SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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RIVERKEEPER, INC.,

Petitioner,

-versus-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Respondent.

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Index No.: _____

RJI No.: _____

VERIFIED PETITION

ORAL ARGUMENT REQUESTED

The Petitioner, Riverkeeper, Inc., by and through its attorneys, the PACE ENVIRONMENTAL LITIGATION CLINIC, INC., and upon the accompanying Affidavit and this Verified Petition for judgment and an order pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This Article 78 special proceeding challenges New York State Department of Environmental Conservation's ("Respondent") amendment to New York State Water Quality Standards ("WQS") published in the State Register on June 17, 2020 (*see* NY Reg, June 17, 2020 at 13-15) (the "Water Quality Rollback") annexed hereto as **Exhibit "A"**, which removes the following language from 6 NYCRR parts 701.13 and 701.14: "In addition, the water quality shall be suitable for primary contact recreation, although other factors may limit the use for this purpose" (the "Suitability Language").

2. The goal of the Clean Water Act was to make the nation's waters fishable and swimmable by 1983 (*see* Clean Water Act § 101(a)(2) [33 USC 1251 (a)(2)]). Like all states,

New York did not meet this goal. In its attempts to meet the goal of fishable and swimmable, one of the most challenging group of waters in the state are the waters around New York City, including Flushing Bay, Flushing Creek, Newtown Creek, and the East River.

3. Because the City relies mostly on a combined sewer system – where water from drains, including raw sewage from millions of toilets, travels through the same infrastructure as storm water from rainfall – these waters are subjected to billions of gallons per year of discharge including raw sewage when too much rain falls for the wastewater treatment plants to handle (*see* City of New York, *New York City Data: New York City Outfalls as of November 2017*, https://data.cityofnewyork.us/Environment/NYC-Outfalls/b9ze-z4u4).

4. Until 2015, these waters were only required to be suitable for secondary contact recreation such as boating, but were not fishable and swimmable, which is also referred to as primary contact recreation. Despite these challenges, in 2015 New York took a major step toward meeting the fishable and swimmable goal of the Clean Water Act, albeit three decades too late.

5. Respondent, as the responsible agency, revised the water quality standards for all Class SD and I waters, which include most of the waters around New York City, stating that the "best use" remained secondary contact recreation, but included the Suitability Language outlined above, which specifically states that the water quality criteria for the waters should be "suitable for primary contact recreation" (the "2015 Amendments").

6. As described in detail below, in adopting the 2015 Amendments, Respondent consistently asserted that the Suitability Language was for the benefit of New York waterbody users, and was to "protect and preserve saline surface water resources for primary contact

recreation, such as swimming, surfing and water skiing . . . " (*see* Regulatory Impact Statement Summary NYCRR Parts 701, 703 ("RIS Summary") § 3, annexed hereto as **Exhibit "B")**.

7. Although certainly supportive of protecting the waters for primary contact recreation, many commenters to the 2015 Amendments took exception to the fact that the state kept the "best use" as secondary contact recreation. In response to this, Respondent repeatedly insisted that the Suitability Language *did* serve to protect primary contact recreation as a use, even going so far as to explicitly state that removing the "best use" language for secondary contact recreation was not necessary because the Suitability Language "provides equivalent protection as would designating primary contact recreation as a best use" (2015 Response to Comments ("2015 Comments Response") at Comment 11, annexed hereto as **Exhibit "C"**).

8. Consistent with this express intention of adopting the Suitability Language to protect primary contact recreation users, after Respondent submitted the 2015 Amendment to the United States Environmental Protection Agency ("EPA") for review, as required under section 303(c) of the Clean Water Act, EPA's response on May 9, 2016 ("May 2016 Letter") stated that EPA understood the rule to have (1) adopted a new primary contact designation for Class SD/I Waters, which EPA approved, and also stated that it "continue[d] to expect [Respondent]" to adopt stronger water quality criteria for Class SD and I waters (*see* May 9, 2016 Letter from EPA to Respondent, annexed hereto as **Exhibit "D"**).

9. Now, five years since Respondent finalized the 2015 Amendments based on multiple reassurances that the Suitability Language protected primary contact recreation users, Respondent wants to pretend that never happened. Respondent has arbitrarily, without statutorily required procedure, and without regard to the safety of hundreds of thousands of New Yorkers,

completely reversed course and removed the Suitability Language outright from the regulations in the Water Quality Rollback.

