Fact Sheet: Manufacturing companies use more than 9 trillion gallons of fresh water every year. The beverage industry uses over 12 billion gallons of water annually to produce products valued at \$58 billion. Beer brewers depend on clean water, which is more than 90 percent of beer. Aquatic recreation is big business. Paddlers alone spend \$86 billion annually on gear and trips. Agriculture depends on clean and reliable water for livestock, crops, and irrigation.³¹

While it is difficult to monetarily quantify many of the benefits associated with EPA's regulations, and cost/benefit analysis is not always an allowable factor in the establishment of EPA's regulations, the types of health and economic benefits that can be quantified alone have been found to far outweigh the compliance costs associated with EPA's regulations. For example, the 2016 Office of Management and Budget Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act³² states that for the 37 rules adopted by EPA between October 1, 2005 and September 30, 2015 that have both Benefit and Cost Estimates, the benefits ranged from \$175.5 to \$678.1 billion, as compared to costs which ranged from \$43.2 to \$50.9 billion. Additionally, OMB's evaluation of the impact of EPA's regulations on labor and employment found little correlation to statistically significant changes in response to the regulations, and also found that changes can often be offset through abatement activity.³³ Additionally, EPA has found that the benefits of the programs and standards required by the CAA "significantly exceed costs," and that projected

³⁰ The Clean Water Rule for Recreation, available at: https://www.epa.gov/sites/production/files/2015-05/documents/fact_sheet_recreation_final_0.pdf.

³¹ The Clean Water Rule for Communities, available at: https://www.epa.gov/sites/production/files/2015-05/documents/fact_sheet_communities_final_0.pdf.

³² Office of Management and Budget Office of Information and Regulatory Affairs, OMB: 2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act (Dec. 14, 2016), available at: https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf

³³ Id. at pp. 41-45.

that the benefits will reach approximately \$2.0 trillion in 2020, whereas regulatory compliance actions are expected to cost an estimated \$65 billion in 2020.³⁴

Waterkeepers have been on the front lines of environmental advocacy and waterway protection for over 50 years, and can attest firsthand how important EPA regulations are to achieving all of the health, economic and other societal benefits that accompany clean air, lands and water. EPA's regulations have led to improvement in air, land and water quality across the nation through the efforts of the states, the EPA, non-profit organizations, and individuals over the last several decades. For example:

- **Hudson River, NY/NJ:** EPA's regulations have revitalized waterways that were once notorious for their high levels of pollution. Enforcement of EPA's regulations by Hudson Riverkeeper helped control widespread industrial pollution on the Hudson River in New York. Additionally, CWA citizen suits enforcing EPA regulations have drastically reduced industrial and sewage pollution, allowing for recovery of fish and wildlife and ending the massive fish kills that historically plagued the Hudson River. EPA's regulations remain an essential tool for fully restoring the river, which still suffers from a legacy of municipal and industrial pollution. The CWA and Superfund regulations are central to the efforts to clean up this pollution.³⁵
- **Chesapeake Bay:** EPA's development of CWA TMDLs in accordance with its regulations is central to efforts to clean up and restore waterways across the country. EPA Region 3, in reliance on EPA's regulations, worked with the states to develop a regional TMDL for the Chesapeake Bay governing nutrient and sediment pollution. This pollution had been degrading water quality for decades, harming fish, oyster, and blue crab populations, and depressing the local economy that relied on the Chesapeake Bay. The 2010 Chesapeake Bay TMDL is a landmark environmental agreement, which EPA achieved by collaborating with the five states and Washington, D.C. By 2017, seven years into the plan, the Chesapeake Bay is showing strong signs of recovery, with increased crab populations and the steady return of native sea grasses that nurture aquatic life.³⁶
- **Municipal Discharges:** Enforcement of EPA's CWA regulations has also resulted municipalities addressing combined sewage and sanitary sewage overflows, which allows communities to reclaim waterfronts, open waterways to recreation and restore fisheries. In Washington, Puget Soundkeeper's citizen suit against the City of Bremerton for CWA violations resulted in the city investing \$50 million in infrastructure to stop raw sewage discharges to sensitive Puget Sound waterways. As a direct result, commercial

³⁴ U.S. EPA, The Benefits and Costs of the Clean Air Act from 1990 to 2020, Final Report (March 2011), available at: <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>

³⁵ Hudson River Protection, available at: <https://www.riverkeeper.org/udson-river/protection/>.

