

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WILDLIFE FEDERATION
Great Lakes Resources Center
213 W. Liberty Street, Suite 200
Ann Arbor, Michigan 48103

Case No. _____

ALLIANCE FOR THE GREAT LAKES
150 N. Michigan Avenue, Suite 700
Chicago, Illinois 60601

Judge _____

LAKE ERIE CHARTER BOAT ASSOCIATION
6392 Edgewater Drive
Erie, Michigan 48133

LAKE ERIE FOUNDATION
236 Walnut Street
Lakeside, Ohio 43440

MICHIGAN UNITED CONSERVATION CLUBS
2101 Wood Street
Lansing, Michigan 48912

OHIO ENVIRONMENTAL COUNCIL
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

SCOTT PRUITT, in his official capacity as
Administrator of the United States Environmental
Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

ROBERT KAPLAN, in his official capacity as
Acting Regional Administrator of United States
Environmental Protection Agency, Region 5,
77 West Jackson Boulevard
Mail Code: R-19J
Chicago, Illinois 60604-3507

Defendants. _____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and their members, who rely on the open waters of the western basin of Lake Erie (“Lake Erie”) for drinking, recreation, aesthetic uses, or other purposes. This action arises from the failure of Defendants U.S. Environmental Protection Agency, Administrator Scott Pruitt, and Acting Regional Administrator Robert Kaplan (collectively, “U.S. EPA”) to perform their nondiscretionary duty to approve or disapprove the list of impaired waters (“303(d) list”) submitted to U.S. EPA by the Ohio Environmental Protection Agency (“OEPA”) within thirty days after the submission of the list to U.S. EPA, as required by the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*

2. Lake Erie suffers from persistent pollution, resulting in toxic or other algal blooms and other adverse conditions, some of which may be or are hazardous to human health.

This pollution may be abated if the addition of pollutants causing the pollution is reduced to a level that will restore the quality of the water. This level is known as the total maximum daily load (“TMDL”). The prerequisite to the establishment of a TMDL for Lake Erie is a decision by U.S. EPA to disapprove OEPA’s omission of Lake Erie from the 303(d) list.

3. On October 20, 2016, OEPA submitted the State of Ohio’s 2016 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval, pursuant to the requirements set forth in CWA § 305(b) (biennial reports on the condition of the State’s waters), 33 U.S.C. § 1315(b), and § 303(d) (list of impaired waters), 33 U.S.C. § 1313(d).

4. U.S. EPA did not approve or disapprove OEPA’s 303(d) list within thirty days after the date of submission of the list to U.S. EPA – that is to say, by November 19, 2016 – contrary to CWA § 303(d)(2), 33 U.S.C. § 1313(d)(2). U.S. EPA has still not approved or disapproved OEPA’s 303(d) list.

5. By unlawfully withholding the decision to approve or disapprove OEPA’s omission of Lake Erie from the 303(d) list, U.S. EPA is delaying the restoration of Lake Erie that might follow from a decision to disapprove. This delay has harmed and continues to harm Plaintiffs and their members’ use and enjoyment of Lake Erie.

6. Among other forms of relief, Plaintiffs seek (a) a declaratory judgment that U.S. EPA’s failure to approve or disapprove OEPA’s 303(d) list within thirty days after the date of submission of the list to U.S. EPA violated U.S. EPA’s nondiscretionary duty under the Clean Water Act, as well as (b) injunctive relief compelling U.S. EPA to approve or disapprove OEPA’s 303(d) list with all deliberate speed.

JURISDICTION AND VENUE

7. On December 19, 2016, Plaintiffs sent U.S. EPA a notice of intent to sue for the agency's violation of the CWA. In particular, the notice informed U.S. EPA of Plaintiffs' intent to sue U.S. EPA for failing to carry out its nondiscretionary duty to approve or disapprove OEPA's 303(d) list within thirty days after the date of submission of the list to U.S. EPA. A copy of Plaintiffs' 60-day notice to U.S. EPA is attached as Exhibit A and incorporated here by this reference. More than sixty days have passed since Plaintiffs provided U.S. EPA with this notice. U.S. EPA has still not approved or disapproved OEPA's 303(d) list.

8. An actual, substantial, and continuing controversy exists between the parties. A declaration of NWF's rights and other legal relations is necessary.