10. This case is about ensuring that hundreds of thousands of New York City waterbody users are able to recreate and enjoy such waterbodies surrounding New York City that are designated Class SD and Class I waters, which includes most of the waters around the city, without fear and apprehension that recreating in such waters will cause a real and imminent risk to their safety and well-being. The Water Quality Rollback is nothing more than an attempt by Respondent to avoid making its water quality standards consistent with the Clean Water Act and protective of the health of the recreational users of the waters around New York City. Respondent adopted the Water Quality Rollback in a transparent attempt to continue to rely on outdated water quality standards that the Environmental Protection Agency has already determined are not scientifically defensible. The reliance by New York City citizens on reportedly "safe" waters based on the outdated standards results in severe public health issues and sows distrust in Respondent, the very state agency that has been statutorily delegated to competently protect these waters and New York's waterbody users.

11. The federal Clean Water Act establishes that a Use Attainability Analysis procedure must be undertaken before rolling back water quality standards. Respondent has attempted to avoid this process by falsely – and in contradiction of its own express statements – claiming that the Suitability Language was meaningless; indeed, Respondent repeatedly claims in the Water Quality Rollback that removal of the language is not a change at all, but rather a "clarification." The very foundation of the Water Quality Rollback is a complete fiction and an arbitrary and capricious reversal of multiple express interpretations of the effect of the Suitability

Language. As explained below, Respondent adopted the Water Quality Rollback solely in an attempt to avoid its obligations under the Clean Water Act, as directed by EPA.

12. In short, Petitioner challenges this amendment on the grounds that the Water Quality Rollback is a change to (and degradation of) existing water quality standards in an attempt to avoid legal obligations associated with those standards and is an arbitrary reversal of the prior position and interpretation of the agency. Further, Respondent failed to complete and submit a required Use Attainability Analysis to the EPA in order to support the removal of a primary contact recreational use, as required by the Clean Water Act.

13. In response to Notice that Respondent was proposing to amend the New York State WQS through the Water Quality Rollback, Petitioner submitted a Comment Letter explaining that the proposed rule was improper and illegal (*see* Comment Letter from Pace Environmental Litigation Clinic, Inc. dated January 13, 2020, annexed hereto as **Exhibit "E"**).

14. Petitioner respectfully brings this proceeding pursuant to Sections 7803[3] and 7806 of the CPLR, for a judgment that Respondent's removal of the Suitability Language in amending the New York State WQS for Class SD and I waters was arbitrary and capricious, contrary to law and an abuse of discretion. The record supporting the addition of the Suitability Language in the 2015 Amendments to the Class I and Class SD standards makes clear that the 2015 Amendments were designed to protect primary contact recreation as a designated use of Class I and SD waters.

JURSIDICTION AND VENUE

15. This court has jurisdiction over claims brought pursuant to CPLR Article 78, under CPLR § 7804[b].

16. Pursuant to CPLR §§ 503 and 506[a] and [b], this proceeding is brought in Albany County, where the challenged determination was made and where Respondent's principal office is located at 625 Broadway, Albany, New York 12233-0001.

PARTIES

17. Petitioner Riverkeeper, Inc., is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Formed in 1966 as the Hudson River Fishermen's Association, Riverkeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River, its tributaries and the waters of New York City. Riverkeeper and its members share a common concern about the quality of the waters surrounding New York City.

18. Respondent is an executive agency of the State of New York with the powers and duties set forth in both the New York Environmental Conservation Law. Respondent is headquartered at 625 Broadway, within the City of Albany, County of Albany.

STANDING

19. Ms. Herzan is a board member of Riverkeeper, Inc., whose mission is to improve and protect water quality and water safety in the waterbodies of New York City, including the Hudson River and its tributaries. This includes waters that are designated "Class SD and I" that are affected by the Water Quality Rollback.

20. Ms. Herzan has used and enjoyed the waters at issue in this case and intends to return and continue to do so. She most frequently uses Flushing Bay, which is subject to the Water Quality Rollback and designated as a Class I water (*see* Affidavit of Alexandra Herzan, annexed hereto as **Exhibit "F"**).

