

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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FRIENDS OF THE BLACK RIVER FOREST,  
INC.

Plaintiff,

Case No. 18-CV-1737

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Defendant.

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**COMPLAINT**

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Plaintiff, Friends of the Black River Forest, Inc., through its attorneys, Pines Bach LLP, alleges and states the following complaint:

**INTRODUCTION**

1. This is a civil action based on violations of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or “the Act”), 5 U.S.C. § 552. It challenges the unlawful failure of the Defendant, the United States Environmental Protection Agency (“EPA”), to respond to the FOIA request of Plaintiff Friends of the Black River Forest (“FBRF”) within the time and in the manner required by the FOIA. EPA has failed to provide a determination regarding records responsive to FBRF’s request and is unlawfully withholding records responsive to FBRF’s FOIA request, which has been pending for over a year and a half, since April 24, 2017.

2. The purpose of the FOIA is “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.”

S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965). “[D]isclosure, not secrecy, is the dominant objective of the Act.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976). The FOIA therefore requires federal agencies to disclose records to any person upon request unless the information falls within one of nine narrow disclosure exemptions listed in the Act. *See* 5 U.S.C. § 552(a)(3)(A), (b); *see also Rose*, 425 U.S. at 361 (“These exemptions are explicitly made exclusive ... and must be narrowly construed.”) (internal citation and quotation marks excluded). Except in unusual circumstances, federal agencies must determine within twenty (20) business days whether requested records are exempt from disclosure and, if they are not, the agency must “promptly disclose” the records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

3. On April 24, 2017, FBRF sent a FOIA request to EPA. The FOIA request sought records related to a February 10, 2017, letter addressed to then-Acting EPA Administrator Catherine McCabe from Wisconsin Senator Ron Johnson and Congressman Glenn Grothman. The legislators’ February letter concerned a proposed rule implementing non-attainment areas for the National Ambient Air Quality Standards for ozone. Sen. Johnson and Rep. Grothman had requested EPA to “take immediate steps to ensure that Sheboygan County is no longer unfairly classified with an ozone nonattainment designation” and to “alter the boundary lines of the Sheboygan nonattainment area in question.” Sen. Johnson and Rep. Grothman voiced specific and “deep concerns” that an ozone monitor at Kohler Andrae State Park was faulty, unreliable, or should be removed.

4. FBRF submitted its FOIA request, in part, so that it could effectively and fully participate in the public debate regarding Sheboygan County’s potential inclusion in the list of counties that EPA designated by regulation as not in attainment of smog

regulations (and therefore subject to stricter monitoring) and related public policy matters. At the time FBRF made its FOIA request, EPA had not yet issued any changes to the list of nonattainment counties in Wisconsin, but FBRF had reason to believe EPA would soon do so. The EPA has since issued such changes, 83 Fed. Reg. 25,776 (June 4, 2018), a decision which has been subject to legal challenge. Further, in March 2018, the Wisconsin legislature enacted a law to exclude consideration of results from the Kohler Andrae State Park ozone monitoring station, as compared to other stations in the state's network, and directing the state to ask the EPA for permission to do so. 2017 Wis. Act 159 (Mar. 29, 2018).

5. EPA violated the FOIA in several ways during its processing of FBRF's FOIA request. First, EPA failed to make a determination regarding FBRF's FOIA request within its statutory deadlines. Second, EPA improperly withheld records responsive to FBRF's FOIA request. Third, EPA failed to provide FBRF with an estimated date on which EPA would complete action on FBRF's request. Each of these failures on the part of EPA violates the FOIA.

6. In this case, EPA has missed every applicable FOIA deadline. In addition, EPA failed to release responsive records before it ultimately decided to remove several Wisconsin counties from the non-attainment list, and before the Wisconsin legislature voted to exclude consideration of results from the Kohler-Andrae State Park monitoring station. EPA has therefore deprived FBRF of one of the primary purposes of its FOIA request—to fully and effectively participate in decisionmaking on a matter of public health. It has also denied FBRF an opportunity to provide meaningful public oversight of its elected officials' lobbying of a government agency, and that agency's evaluation of the scientific, public

health, and political factors that related to these lobbying concerns. However, the records are still important to FBRF. They will inform FBRF of the basis on which EPA acted and how FBRF may best evaluate and effectively communicate on these issues in the future. They will allow Wisconsin residents to better understand the government's actions and impact on environmental regulation, and the accuracy of the disputed air monitor at Kohler-Andrae State Park. Moreover, the requested records are still highly relevant to FBRF's ongoing public education and outreach efforts regarding the health of the public and the environment in and around the Black River Forest.