9. This Court has jurisdiction over this controversy pursuant to 33 U.S.C. § 1365(a)(2) because this complaint alleges a failure of U.S. EPA to perform a duty which is nondiscretionary under the CWA. Additionally, jurisdiction exists under 28 U.S.C. § 1331 ("Federal question") or 28 U.S.C. § 1361 ("Action to compel an officer of the United States to perform his duty).

10. Venue is proper in this district pursuant to 28 U.S.C. 1391(e) because U.S. EPA has its headquarters and principal office in the District of Columbia and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia.

PARTIES

11. Plaintiff National Wildlife Federation ("NWF") is the nation's largest not-for-profit conservation advocacy and education organization. NWF has more than 690,000 members nationwide, including more than 24,000 members in Michigan. NWF's mission is to unite all

Americans to ensure wildlife thrive in a rapidly changing world. NWF's mission includes protecting wildlife, navigable waters, and other natural resources from the impacts of pollution. NWF is a District of Columbia nonprofit corporation with its principal office located in Virginia and a Great Lakes office headquartered at 213 West Liberty Street, Second Floor, Ann Arbor, Michigan, 48104.

12. Plaintiff Alliance for the Great Lakes ("Alliance") is a non-profit organization that works to protect the Great Lakes for today and tomorrow. The Alliance has approximately 1,200 members and involves tens of thousands of people each year in advocacy, volunteering, education, and research to ensure the lakes are healthy and safe for all. The Alliance is located at 150 N. Michigan Avenue, Suite 700, Chicago, IL 60601.

13. Plaintiff Lake Erie Charter Boat Association ("LECBA") is organized to encourage and promote sound fisheries management in Lake Erie, support the charter boat industry, and create a better working relationship between the association, law enforcement agencies, politicians, and the sport fishing public. LECBA has approximately 165 members. LECBA may be contacted at 6392 Edgewater Drive, Erie, Michigan, 48133.

14. Plaintiff Lake Erie Foundation is a nonprofit organization dedicated to restoring and protecting Lake Erie's waters with a mission of creating and maintaining a healthy Lake Erie now and forever as defined by drinkable water, recreational contact, and edible fish. This foundation was created by combining the resources of two other organizations, Lake Erie Waterkeeper and the Lake Erie Improvement Association. This partnership now includes more than 200 members that help form a long-term sustainable Lake Erie advocacy organization. Most members are located in the Lake Erie watershed. The Foundation's office is located at 236

Walnut Street, Lakeside, Ohio, 43440.

15. Plaintiff Michigan United Conservation Clubs (“MUCC”), founded in 1937, is Michigan’s largest statewide nonprofit conservation organization, with approximately 45,000 members. MUCC represents over 50,000 hunters, anglers and trappers and approximately 250 local conservation and sportsmen’s clubs. Its mission is uniting citizens to conserve, protect and enhance Michigan’s natural resources and outdoor heritage. Through member-sponsored resolutions, MUCC has adopted specific policy to work toward a reduction of harmful algae blooms in Lake Erie, which impair the fisheries of the Great Lakes and MUCC members’ ability to fish them. MUCC is a Michigan non-profit organization headquartered at 2101 Wood Street, Lansing, Michigan, 48912.

16. Plaintiff Ohio Environmental Council (“OEC”) is a non-profit organization dedicated to securing healthy air, land, and water for all who call Ohio home. Founded in 1969, OEC is a not-for-profit environmental and conservation organization, organized under the laws of the State of Ohio. OEC is comprised of more than 100 member environmental and conservation organizations, and thousands of individual members throughout the state. Many of these members live, work, and/or recreate within or near Lake Erie or the Lake Erie Basin. OEC is located at 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

17. Defendant U.S. EPA is the agency of the government of the United States responsible for the implementation of the Clean Water Act.

18. Defendant Scott Pruitt is the Administrator of U.S. EPA. He is charged with the supervision and management of all decisions and actions of that agency, including those taken pursuant to the Clean Water Act with respect to the State of Ohio. He is being sued in his official

capacity.

19. Defendant Robert Kaplan is the Acting Regional Administrator of U.S. EPA Region 5. He is charged with the supervision and management of all decisions and actions of U.S. EPA Region 5, including those taken pursuant to the Clean Water Act with respect to the State of Ohio. He is being sued in his official capacity.

STANDING

20. Plaintiffs file this action on behalf of themselves and their members.

21. One or more of Plaintiffs' members have standing in this action because they reside or have a residence in Ohio near land or waters adversely affected by pollution in Lake Erie.