21. If the Water Quality Rollback is not revoked, it will purport to remove the only express protection of primary contact recreation uses of these waters, thereby negatively impacting Ms. Herzan's aesthetic, environmental and recreational interests in the waters. Further, in completely removing the Suitability Language in order to duck important legal obligations (*i.e.,* to comply with the EPA's direction to update the standards to scientifically-defensible indicator bacteria), members of Riverkeeper, Inc., including Ms. Herzan, are increasingly concerned for their safety on the waterbodies in question. Due to the removal of said protections, if this act is successful in allowing Respondent to avoid EPA's mandate, Ms. Herzan will be forced to limit her use of the waterbodies, resulting in a detriment to recreation and aesthetic enjoyment, or continue recreation and risk her safety and well-being on waters that she has no way of knowing are safe. As such, Respondent's action and inaction threaten to directly and negatively impact Petitioner's interests.

22. A favorable result in this matter would remedy these concerns. An order from the Court requiring Respondent to revoke the Water Quality Rollback, or, at a minimum, temporarily revoke the Water Quality Rollback and require that Respondent complete a Use Attainability Analysis and submit to the EPA to determine whether the removal of the Suitability Language was proper or not, would allow for the proper consideration of the issues raised herein and would likely lead to the adoption of appropriate and protective water quality criteria.

23. Respondent is an executive agency of the State of New York with the powers and duties set forth in both the New York Environmental Conservation Law ("NY ECL") and State Environmental Quality Review Act.

FACTUAL BACKGROUND

24. On December 3, 2014, Respondent proposed the 2015 Amendments to, *inter alia*, add the Suitability Language to the water quality standards for Class I and Class SD waters (*see* NY Reg, December 3, 2014 at 17-19. It subsequently adopted the Suitability Language in a final rule (*see* 6 NYCRR §§ 701.13, 701.14). Because the waters were now required to be suitable for primary contact recreation, the 2015 Amendments also proposed to adopt revised water quality criteria for Class I and Class SD waters that matched the then-existing water quality criteria (based on fecal coliform and total coliform as fecal indicator bacteria) that Respondent already applied to other waters that were designated with a primary contact use. Respondent adopted these revised criteria in the final rule in November of 2015 (*see* 37 NY Reg, Nov. 4, 2015 at 15), annexed hereto as **Exhibit "G"**).

25. The regulatory impact statement Respondent issued to support the proposed 2015 Amendments made clear that, though primary contact recreation was not added as an express "best use," the Suitability Language was intended to add a designated use of primary contact recreation to the waters. As statutory authority for the regulation, the Department cited NY ECL § 17-0301, and pointed out that the statute permitted the Department to classify waters and "shall adopt and assign standards of quality and purity for each such classification *necessary for the public use or benefit contemplated by such classification*" (Ex. B (RIS Summary), at § 1) (emphasis added). Further, Respondent described the need for the Amendment as follows: "The proposed action is needed to protect and preserve saline surface water resources for *primary contact recreation uses*, such as swimming, surfing and water skiing . . . " (*id.* at § 3) (emphasis added).

26. Additionally, and directly contrary to Respondent's position later expressed when promulgating the Water Quality Rollback, Respondent previously explained that the proposed 2015 Amendments would not cause costs for New York City because "some of the Class I and Class SD waters within the city are already designated for primary contact recreation under the Interstate Environmental Commission ("IEC") . . ." and "the proposed regulatory changes would make New York State classifications consistent with IEC classifications" (*id.* at § 4(B)). Additionally, Respondent recognized that the 2015 Amendments would necessarily be duplicative of federal law, which already required the affected waters to be suitable for primary contact recreation (swimming), stating: "In its regulations, the EPA requires states to 'specify' appropriate water uses to be achieved and protected" and to "take into consideration the use and value of water for recreation (i.e. the swimmable goal of the Clean Water Act) when classifying waters of the state" (*see* Regulatory Impact Statement NYCRR Parts 701, 703 ("RIS"), § 7, annexed hereto as **Exhibit "H"**).