³⁶ Chesapeake Bay TMDL, available at: <https://www.epa.gov/chesapeake-bay-tmdl>.

and tribal shellfish harvests were re-opened in Dyes Inlet after 50 years of closure.³⁷ In Georgia, Chattahoochee Riverkeeper's citizen suit over sewage pollution from Atlanta resulted in a 99 percent reduction in the amount of sewage running into the river into the river, making way for the revival of native species.³⁸

- **NPDES Permits:** Through enforcement of EPA's NPDES regulations, Waterkeepers have been able to stop significant sources of pollution across the country. In response to a massive fishkill on the river, the Ogeechee Riverkeeper in Georgia sued a textile manufacturing plant for NPDES permit violations, leading to the company making extensive upgrades to its wastewater treatment system and having much more stringent discharge limits. In 2015, Potomac Riverkeeper reached a settlement with Washington Suburban Sanitary Commission requiring the Commission to upgrade its drinking water treatment plant in suburban Washington, D.C. to end years of permit violations that dumped millions of pounds of aluminum, sediment and other pollutants into the Potomac River.³⁹
- **Coal Ash:** From 2014 to 2016 Yadkin Riverkeeper pursued a CWA citizen suit to clean up Duke Energy's Buck Steam Station, a retired coal fired power plant site with five million tons of coal ash in unlined pits sited between the Yadkin River and private residents on well water. This site discharges 70,000 gallons of groundwater a day into the Yadkin River, leaks/seeps from the coal ash dam are also discharging to the river and monitoring wells around the site demonstrate that the groundwater is contaminated with arsenic, hexavalent chromium and vanadium. Yadkin Riverkeeper's litigation resulted in a binding settlement agreement announced in October of 2016 under which Duke Energy will excavate and recycle all five million tons of ash at the site, protecting surrounding groundwater and surface waters. This result protected High Rock Lake, the most heavily used recreational water in this 7,221 square mile watershed, from the threat of further contamination via seepage, groundwater or dam failure. It would not have been possible without the protections of the CWA and EPA's regulations.⁴⁰

B. The Nation's Pollution Problems Will Never Be Remedied if EPA Revokes, Replaces or Modifies its Vital Regulations.

On the other hand, while the EPA has a 45-year history of adopting and implementing regulations that have greatly improved the nation's air, land and waters, there remains a great deal of work to be done, and the work necessary to address this pollution will not be possible if

³⁷ Puget Soundkeeper Citizen Suits, available at: <http://www.pugetsoundkeeper.org/programs/monitoring/strategy-citizen-lawsuits/>.

³⁸ Environment America, Waterways Restored: The Clean Water Act's Impact on 15 American Rivers, Lakes & Bays, pp. 12-14, (Oct. 2014), available at: http://environmentamerica.org/sites/environment/files/EA_waterways_scrn.pdf.

³⁹ "WSSC agrees to reduce pollution in Potomac River from treatment plant," Washington Post (Oct. 21, 2015), available at: <http://wapo.st/2q4cP0M>.

⁴⁰ Yadkin River Coal Ash, available at: <http://www.yadkinriverkeeper.org/campaigns/coal-ash>.

EPA's regulations are revoked, modified or replaced to purportedly relieve "regulatory burden." For example:

