

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ENVIRONMENTAL LAW AND)
POLICY CENTER, et al.,)
)
Plaintiffs,) CASE NO. 3:17-CV-1514
)
v.)
) JUDGE JAMES G. CARR
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, et al.,)
)
Defendants.) **Motion of Lake Erie Foundation to
) Participate as Amici Curiae and to file a
) Memorandum In Support of Plaintiffs’
) Motion for Leave to File Supplemental
) Complaint**
)
) Megan M. Hunter (0096035)
) Hunter & Hunter LLC
) 640 Ardleigh Dr.
) Akron, Ohio 44303
) Telephone: 234-281-2528
) Fax: 330-805-4518
)
) *Counsel for Amici Curiae Lake Erie
) Foundation*

Motion for Leave to File *Amicus* Memorandum

The Lake Erie Foundation (“LEF” or “the Foundation”), by and through its undersigned counsel, respectfully moves this Honorable Court for leave to file the enclosed memorandum as *amici curiae* in the above-captioned matter. For the reasons provided *infra*, LEF supports Plaintiffs’ *Motion for Leave to File Supplemental Complaint*.

LEF is well-positioned to submit an *amicus* memorandum in this matter. Lake Erie Foundation was formed in 2016 by combining Lake Erie Waterkeeper (established in 2004) and Lake Erie Improvement (established in 2011) into a nonprofit organization with over 500 members and a stated mission “to create and maintain a healthy Lake Erie now and forever as

defined by drinkable water, recreational contact, and edible fish.” LEF describes its vision of a healthy Lake Erie as follows:

When Lake Erie is healthy, it is highly productive, and a healthy Lake Erie is measured by established federal, provincial, and state water quality standards. The result of having a healthy lake will be water free of impacts from harmful algae and contaminants with minimized impacts from invasive species. Sustainable practices on land and in water will help restore Lake Erie and provide resilience to its ecosystem, providing a valuable resource for drinking, recreational activities, lake-related businesses, and aquatic and terrestrial life.

LEF uses the tools of advocacy, education and outreach, defense, and technology to achieve these goals. The Foundation’s service area includes the entire Lake Erie watershed. LEF serves the interests of those whose drinking water source is in the Lake Erie watershed, as well as businesses, boaters, fishermen, tourists, recreational users, property owners, and others who use and rely on Lake Erie.

LEF’s current focus is reducing those sources causing and contributing to the harmful algal blooms (“HABs”) in Lake Erie. To that end, LEF has spent significant time and resources researching solutions to Lake Erie’s HABs and researching methods that have been used in other parts of the United States. This research has demonstrated to LEF that establishing a Total Maximum Daily Load (“TMDL”) for Lake Erie is necessary to successfully address the HAB problem in the Lake. Lake Erie Foundation, on behalf of its over 500 members, has a substantial interest in the Court’s resolution of this important matter regarding Ohio EPA and U.S. EPA’s legal responsibility under the Clean Water Act to create a TMDL to address the continued increasing HABs in Lake Erie.

Pursuant to this Court’s inherent authority and Fed. R. Civ 7(b), whether to permit *amicus* participation is left to the discretion of the Court, and this Court has historically permitted *amici* participation. *See e.g. Superior Dairy, Inc. v. Thomas Vilsack*, No. 5:11-cv-1979, (N.D.

Ohio 2011); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 696 n.1 (N.D. Ohio 2006). LEF's members and Lake Erie cannot afford to wait for piecemeal litigation to take the place of urgently needed agency action to establish a TMDL for western Lake Erie. Granting this motion will not result in a delay of proceedings, and this filing raises no new legal arguments. The parties have plenty of time to consider the information presented in this filing prior to the date of oral argument, which is set for August 21, 2018.

Accordingly, LEF respectfully requests that this Motion be granted, Lake Erie Foundation be added as an *amici curiae* party to this litigation, and LEF be permitted to file the attached Memorandum in Support of Plaintiffs' Motion for Leave to File Supplemental Complaint.

Respectfully submitted,

/s/ Megan M. Hunter
Megan M. Hunter (0096035)
Hunter & Hunter LLC
640 Ardleigh Dr., Akron, OH 44303
Telephone: 234-281-2528
Fax: 330-805-4518
megan@hunterfirm.org

Counsel for Lake Erie Foundation

CERTIFICATE OF SERVICE

I, Megan M. Hunter, hereby certify that a true and correct copy of the foregoing was filed electronically on August 14, 2018. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Megan M. Hunter

Megan M. Hunter (0096035)