27. Following the proposal of the 2015 Amendments, but prior to adoption, Respondent expressly stated that the Suitability Language constituted an addition of a primary contact designated use for these waters. For example, in commenting on New York City's Long Term Control Plan for Alley Creek and Little Neck Bay in May of 2015, Respondent advised the City that "the proposed rulemaking for the Class SD and I waters does not propose a reclassification of these waters to Class SC, but rather the regulatory changes will add primary contact recreation as a designated use to the existing classification" (*see* Combined Sewer Overflow Long Term Control Plan for Alley Creek and Little Neck Bay, Respondent Comment 1, annexed hereto as **Exhibit "I"**) (emphasis added).

28. Respondent also clarified, in response to comments on the 2015 Amendments, that an express change to the "best usage" language was not necessary because the legal protections for primary contact recreation were the same under its proposed language as they would be with an express change of the best use. For example, Respondent stated that "[i]t is not necessary to adopt a 'best use' of primary contact recreation in order to protect the waters for that use. Requiring water quality to be suitable for primary contact recreation provides *equivalent protection as would designating primary contact recreation as a best use*" (Ex. C (2015 Comments Response), at Comment 11) (emphasis added). The Department even cited EPA to back up this assertion, stating that "EPA concurs that this provides protection *equivalent to adopting a best use of primary contact recreation* for these waters" (*id.* at Comment 46) (emphasis added). Likewise, the Department stated that these waters will be *required to meet all water quality standards associated with primary contact use*" (*id.* at Comment 21) (emphasis added).

29. In sum, Respondent itself repeatedly assured New York recreational users that the Suitability Language protected the affected waters to ensure safe primary contact recreation.

30. After Respondent adopted the 2015 Amendment, it submitted the rule to EPA for review, as required under section 303(c) of the Clean Water Act. EPA's response to Respondent, on May 9, 2016 ("May 2016 Letter"), stated that EPA understood the rule to have adopted (1) a new primary contact use designation for Class SD/I Waters, which EPA approved; and (2) revised water quality criteria for Class I and Class SD waters, which EPA did not approve because they failed to protect the primary contact designated use (*see* Ex. D (May 2016 Letter)). In the May 2016 Letter, EPA stated that it "continues to expect the [Respondent]" to adopt stronger water quality criteria for Class I and Class SD waters, based on enterococci as a fecal

indicator bacteria, in order to protect the primary contact designated use and comply with the Clean Water Act. *Id.*

31. Following the May 2016 Letter, the Respondent did not call into question EPA's interpretation of the 2015 Amendment as adding the designated use of Class I and Class SD waters; EPA's approval of that revised designated use; or EPA's stated "expect[ation]" that the Department would adopt revised water quality criteria, based on enterococci bacteria, to protect that designated use. *Id.* Nor did Respondent take action to revise the water quality criteria for Class I and Class SD waters.

32. Only when faced with legal pressure to revise the criteria to protect a primary contact designated use – and the threat that EPA might revise the criteria on the state's behalf if Respondent continued in its failure to do so – did Respondent reverse course. It has done so not by revising the criteria but rather by claiming, in the face of all evidence, that the 2015 Amendment did not adopt a primary contact designated use for Class I and Class SD waters and, therefore, that there is no need to revise the criteria to protect that use.

33. When Respondent failed to correct its water quality criteria for more than a year after EPA's May 2016 letter, Commenters and other environmental organizations filed a lawsuit, pursuant to CWA Section 303(c)(3)-(4), seeking to force EPA to promulgate new water quality criteria for Class I and Class SD waters to protect the primary contact designated use adopted in the 2015 Amendments (*see Riverkeeper v Pruitt, et al.*, 2018 WL 987262, *1 [SD NY, Feb. 20, 2018, No. 17-CV-4916 (VSB)]). Prompted by that lawsuit, EPA sent a second letter to Respondent, on March 7, 2018 ("March 2018 Letter"), stating explicitly that "[Respondent] must adopt RWQC [recreational water quality criteria] for Class I and Class SD saline surface waters that are based on a sound scientific rationale and protect the primary contact recreation

designated use" (*see* March 7, 2018 Letter from EPA to Respondent, annexed hereto as **"Exhibit J"**).