22. One or more of Plaintiffs' members have standing in this action because they use or enjoy land or waters adversely affected by pollution in Lake Erie for a variety of purposes, including drinking, recreational pursuits, or aesthetic enjoyment. One or more of Plaintiffs' members intend to continue to use or enjoy land or waters adversely affected by pollution in Lake Erie to the extent the condition of the lake allows for a variety of purposes, including drinking, recreational pursuits, or aesthetic enjoyment on a regular, ongoing basis now and in the future, including this year.

23. One or more of Plaintiffs' members have been, are, or may be adversely affected or aggrieved by U.S. EPA's failure to approve or disapprove OEPA's 303(d) list within thirty days after the date of submission of the list to U.S. EPA. These adverse effects have, are, or may occur because U.S. EPA's inaction allows the pollution of Lake Erie to continue unabated.

24. The interests of Plaintiffs and their members fall within the zone of interests

protected under the Clean Water Act.

25. The relief Plaintiffs seek will redress the injuries to Plaintiffs and one or more of their members caused by U.S. EPA's violation of the Clean Water Act described in this complaint. If the U.S. EPA were to disapprove the omission of Lake Erie from OEPA's 303(d) list, U.S. EPA would have a nondiscretionary duty, not later than thirty days after the date of such disapproval, to identify Lake Erie as impaired and establish a TMDL for the lake as U.S. EPA determines necessary to implement the water quality standards applicable to Lake Erie, and upon such identification and establishment, the State of Ohio must incorporate them into its continuing planning process. This might lead to the restoration of the quality of the water in Lake Erie, which might eliminate or reduce the adverse effects that have harmed, are harming, or may harm Plaintiffs and one or more of its members.

STATEMENT OF THE CASE

Statutory and Regulatory Background

26. The purpose of the Clean Water Act ("CWA") is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 U.S.C. § 1251(a).

27. In furtherance of the purpose of the CWA, the statute requires each State to "identify those waters within its boundaries for which the effluent limitations required by § 1311(b)(1)(A) and § 1311(b)(1)(B) of [the CWA] are not stringent enough to implement any water quality standard applicable to such waters." CWA § 303(d)(1), 33 U.S.C. § 1313(d)(1). Such waters are known as "impaired waters."

28. U.S. EPA regulations require States to submit a comprehensive list of impaired

waters every two years, along with the corresponding TMDLs for the pollutants causing the impairments. 40 C.F.R. §130.7(d)(1).

29. U.S. EPA “shall” either approve or disapprove a list of impaired waters not later than thirty days after the date of the submission. 33 U.S.C. § 1313(d)(2); 40 C.F.R § 130.7(d)(2).

Factual Background

30. The addition of nutrients to the western basin of Lake Erie, coming from the Maumee River or other sources has caused toxic or other algal blooms and other adverse conditions that make the water unsafe for drinking, recreational pursuits, aesthetic enjoyment, or other uses.

31. On October 20, 2016, OEPA submitted to U.S. EPA the State of Ohio’s 2016 Integrated Water Quality Monitoring and Assessment Report (“Report”) to U.S. EPA. The Report purports to satisfy the listing requirements of CWA § 303(d), 33 U.S.C. § 1313(d).

32. The Report includes a 303(d) list that identified as impaired portions of Lake Erie from which Toledo draws its drinking water, as well as miles of the lake’s shoreline and areas around islands in the lake. The 303(d) list does not, however, list as impaired the open waters of the western basin of Lake Erie.

33. U.S. EPA has neither approved nor disapproved OEPA’s 303(d) list.

CLAIM FOR RELIEF **(Violation of the Clean Water Act)**

34. Plaintiffs re-allege and incorporate by reference all the allegations set forth above.

35. U.S. EPA failed to perform its nondiscretionary duty to approve or disapprove OEPA’s 303(d) list within thirty days after the date of submission, contrary to CWA § 302(d)(2), 33 U.S.C § 1313(d)(2), and 40 C.F.R. § 130.7(d)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. A declaratory judgment that U.S. EPA's failure to approve or disapprove OEPA's 303(d) list within thirty days after the date of submission violated the U.S. EPA's nondiscretionary duty under the Clean Water Act, CWA § 302(d)(2), 33 U.S.C § 1313(d)(2), and 40 C.F.R. § 130.7(d)(2);