- Recent water quality reports from the states to EPA show that 97.7% of assessed Great Lakes Open Water; 83.5% of assessed bays and estuaries; 78.7% of assessed coastal shoreline; 91% of assessed ocean and near coastal waters; 71.3% of assessed lakes/reservoirs/ponds; and 54.7% of assessed streams/rivers in the U.S. are unsafe for fishing, drinking, and/or swimming.⁴¹
- A Congressional Research Report found that "[a]fter nearly 40 years of implementing the CWA, EPA and states acknowledge that a substantial portion of the nation's waters still are impaired or threatened by pollution. The most recent national inventory of water quality reported that nearly 40% of surveyed water bodies remain too polluted for fishing, swimming, and other designated uses. Yet those numbers only represent rivers, streams, and lakes actually surveyed by state monitoring programs—typically about one-third of all waters." The report also noted that a 2007, EPA's Inspector General report on TMDL implementation "found that a lack of information prevents EPA from determining if TMDL implementation activities are occurring in a timely manner, and the extent to which TMDLs are restoring impaired waters. EPA tracks specific outcomes—e.g., numbers of TMDLs developed—but not functional results of water quality improvement."⁴²
- A recent Natural Resources Defense Council analysis shows that "in 2015 alone, there were more than 80,000 reported violations of the Safe Drinking Water Act by community water systems. Nearly 77 million people were served by more than 18,000 of these systems with violations in 2015. These violations included exceeding health-based standards, failing to properly test water for contaminants, and failing to report contamination to state authorities or the public." Alarming, NRDC's analysis identified, in 2015, "more than 12,000 health-based violations in some 5,000 community water systems serving more than 27 million people." The records also indicated that formal enforcement of these standards by the regulatory agency was shockingly low - with the lowest enforcement rate of 5.2% for inorganic contaminants and the highest enforcement rate of 37.1% for health-based arsenic exceedances.⁴³
- A new study, co-authored by EPA scientists, and published in the American Cancer Society's peer-reviewed journal, "Cancer," just last week, shows that the overall

⁴¹ U.S. EPA, National Summary of State Information, available at: https://ofmpub.epa.gov/waters10/attains_nation_cy.control.

⁴² U.S. Congressional Research Service, Clean Water Act and Pollutant Total Maximum Daily Loads (TMDLs), Report No. R42752, Claudia Copeland Specialist in Resources and Environmental Policy (September 21, 2012), available at: <https://fas.org/sgp/crs/misc/R42752.pdf>.

⁴³ NRDC, Threats on Tap: Widespread Violations Highlight Need for Investment in Water Infrastructure and Protections, (May 2, 2017), available at: <https://www.nrdc.org/resources/threats-tap-widespread-violations-water-infrastructure>.

environmental quality of a location is associated with overall cancer rates for that location.⁴⁴ Using EPA's own Environmental Quality Index (EQI), researchers were able to show that areas with low cumulative environmental quality showed an average of 38 more cancer cases per 100,000 people than those with high environmental quality. With this published research, it is hard to argue that regulations that protect the quality of air, water and land - all measured through the EQI - should be repealed, replaced, or modified. Doing so will only result increased cancer and death rates. Instead, EPA should focus its efforts on strengthening public protections over these vital resources that have a direct impact on human health.

- The Departments of Agriculture, the Interior, Defense, and Energy “have identified thousands of contaminated and potentially contaminated sites on land they manage but do not have a complete inventory,” including the USDA’s 1,491 contaminated sites and many potentially contaminated sites; 27,000 to 39,000 abandoned mines on U.S. Forest Service lands—approximately 20 percent of which may pose some level of risk to human health or the environment; 4,722 DOI sites with confirmed or likely contamination and 30,000 abandoned mines that were not yet assessed for contamination; 38,804 DOD sites in its inventory of sites with contamination; and 16 DOE sites in 11 states with contamination.⁴⁵
- The U.S. General Accounting Office has determined that EPA “has not collected specific inspection and complete or consistent enforcement information, or consistently conducted oversight activities, to assess whether state and EPA-managed Underground Injection Control (UIC) class II programs are protecting underground sources of drinking water.”⁴⁶
- With regard to the Superfund program, the U.S. General Accounting Office reports that “[t]he total number of nonfederal sites on the NPL increased from 1,054 in fiscal year 1999 to 1,158 in fiscal year 2013, and averaged about 1,100 annually. The number of remedial action project completions at nonfederal NPL sites generally declined by about 37 percent during the 15-year period. Similarly, the number of construction completions at nonfederal NPL sites generally declined by about 84 percent during the same period.”⁴⁷

⁴⁴ Jagai, J. S., Messer, L. C., Rappazzo, K. M., Gray, C. L., Grabich, S. C. and Lobdell, D. T. (2017), County-level cumulative environmental quality associated with cancer incidence. *Cancer*. doi:10.1002/cncr.30709, available at: <http://onlinelibrary.wiley.com/doi/10.1002/cncr.30709/full>.