34. Respondent intervened in that case, and in April 2018 – nearly two years after EPA's letter recognizing the primary contact designation – the Department argued that it never intended to adopt primary contact recreation as a designated use (*see* "Dep't Mem." at 5 (citing NY Reg, Mar. 21, 2018 at 15) (where Respondent claims that the 2015 Amendments did not add primary contact recreation as a use) annexed hereto as **"Exhibit K"**). Although, even then, Respondent still conceded that the Suitability Language *did* have the effect of protecting the waters for primary contact recreation. *Id.*

35. Finally, on January 29, 2019 ("Jan. 2019 Letter"), EPA sent the Respondent a response to a June 13, 2018 request by the Respondent that EPA "reconsider" its rejection of the Respondent's water quality criteria (*see* Jan. 29, 2019 Letter from EPA to Respondent, annexed hereto as **Exhibit "L"**). EPA noted that the Respondent's claim, in its reconsideration request, that the 2015 Amendments did not revise the usages of Class I and Class SD waters, "runs counter to [the Respondent's] record for its 2015 rulemaking" (*id.* at 1) (citing extensive examples from the record).

36. Only after the EPA's January 2019 letter did the Respondent propose this Water Quality Rollback. Based on the above, the Water Quality Rollback is quite plainly a change to (and degradation of) existing water quality standards in an attempt to avoid legal obligations associated with those standards, and therefore, is not a "clarification" at all. Despite this, Respondent claims that the Water Quality Rollback is merely a "clarification" and does not make any substantive changes to applicable water quality standards (*see* Regulatory Impact Statement

Clarification of Class I & Class SD Best Usages Amendment to 6 NYCRR 701.13, 701.14 ("RIS Clarification"), § 1 annexed hereto as "**Exhibit M"**).

37. Moreover, Respondent acknowledged when adopting the 2015 Amendments that "where a state believes that a use specified in Section 101(a)(2) [of the Clean Water Act] is not attainable and wishes to remove or subcategorize this use, the state is required to demonstrate that the use is not attainable . . . through the completion and submission to EPA of a [Use Attainability Analysis]" (Ex. C (2015 Comments Response), at Comments 16, 44, 48 & 49). Despite repeated concessions that the Suitability Language protected primary contact recreation as a use, Respondent has not conducted a Use Attainability Analysis to support removal of a primary contact designated use.

38. If a state seeks to remove a use that is not an existing use, it must conduct a Use Attainability Analysis demonstrating that attaining the designated use is not feasible due to one of six specifically outlined factors (*see* 40 CFR 131.10 [g]). Specifically relevant here, the Clean Water Act and regulations explicitly state that "A state must conduct a use attainability analysis . . . whenever . . . (2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the [Clean Water] Act . . . " (*see* 40 CFR 131.10 [j]). Further, New York State's Environmental Conservation Law states generally, that its State Pollutant Discharge Elimination System ("SPDES"), must "meet all applicable requirements" of the CWA, and all "rules, regulations, guidelines, criteria, standards, and limitations adopted pursuant thereto" (*see* ECL 17-0801). This is unsurprising, because State compliance with the requirements of the CWA is clear. CWA section 510 prohibits states that operate federally-delegated SPDES programs, such as New York State, from "adopt[ing] or enforc[ing] any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less

stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under [the CWA]" (CWA § 510 [33 USC § 1370]; *Natural Res. Def. Council, Inc. v. EPA*, 859 F2d 156, 186 [DC Cir 1988]; *see* 6 NYCRR 750-1.11 [5] [i]-[iii]) (emphasis added).

39. Indeed, the affected waterbodies cannot and will not meet the appropriate standards that EPA has required, which are based on enterococcus as an indicator bacteria, but purportedly will meet the outdated standards Respondent seeks to retain through the Water Quality Rollback. Based on the current, outdated standards employed by Respondent, New York City contends sewage discharge measures comply with the Clean Water Act, even though billions of gallons of sewage overflow into these waters each year (City of New York, *Citywide East River open waters mosaics maps*, 2-3, 6, 9-10, 13-4, 17-8 (last visited July 1, 2020), https://www1.nyc.gov/assets/dep/downloads/pdf/water/nyc-waterways/citywide-east-river-open-water/ltcp-citywide-east-river-open-waters-mosaics-maps.pdf).

40. New York City concedes that most Class SD and I waters would not meet the stricter and scientifically defensible standard based on Enterococcus bacteria that the EPA has determined necessary for these specific waters (*id.* at 3-4, 7-8, 12, 16, 20. As a result, if Respondent is successful in avoiding its obligations through the Water Quality Rollback, the affected waters will be labelled "safe," but will not meet any scientifically defensible standards for "safe."