B. An order entering an injunction compelling U.S. EPA to comply with the CWA by approving or disapproving OEPA's 303(d) list within a specified time period not to exceed 30 days from the date of such order;

C. An order retaining jurisdiction until U.S. EPA complies with the injunction entered by this court;

D. An order granting Plaintiffs costs of litigation (including reasonable attorney and expert witness fees) incurred in prosecuting this action pursuant to the Clean Water Act, CWA § 505(d), 33 U.S.C. § 1365(d); and

E. Such other relief as this Court deem just and proper.

Respectfully submitted,

/s/ Neil S. Kagan
Neil S. Kagan
National Wildlife Federation
801 Monroe Street
745 Legal Research
Ann Arbor, Michigan 48109
(734) 763-7087
kagan@nwf.org
D.C. Bar No. MI0078

December 19, 2016

VIA CERTIFIED MAIL #7015 1520 0000 8394 8852

The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to File a Citizen Suit under the Clean Water Act

Dear Administrator McCarthy:

Pursuant to Section 505(a)(2) of the Clean Water Act (“the Act” or “CWA”), 33 U.S.C. 1365(a)(2), the Alliance for the Great Lakes, Lake Erie Charter Boat Association, Lake Erie Foundation, Michigan League of Conservation Voters, Michigan United Conservation Clubs, National Wildlife Federation, and Ohio Environmental Council (collectively, “prospective plaintiffs”) are writing to notify you that they intend to file a civil action or actions in U.S. District Court against you, in your official capacity as Administrator of the U.S. Environmental Protection Agency (“USEPA”), for your failure to perform nondiscretionary duties imposed by the Act and its implementing regulations.

USEPA has a nondiscretionary duty to act within a specified time period after a State submits a list of impaired waters and their corresponding total maximum daily loads (“TMDLs”) for the pollutants causing the impairments. CWA § 303(d)(2), 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2). EPA must approve or disapprove a State’s list within thirty days of the date the State submits the list. *Id.* This is a nondiscretionary duty that is triggered as soon as a State submits its list. *See Hayes v. Whitman*, 264 F.3d 1017, 1023 (10th Cir. 2001).

USEPA is currently in violation of its nondiscretionary duty to timely approve or disapprove the lists of impaired waters submitted by the Ohio Environmental Protection Agency (“OEPA”) for the State of Ohio and the Michigan Department of Environmental Quality (“MDEQ”) for the State of Michigan pursuant to CWA § 303(d), 33 U.S.C. § 1313(d). More than thirty days have elapsed since OEPA and MDEQ submitted the lists. However, USEPA has yet to approve or disapprove either list.

If USEPA does not approve or disapprove the lists submitted by OEPA and MDEQ within sixty days of this notice, the prospective plaintiffs intend to file a citizen suit or suits against you in U.S. District Court seeking an order compelling USEPA to exercise its nondiscretionary duty either to approve or disapprove the lists.

LEGAL STANDARDS

The purpose of the Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). In furtherance of this goal, CWA § 303(d)(1), 33 U.S.C. § 1313(d)(1), requires each State to “identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters.” Further, the “State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.” *Id.*

USEPA’s regulations require States to submit a new list of impaired waters every two years. 40 C.F.R. § 130.7(d)(1). Once a State submits its list, USEPA “shall” either approve or disapprove the list “not later than thirty days after the date of submission.” 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2). This language is non-permissive; as soon as a State submits its list of impaired waters list and TMDLs, USEPA *must* act within thirty days. Since USEPA’s obligations under CWA § 303(d)(2) and 40 C.F.R. § 130.7(d)(2) are nondiscretionary, USEPA’s failure to comply with the 30-day timeframe is a valid ground for a citizen suit. *Hayes v. Whitman*, 264 F.3d 1017, 1023 (10th Cir. 2001) (finding that “the EPA [has a] nondiscretionary duty under § 1313(d)(2) to approve or disapprove the submission . . . within thirty days. *If the EPA fails to respond within this period, it is subject to suit under the citizen-suit provision of the Clean Water Act to compel it to perform this nondiscretionary duty.*”) (emphasis added).