⁴⁵ U.S. Government Accountability Office, *Federal Facilities: HAZARDOUS WASTE CLEANUP: Numbers of Contaminated Federal Sites, Estimated Costs, and EPA's Oversight Role* GAO-15-830T: Published: Sep 11, 2015. Publicly Released: Sep 11, 2015, available at: <https://www.gao.gov/products/GAO-15-830T>.

⁴⁶ U.S. Government Accountability Office, *DRINKING WATER: EPA Needs to Collect Information and Consistently Conduct Activities to Protect Underground Sources of Drinking Water* GAO-16-281: Published: Feb 26, 2016. Publicly Released: Mar 28, 2016, available at: <https://www.gao.gov/products/GAO-16-281>.

⁴⁷ U.S. Government Accountability Office, *SUPERFUND: Trends in Federal Funding and Cleanup of*

Withdrawal, modification or revocation of any CWA or other water quality regulations following the processes and criteria outlined in E.O. 13777 will endanger the public and will degrade or destroy our nation's fisheries, water supplies, recreational waters, and coastal waters. Waterkeeper Alliance and 169 Waterkeeper Organizations working across the country depend on these regulations to protect communities and the wetlands, rivers, lakes, reservoirs, and coastal waters within their watersheds. Severe water pollution problems that endanger human health, drinking water supplies, fisheries, recreational waters, and fisheries persist across the nation, and maintaining EPA's regulations is essential to control pollution and restore these waterways.

Waterkeeper Alliance and Waterkeepers are working with their communities, state agencies and the EPA to address pollution from a wide range of sources, including, but not limited to, oil and gas operations, pipelines, coal mining, coal ash, Superfund sites, stormwater, power plants, nuclear facilities, industrial dischargers, Concentrated Animal Feeding Operations, municipal wastewater treatment plants, and indirect dischargers. Some of the major challenges to controlling pollution include inadequate state regulation, monitoring, funding, and enforcement; failure to control discharges of nutrients such as nitrogen and phosphorus, uncontrolled pathogen pollution, failure to list impaired waters/develop and implement TMDLs, lack of CWA permitting for CAFOs nationwide, and inadequate regulation of coal ash discharges and disposal.

As an illustrative "case study" example, according to EPA, waterways in all 50 states are being adversely impacted by nitrogen and phosphorus pollution, which can negatively impact tourism and recreational use of those waterways, as well as cause toxic algal blooms; fish kills; decreased property values; closure, reduced harvest and increased processing costs due to poisoning risks for commercial fisheries; contamination of drinking water supplies and increased treatment costs; and severe illness in humans, livestock and wildlife.⁴⁸ Many waters of national importance, like Lake Erie, the Chesapeake Bay, the Gulf of Mexico, North Carolina's coastal estuaries, the Snake River, Florida's inland and coastal waters, California's coastal waters, and Puget Sound are among the nation's waterways that are severely polluted as a result of uncontrolled nitrogen and phosphorus pollution. For example:

- Lake Erie has experienced massive algal blooms, including one that forced the shutdown of Toledo's drinking water supply in 2014,⁴⁹

EPA's Nonfederal National Priorities List Sites.GAO-15-812: Published: Sep 25, 2015. Publicly Released: Oct 26, 2015, available at: <https://www.gao.gov/products/GAO-15-812>.

⁴⁸ See U.S. EPA Office of Water, Compilation of Cost Data Associated with the Impacts and Control of Nutrient Pollution, EPA 820-F-15-096 at ES-4 to ES-5 (May 2015), available at: <https://www.epa.gov/sites/production/files/2015-04/documents/nutrient-economics-report-2015.pdf>; See also <https://www.epa.gov/nutrientpollution/infographic-what-nutrient-pollution>.