AS FOR THE FIRST CAUSE OF ACTION (ARTICLE 78)

41. Petitioner Riverkeeper, Inc., repeats and realleges each and every allegation contained in the preceding counts of this Verified Petition as if more fully set forth herein.

42. In promulgating the Water Quality Rollback, Respondent arbitrarily and unlawfully purport to remove primary contact recreation protections from Class SD and I waters on the basis that the language was mistaken and unnecessary and did not alter water quality standards. This contention and basis are arbitrary as they are directly conflicting with Respondent's own record establishing the reasoning for implementing such protections in the 2015 Amendments in the first place.

43. Specifically, Respondent stated the need for the 2015 Amendments was to "protect and preserve saline surface water resources for primary contact recreation uses, such as swimming, surfing and water skiing . . . " (Ex. B (RIS Summary), at § 3). Further, Respondent continued to emphasize the importance of the addition of the Suitability Language by stating that it was included not only "to require that the quality of Class I and SD waters be suitable for primary contact recreation" but also to revise applicable water quality criteria to "meet corresponding total and fecal coliform standards," or in other words, to apply Class I and SD waters the numeric water quality criteria then-applicable to other waters designated for a best usage of primary contact (*see* id. at § 3(C)).

44. Further, the Respondent is removing protections for a designated use, but failed to comply with the Clean Water Act, which expressly requires Respondent to conduct a Use Attainability Analysis to support the removal of a currently designated use (*see* Clean Water Act §§ 101 (a)(2), 303(c)(2)(a) [33 USC §§ 1251 (a)(2), 1313 (c)(2)(A)]; 40 CFR 131.10 [g]) (where a state believes that a use specified in section 101(a)(2) is not attainable and wishes to remove or subcategorize his use, the state is required to demonstrate that the use is not attainable based on one or more of the factors included in 40 CFR 131.10 [g] through the completion and submission to EPA of a Use Attainability Analysis). Respondent has not completed a Use Attainability

Analysis, so the Water Quality Rollback was adopted in violation of the requirements of the Clean Water Act.

45. For the above reasons, the Respondent's actions in adopting the Water Quality Rollback were made in violation of lawful procedure, were affected by errors of law, were arbitrary and capricious, and constituted an abuse of Respondent's discretion (CPLR 7803[3]).

WHEREFORE, Petition respectfully requests that this Court enter a Judgment and Order against Respondent pursuant to CPLR Sections 7803[3], and 7806 that:

A. DECLARING that pursuant to CPLR 7803, Respondent's promulgation of the Water Quality Rollback, removing the Suitability Language, was arbitrary, capricious and contrary to law;

B. ANNULING the Water Quality Rollback on the basis that such amendment was made in violation of lawful procedure, was affected by an error of law, and was arbitrary and capricious, and was an abuse of discretion;

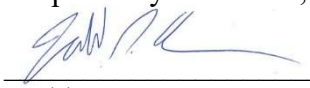
C. ORDERING that Respondent withdraw the Water Quality Rollback and conduct a new Rulemaking process, consulting with the EPA, before considering any new amendments to the Rule;

D. GRANTING Petitioner Riverkeeper, Inc., costs and disbursement of this action; and

E. GRANTING any further relief that the Court deems necessary or appropriate.

Dated: August 17, 2020
White Plains, New York

Respectfully submitted,



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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RIVERKEEPER, INC.,

Index No.: _____

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-versus-

VERIFICATION

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Respondent.

----------X

STATE OF MASSACHUSETTS)
) ss:
BARNSTABLE COUNTY)

Richard Webster, being duly sworn, deposes and says that he is a citizen of the State of New Jersey, and officer of Petitioner, Riverkeeper, Inc., whose domicile is in the State of New York, and hereby states that he has read the annexed Petition, knows the contents thereof and the same is true to his knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters he believes them to be true. His belief to those matters therein not stated upon knowledge is based upon the files he maintains.

R. W

RICHARD WEBSTER

Dated: August 17, 2020
Wellfleet, MA

Sworn to me before this
17 day of August, 2020

NOTARY PUBLIC

ROSA M. BUTTRICK
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
June 12, 2026

My Commission expires: June 12, 2026