



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

September 17, 2018

Via Electronic Filing

Sandy Opacich, Clerk of Court
Carl B. Strokes U.S. Court House
U.S. District Court of the Northern
District of Ohio
801 West Superior Avenue
Cleveland, OH 44113

Re: *Environmental Law & Policy Center et al. v. U.S. EPA et al.*, Case No. 17-cv-1514

Dear Ms. Opacich:

Plaintiffs write to notify the Court that, as of September 16, 2018, the 60-day notice requirement has been satisfied with respect to Plaintiffs' proposed citizen suit claim against the U.S. Environmental Protection Agency ("U.S. EPA" or "Agency") for a failure of the Agency to perform a non-discretionary act or duty under section 505(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1365(a). That claim is pending before this Court as part of Plaintiffs' proposed Supplemental Complaint. Dkt. No. 36, Ex. A. Pursuant to CWA section 505(b)(2), a plaintiff must give U.S. EPA at least 60 days' notice of intent to bring a civil action under section 505(a). The specific requirements for properly providing such notice are set forth in 40 C.F.R. Part 135.

As noted in Plaintiffs' July 24, 2018 filing regarding the proposed Supplemental Complaint, we sent a notice of intent letter in compliance with this requirement to U.S. EPA on July 18, 2018. Dkt. No. 40, Ex. B. The 60-day period commencing as of that date has now elapsed. In light of the representation of Defendants' counsel on the August 30, 2018 status call held in this case that Defendants do not intend to contest the sufficiency of the July 18, 2018

21 W. Broad Street, 8th Floor • Columbus, OH 43215
(614) 569-3827 • www.ELPC.org

Harry Drucker, Chairperson • Howard A. Learner, Executive Director
Chicago, IL • Columbus, OH • Des Moines, IA • Duluth, MN • Grand Rapids, MI • Indianapolis, IN
Jamestown, SD • Madison, WI • Minneapolis/St. Paul, MN • Sioux Falls, SD • Washington, D.C.

notice letter, the Court is now free to rule on Plaintiffs' Motion for Leave to File a Supplemental Complaint consistent with the notice requirements of Clean Water Act section 505.

Dated: September 17, 2018

Respectfully Submitted,

/s/Madeline Fleisher

MADELINE FLEISHER (91862)

Attorney for the Environmental Law & Policy
Center

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2018, a copy of the foregoing Letter was filed electronically using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Madeline Fleisher

MADELINE FLEISHER (91862)

Attorney for Environmental Law & Policy Center