⁴⁹ "Tap Water Ban for Toledo Residents," New York Times (Aug. 3 2014), available at: <https://www.nytimes.com/2014/08/04/us/toledo-faces-second-day-of-water-ban.html>.

- An unprecedented, toxic algal bloom stretching from central California to the Alaska Peninsula in 2015 caused fishery and shellfish closures in multiple states,⁵⁰
- The decades-old Gulf of Mexico dead zone expanded in 2015 to 6,474 square miles - an area roughly the size of Connecticut and Rhode Island combined,⁵¹ and
- The 2016 State of Emergency declared in Florida as a result of the toxic algal bloom in Lake Okeechobee and along Florida's beaches.⁵²

These high profile problems, most of which involve nutrient pollution originating in multiple states, clearly illustrate the needs to: maintain (as well as strengthen and enforce) EPA's existing regulations to control such pollutants; consider the costs already externalized by polluters and borne by the public from uncontrolled nutrient pollution when evaluating those regulations,⁵³ and step in when states are unwilling or unable to address these problems. A evaluation of the nation's water quality problems caused by other pollutants would demonstrate similar needs.

And these nutrient pollution problems are not isolated to large, high profile waterways - in fact, two-thirds of our nation's coastal waters are polluted by nitrogen and phosphorus,⁵⁴ and toxic algal blooms have been documented in every U.S. coastal state⁵⁵ with an estimated annual loss of \$82 million to the coastal seafood, restaurant, and tourism industries.⁵⁶ In Washington State alone, nitrogen and phosphorus pollution closed the razor clam fishery for part of 2016 resulting in an estimated \$9.2 million in lost income.⁵⁷ While only a small portion of our nation's waters are monitored, we know that nutrients are causing poor water quality in at least 100,000 miles of rivers and streams, nearly 2.5 million acres of lakes, reservoirs and ponds, and more than 800 square miles of bays and estuaries.⁵⁸ The failure to control nitrogen and phosphorus pollution

⁵⁰ NOAA, West Coast Harmful Algal Bloom, (Oct. 2016), available at:

<http://oceanservice.noaa.gov/news/sep15/westcoast-habs.html>.

⁵¹ NOAA, "2015 Gulf of Mexico dead zone 'above average,'" (Aug. 4 2015), available at:

<http://www.noaanews.noaa.gov/stories2015/080415-gulf-of-mexico-dead-zone-above-average.html>.

⁵² NASA Earth Observatory, available at:

<https://earthobservatory.nasa.gov/NaturalHazards/view.php?id=88311>; National Geographic, "Slimy Green Beaches May Be Florida's New Normal," available at:

<http://news.nationalgeographic.com/2016/07/toxic-algae-florida-beaches-climate-swamp-environment/>.

⁵³ See U.S. EPA Office of Water, Compilation of Cost Data Associated with the Impacts and Control of Nutrient Pollution, EPA 820-F-15-096 (May 2015) ("Cost is a major factor in the management and control of nutrient pollution. External costs – costs borne by the public more generally – associated with the impacts from uncontrolled or undercontrolled nutrient pollution and delayed action are important considerations. The adverse biological and ecological effects of nutrient pollution can result in economic losses across multiple industries and economic sectors."), available at:

<https://www.epa.gov/sites/production/files/2015-04/documents/nutrient-economics-report-2015.pdf>.

⁵⁴ <https://www.epa.gov/nutrientpollution/where-occurs-coasts-and-bays>.

⁵⁵ NOAA, Harmful Algal Blooms, available at: <http://oceanservice.noaa.gov/hazards/hab/>

⁵⁶ NOAA, "Why do harmful algal blooms occur?," available at:

http://oceanservice.noaa.gov/facts/why_habs.html.

⁵⁷ Id.