VIOLATIONS

USEPA Failed to Perform its Nondiscretionary Duty to Approve or Disapprove Ohio and Michigan’s § 303(d) Lists within Thirty Days of the Dates the States Submitted the Lists, as Required by the CWA

On October 20, 2016, the State of Ohio, by and through OEPA, submitted to the USEPA for approval Ohio’s 2016 Integrated Water Quality Monitoring and Assessment Report.¹ The Integrated Report purports to satisfy the requirements both of CWA § 305(b) (biennial reports on the condition of the State’s waters) and § 303(d) (list of impaired waters). OEPA’s 2016 303(d) report listed as impaired portions of Lake Erie from which Toledo draws its drinking water, as well as miles of the lake’s shoreline and areas around the lake’s islands. OEPA’s report, however, did not list the open waters of the western basin of Lake Erie.

USEPA was required to approve or disapprove Ohio’s 2016 303(d) list on or before the thirtieth day following OEPA’s October 20, 2016, submittal of the list – that is to say, on or

¹ OEPA’s report, including response to comments, is available at: <http://epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx>.

before November 21, 2016. USEPA has neither approved nor disapproved OEPA's list to date.

On November 10, 2016, the State of Michigan, by and through the MDEQ, submitted to the USEPA for approval its Integrated Report.² The Integrated Report purports to satisfy the listing requirements of CWA § 303(d) and the reporting requirements of CWA §§ 305(b) and 314. The report's 2016 303(d) list identifies Michigan's open waters of Lake Erie as impaired.

USEPA was required to approve or disapprove Michigan's 2016 303(d) list on or before the thirtieth day following MDEQ's November 10, 2016, submittal of the list – that is to say, on or before December 12, 2016. USEPA has neither approved nor disapproved MDEQ's list to date.

USEPA's present and ongoing failure to timely approve or disapprove Ohio and Michigan's CWA § 303(d) lists violates the agency's nondiscretionary duty. Prospective plaintiffs and their members are injured by this violation because it delays the restoration of the water quality of the listed portions of Lake Erie and the unlisted open waters of the western basin of Lake Erie that do not meet applicable water quality standards.

Prospective plaintiffs and their members have interests in the safety of Lake Erie's water for drinking, recreational, aesthetic, and other uses. Evidence establishes that existing effluent limitations are not stringent enough to implement the water quality standards applicable to the listed portions of Lake Erie and the unlisted open waters of the western basin of Lake Erie, making the water unsafe for drinking, recreational, aesthetic, and other uses by prospective plaintiffs and their members.³

RELIEF SOUGHT

For all these reasons, EPA's approval or disapproval of Ohio's and Michigan's lists is imperative. The prospective plaintiffs demand that USEPA immediately perform its nondiscretionary duty by either approving or disapproving Ohio's and Michigan's 2016 303(d) lists. If you do not correct USEPA's failure to comply with its nondiscretionary duty to approve or disapprove the lists, described above, within sixty days of the mailing of this notice, the prospective plaintiffs intend to initiate a citizen suit or suits against you pursuant to CWA § 505(a), 33 U.S.C. § 1365(a).

² MDEQ's report, including response to comments, is available at:
http://www.michigan.gov/deq/0,4561,7-135-3313_3681_3686_3728-12711--,00.html.

³ For instance, the discharge of phosphorus to Lake Erie, predominantly from the Maumee River, causes persistent harmful algal blooms in the open waters of the western basin of Lake Erie. [Annex 4 Objectives and Targets Task Team Final Report to the Nutrients Annex Subcommittee, Recommended Phosphorus Loading Targets for Lake Erie \(May 11, 2015\) available at https://www.epa.gov/sites/production/files/2015-06/documents/report-recommended-phosphorus-loading-targets-lake-erie-201505.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/report-recommended-phosphorus-loading-targets-lake-erie-201505.pdf).

PARTIES GIVING NOTICE

The **Alliance for the Great Lakes** is a non-profit organization that works to protect the Great Lakes for today and tomorrow. The Alliance involves tens of thousands of people each year in advocacy, volunteering, education, and research to ensure the lakes are healthy and safe for all. The Alliance is located at 150 N. Michigan Avenue, Suite 700, Chicago, IL 60601, Phone: (312) 939-0838.

The **Lake Erie Charter Boat Association** is organized to encourage and promote sound fisheries management in Lake Erie, support the charter boat industry, and create a better working relationship between the association, law enforcement agencies, politicians, and the sport fishing public. LECBA may be contacted at 6392 Edgewater Drive, Erie, Michigan, 48133, Phone: (800) 798-1218.