⁵⁸ <https://www.epa.gov/nutrientpollution/where-nutrient-pollution-occurs>.

nationwide has resulted in exponential increases in drinking water treatment costs, billions in pollution cleanup costs, \$1 billion in annual losses to the tourism industry, millions in annual losses to the fish and shellfish industries, and devaluation of waterfront real estate.⁵⁹

By contrast, we also know that utilizing the CWA and EPA's regulations to clean up nitrogen and phosphorus pollution in the Chesapeake Bay has resulted in enormous jumps in job creation and that "[c]leaner water also will mean more fish, crabs, and oysters, which will translate to more work and income for fishermen, processors, packers, restaurateurs, and people in tourism-related industries."⁶⁰ Many Waterkeepers across the country are actively relying on the CWA and EPA regulations to address the severe impacts that nutrient pollution is causing in their watersheds in CWA permits, state-delegated program regulations, TMDLs, CWA 319 Projects, Cooperative Projects, citizen suits, and through numerous other mechanisms. These Waterkeepers include, by way of example, Puget Soundkeeper and North Sound Baykeeper in Washington State, Lake Erie Waterkeeper in Ohio; Hudson Riverkeeper in New York; Snake River Waterkeeper in Idaho; multiple Waterkeepers in North Carolina; multiple Waterkeepers in the Chesapeake Bay region; multiple Waterkeepers in Florida; and multiple Waterkeepers in California.

CONCLUSION

For all of the foregoing reasons, Waterkeeper Alliance and the undersigned Waterkeeper Organizations object to the withdrawal, modification or revocation of any EPA regulation that results from the EPA's E.O. 13777 Notice itself and/or the process and criteria set forth in that notice.

⁵⁹ <https://www.epa.gov/nutrientpollution/effects-economy>.

⁶⁰ Chesapeake Bay Foundation, Debunking the "Job Killer" Myth: How Pollution Limits Encourage Jobs in the Chesapeake Bay Region, (Jan. 2012), available at: <http://www.cbf.org/document-library/cbf-reports/Jobs-Report-120103-FINALe2ef.pdf>.

Respectfully submitted:



Kelly Hunter Foster
Waterkeeper Alliance
New York, NY



Nelson Brooke
Black Warrior Riverkeeper
Birmingham, AL



Cindy Medina
Alamosa Riverkeeper
Capulin, CO



Jeff Turner
Blackwater Nottoway
Riverkeeper Program
Sedley, VA



Jen Hilburn
Altamaha Riverkeeper
Macon, GA



David Caldwell
Broad River Alliance
A Waterkeeper Affiliate
Lawndale, NC



Emily Franc
Anacostia Riverkeeper
Washington, DC



Jill Jedlicka
Buffalo Niagara Riverkeeper
Buffalo, NY



Dan Tonsmeire
Apalachicola Riverkeeper
Apalachicola, FL



Mark Rasmussen
Buzzards Baykeeper
Buzzards Bay Coalition
New Bedford, MA



Kathy Phillips
Assateague Coastkeeper
Assateague Coastal Trust
Berlin, MD



Myra Crawford
Cahaba Riverkeeper
Birmingham, AL



Dean A. Wilson
Atchafalaya Basinkeeper
St. Martinville, LA



Sara Aminzadeh
California Coastkeeper Alliance
San Francisco, CA



Angela Haren
Baltimore Harbor Waterkeeper
Baltimore, MD



John Cassani
Calusa Waterkeeper
Fort Myers, FL



Michael Howell
Bitterroot River Protection Assn.
Stevensville, MT



Kemp Burdette
Cape Fear Riverkeeper
Cape Fear River Watch
Wilmington, NC



Ivy Frignoca
Casco Baykeeper
Friends of Casco Bay
South Portland, ME



John Weisheit
Colorado Riverkeeper
Moab, UT



Sam Perkins
Catawba Riverkeeper
Charlotte, NC



Bill Stangler
Congaree Riverkeeper
Columbia, SC



Timmarie Hamill
CA Urban Streams Alliance -
The Stream Team
A Waterkeeper Alliance Affiliate
Chico, CA



Bob Shavelson
Cook Inletkeeper
Homer, AK



Andrew Wunderley
Charleston Waterkeeper
Charleston, SC



Frank Chitwood
Coosa Riverkeeper
Birmingham, AL



Jason Ulseth
Chattahoochee Riverkeeper
Atlanta, GA



Larry Baldwin
Crystal Coast Waterkeeper
Moorehead City, NC



Isabel Hardesty
Chester Riverkeeper
Chester River Association
Chestertown, MD



Robert Burns
Detroit Riverkeeper
Taylor, MI



Michael Mullen
Choctawhatchee Riverkeeper
Troy, AL



Laurie Murphy
Emerald Coastkeeper, Inc.
Pensacola, FL



Matt Pluta
Choptank Riverkeeper
Easton, MD



Steve Box, Executive Director
Environmental Stewardship
A Waterkeeper Affiliate
Bastrop, TX



Harrison Langley
Collier County Waterkeeper
Naples, FL



Gordon Rogers
Flint Riverkeeper
Albany, GA



Hartwell Carson
French Broad Riverkeeper
Asheville, NC



John Wathen
Hurricane CREEKKEEPER
Tuscaloosa, AL



Bruce Bodson
Galveston Baykeeper
Seabrook, TX



Megan Brousseau
Inland Empire Waterkeeper
Riverside, CA



Christine Crissman
Grand Traverse Baykeeper
The Watershed Center
Traverse City, MI



Dawn Buehler
Kansas Riverkeeper
Friends of the Kaw
Eudora, KS



Gray Jernigan
Green Riverkeeper
Hendersonville, NC



Konrad Fisher
Klamath Riverkeeper
Somes Bar, CA



Theaux M. Le Gardeur
Gunpowder RIVERKEEPER
Monkton, MD



Dr. Lisa Manning
Lake Coeur d'Alene Waterkeeper
Kootenai Environmental Alliance
Coeur d'Alene, ID



Captain Bill Sheehan
Hackensack Riverkeeper
Hackensack, NJ



Sandy Bihn
Lake Erie Waterkeeper
Lake Erie Foundation
Toledo, OH



Elaine Chiosso
Haw Riverkeeper
Haw River Assembly
Bynum, NC



Chris Navitsky
Lake George Waterkeeper
Lake George, NY



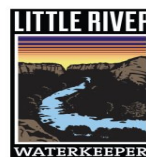
Paul Gallay
Riverkeeper
Ossining, NY



Shannon Williamson
Lake Pend Oreille Waterkeeper
Sandpoint, ID



Jennifer Kalt
Humboldt Baykeeper
Arcata, CA



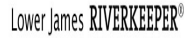
Bill Shugart
Little River Waterkeeper
Fort Payne, AL



Bruce Reznik
Los Angeles Waterkeeper
Santa Monica, CA



Cade Kistler, Program Director
Mobile Baykeeper
Mobile, AL



Jameson Brunkow
Lower James Riverkeeper
Richmond, VA



Steve Shimek
Monterey Coastkeeper
Monterey, CA



Paul Orr
Lower Mississippi Riverkeeper
Baton Rouge, LA



Rachel Calabro
Narragansett Bay Riverkeeper
Providence, RI



Travis Graves
Lower Neuse Riverkeeper
Sound Rivers
New Bern, NC



Mike Jarbeau
Narragansett Baykeeper
Providence, RI



Ted Evgeniadis
Lower Susquehanna
Riverkeeper Association
Wrightsville, PA



Debbie Mans
NY/NJ Baykeeper
Keyport, NJ



Neil A. Armingeon
Matanzas Riverkeeper
St. Augustine, FL



Ann Russell and Lee First
North Sound Baykeeper
RE Sources for Sustainable
Communities
Bellingham, WA