The **Lake Erie Foundation** is a nonprofit organization dedicated to restoring and protecting Lake Erie's waters with a mission of creating and maintaining a healthy Lake Erie now and forever as defined by drinkable water, recreational contact, and edible fish. This foundation was created by combining the resources of two other organizations, Lake Erie Waterkeeper and the Lake Erie Improvement Association. This partnership now includes over 200 members that help form a long-term sustainable Lake Erie advocacy organization. Most members are located in the Lake Erie watershed. The Foundation's office is located at 236 Walnut Street, Lakeside, Ohio, 43440, Phone: (800) 551-1592.

The **Michigan League of Conservation Voters** is a non-profit organization that serves as the non-partisan political voice for Michigan's land, air, and water. Michigan LCV is dedicated to ensuring that every Michigander has access to clean air and clean water and is able to enjoy the pure beauty of our state. Michigan LCV has regional offices throughout the state and is headquartered at 3029 Miller Road, Ann Arbor, Michigan, 48103, Phone: (734) 222-9650.

Founded in 1937, **Michigan United Conservation Clubs** is Michigan's largest statewide nonprofit conservation organization, representing over 50,000 hunters, anglers and trappers and approximately 250 local conservation and sportsmen's clubs. Its mission is uniting citizens to conserve, protect and enhance Michigan's natural resources and outdoor heritage. Through member-sponsored resolutions, MUCC has adopted specific policy to work toward a reduction of harmful algae blooms in Lake Erie, which impair the fisheries of the Great Lakes and MUCC members' ability to fish them. MUCC is a Michigan nonprofit organization headquartered at 2101 Wood St., Lansing, Michigan, 48912, Phone: (517) 371-1041.

The **National Wildlife Federation** is the nation's largest not-for-profit conservation advocacy and education organization. NWF and its members are dedicated to protecting rivers, lakes, and wetlands, including those within the Great Lakes Basin, and the fish and wildlife that depend on them. NWF is a District of Columbia nonprofit corporation with its principal office in Virginia and a Great Lakes office headquartered at 213 West Liberty Street, Second Floor, Ann Arbor, Michigan, 48104, Phone: (734) 769-3351.

The **Ohio Environmental Council** is a non-profit organization dedicated to securing healthy air, land, and water for all who call Ohio home. Founded in 1969, OEC is a not-for-profit environmental and conservation organization, organized under the laws of the State of Ohio. OEC is comprised of over 100 member environmental and conservation organizations, and thousands of individual members throughout the state. Many of these members live, work, and/or recreate within or near Lake Erie and/or Lake Erie Basin. OEC is located at: Ohio Environmental Council, 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212, Phone: (614) 487-7506.

Accordingly, the prospective plaintiffs qualify as “citizens,” as that term is defined by CWA § 505(g), 33 U.S.C. § 1365(g), and they have standing to bring the suits noticed herein.

LEGAL COUNSEL

The name, address, and telephone number of the legal counsel representing the prospective plaintiffs is as follows:

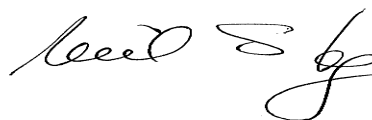
Neil Kagan
801 Monroe Street
745 Legal Research
Ann Arbor, Michigan 48109
(734) 763-7087
kagan@nwf.org

CONCLUSION

This notice of intent to sue sufficiently states grounds for filing suit. The prospective plaintiffs intend, at or after the close of the 60-day notice period to file a citizen suit or suits against the Administrator pursuant to CWA § 505(a) for the violations summarized above. The prospective plaintiffs will seek damages and reasonable costs, attorney and expert fees, and any other relief deemed just and appropriate by the court pursuant to 33 U.S.C. § 1365(d).

During the 60-day notice period, the prospective plaintiffs are willing to discuss effective remedies for the violations summarized in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, please initiate such discussions as soon as possible upon receipt of this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. The prospective plaintiffs do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Sincerely,



Neil Kagan
Senior Counsel

Copies by certified mail to:

Hon. Loretta Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Craig Butler, Director
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

Heidi Grether, Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, MI 48909-7973

Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Mail Code R-19
Chicago, IL 60604-3507

<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran’s Benefits 160 Stockholder’s Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: <input type="checkbox"/> YES <input type="checkbox"/> NO
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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