Carol Parenzan
Middle Susquehanna
Riverkeeper
Lewisburg, PA



Garry Brown
Orange County Coastkeeper
Costa Mesa, CA



Jeffrey Horstman
Miles-Wye Riverkeeper
Easton, MD



Heather Deck
Pamlico-Tar Riverkeeper
Sound Rivers
Washington, NC



Cheryl Nenn
Milwaukee Riverkeeper
Milwaukee, WI



Frederick Tutman
Patuxent Riverkeeper
Upper Marlboro, MD



Sean O'Neill
Peconic Baykeeper
Quogue, NY



Matt O'Malley
San Diego Coastkeeper
San Diego, CA



Jeff Kelble, President
Potomac Riverkeeper Network
Washington, DC



Sejal Choksi-Chugh
San Francisco Baykeeper
San Francisco, CA



Dean Naujoks
Potomac Riverkeeper
Washington, DC



Gordon Hensley
San Luis Obispo Coastkeeper
San Luis Obispo, CA



Chris Wilke
Puget Soundkeeper
Puget Soundkeeper Alliance
Seattle, WA



Kira Redmond
Santa Barbara Channelkeeper
Santa Barbara, CA



Kate McLaughlin
Prince William Soundkeeper
Cordova, AK



Blue Evening Star
Friends of the Santa Cruz River
A Waterkeeper Alliance Affiliate
Tubac, AZ



Arthur Norris
Quad Cities Waterkeeper Inc.
Davenport, IA



Emmett Duke, RIVERKEEPER
Sassafras River Association
Georgetown, MD



Stacey Detwiler
Rogue Riverkeeper
Ashland, OR



Tonya Bonitatibus
Savannah Riverkeeper
Augusta, GA



Don McEnhill
Russian Riverkeeper
Healdsburg, CA



Rick Frey
St. Marys Riverkeeper
St. Marys, GA



Lisa Rinaman
St. Johns Riverkeeper
Jacksonville, FL



Diane Wilson
San Antonio Bay Waterkeeper
Seadrift, TX



Dr. Joseph Campbell
Seneca Lake Guardian
A Waterkeeper Affiliate
Watkins Glen, NY



David Whiteside
Tennessee Riverkeeper
Decatur, AL



Fred Kelly
Severn Riverkeeper
Annapolis, MD



Rob Walters
Three Rivers Waterkeeper
Pittsburgh, PA



Mark Frondorf
Shenandoah Riverkeeper
Berryville, VA



Ruby Buchholtz
Tualatin Riverkeepers
Tualatin, OR



Buck Ryan
Snake River Waterkeeper
Boise, ID



Pam Diegel
Upper Allegheny River Project
A Waterkeeper Alliance Affiliate
Bradford, PA



Jesse Iloff
South Riverkeeper
South River Federation
Edgewater, MD



Jesse Demonbreun-Chapman
Upper Coosa Riverkeeper
Coosa River Basin Initiative
Rome, GA



Jerry White, Jr.
Spokane Riverkeeper
Spokane, WA



Patrick L. Calvert
Upper James Riverkeeper
Lynchburg, VA



Justin Bloom
Suncoast Waterkeeper
Sarasota, FL



Guy Alsentzer
Upper Missouri Waterkeeper
Bozeman, MT



Andrew Hayslip
Tampa Bay Waterkeeper
St. Petersburg, FL



Matthew Starr
Upper Neuse Riverkeeper
Sound Rivers
Raleigh, NC



Rebecca Jim
Tar Creekkeeper
LEAD Agency, Inc.
Vinita, OK



Brent Walls
Upper Potomac Riverkeeper
Williamsport, MD



Lee Willbanks
Upper St. Lawrence Riverkeeper
Save The River
Clayton, NY



Chauncey J. Moran
Yellow Dog Riverkeeper
Yellowdog Watershed Preserve
Big Bay, MI



Cara Schildtknecht
Waccamaw Riverkeeper
Conway, SC



Caleb Dardick
Yuba River Waterkeeper
Nevada City, CA



Betsy Nicholas
Waterkeepers Chesapeake
Takoma Park, MD



David Prescott
South County Coastkeeper
Westerly, RI



Angie Rosser
West Virginia Headwaters
Waterkeeper
Charleston, WV



John S. Quarterman
Suwannee Riverkeeper
Hahira, GA



Jessie Green
White River Waterkeeper
Little Rock, AR



Cynthia Cook
Trinity Rivers
A Waterkeeper Alliance Affiliate
Dallas TX



Travis Williams
Willamette Riverkeeper
Portland, OR



Ron Huber
Friends of Penobscot Bay
A Waterkeeper Alliance Affiliate
Rockland, ME



Will Scott
Yadkin Riverkeeper
Winston-Salem, NC