7. EPA is improperly withholding from disclosure responsive records sought by FBRF, records to which FBRF is legally entitled. EPA has violated numerous FOIA mandates by failing to provide a determination on FBRF's FOIA request within the time and manner required by law. Accordingly, FBRF seeks a declaration from this Court that EPA has violated FOIA. FBRF also seeks an injunction from this Court that directs EPA to promptly provide FBRF with the requested records.

#### **PARTIES**

8. Friends of the Black River Forest ("FBRF") is a 501(c)(3) nonprofit organization whose mailing address is P.O. Box 804, Sheboygan, WI 53082, and street address is 314 Pioneer Road, Sheboygan, Wisconsin. Its mission is to promote the preservation of the Black River, its wetlands, the forest, and the adjoining Lake Michigan shore as an ecological whole. FBRF's members and supporters live, work, and recreate in or near the Black River, Kohler-Andrae State Park, and Lake Michigan area in Sheboygan County.

9. Defendant, Environmental Protection Agency (“EPA”), is an independent regulatory agency of the United States government, and its headquarters are located in Washington, D.C. It is in possession and control of the records sought by FBRF, and as such it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over the claims set forth in this claim pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA.

11. Venue is proper in the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1391(e)(2) because the events giving rise to the claim occurred in this District.

### **STATUTORY BACKGROUND**

12. The FOIA imposes strict and rigorous deadlines on federal agencies. The Act requires a federal agency that receives a FOIA request to determine whether the requested records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within twenty (20) business days. 5 U.S.C. § 552(a)(6)(A)(i). If the agency makes any adverse determination regarding a request, the agency must also communicate to the requester that it has a right to appeal that determination. 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines the records are not exempt from public disclosure, the agency is required to make the requested records “promptly available” to the requester. 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

13. An “agency record” subject to a FOIA request is any record that is (1) created or obtained by an agency, and (2) under agency control at the time of the FOIA request. *See, e.g., United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

14. The FOIA also mandates that a federal agency that has received a request for records must inform the requester of “the date on which the agency originally received the request[,]” and “an estimated date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B).

15. The FOIA provides only limited circumstances under which a federal agency may take longer than 20 business days to make a determination. First, the agency may toll the 20 business-day deadline for up to ten additional business days while the agency is waiting for the information that it has reasonably requested from the requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I). Second, the agency may also toll the 20 business-day deadline for up to ten additional business days if it needs to clarify with the requester any issues regarding fee assessment. 5 U.S.C. § 552(a)(6)(A)(ii)(II). Additionally, if the agency faces “unusual circumstances,” the agency may extend the 20 business-day deadline if the agency sets “forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i). No extension will exceed ten business days unless the agency provides written notice to the requester explaining the “unusual circumstances” requiring an extension, establishes the date on which the agency expects to make the determination, and gives the requester “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii). Under the FOIA, “unusual circumstances” are defined

as “the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request[,]” or “the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request,” or “the need for consultations ... with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

16. Unless an agency subject to the FOIA properly establishes a different timeline for disclosing responsive records, according to the above provisions, FOIA’s mandate to make public records “promptly available” to a requester requires federal agencies to provide responsive records to a requester within or shortly after the 20-day deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

17. A U.S. district court has jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). If the government can show that “exceptional circumstances” exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not* include a delay that results from a predictable agency workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. 5 U.S.C. § 552(a)(6)(C)(ii).

## FACTS

18. On April 24, 2017, FBRF, through its counsel, submitted a Freedom of Information Act (“FOIA”) request to the EPA. The request sought certain records related to a February 10, 2017 letter addressed to then-Acting EPA Administrator Catherine McCabe from Wisconsin Senator Ron Johnson and Representative Glenn Grothman, regarding EPA Docket ID No. EPA-HQ-OAR-2016-0202. That docket related to a proposed rule implementing non-attainment areas for the National Ambient Air Quality Standards for ozone.

19. The FOIA request sought

records related to Sen. Johnson and Rep. Grothman's requests to EPA to "take immediate steps to ensure that Sheboygan County is no longer unfairly classified with an ozone nonattainment designation" and to "alter the boundary lines of the Sheboygan nonattainment area in question." This request includes records related to Kohler Andrae ozone monitor, site ID 55-117-0006 and Sen. Johnson and Rep. Grothman's “deep concerns” that the monitor is faulty, unreliable, or should be removed, and records relating to EPA's response to those concerns and evaluation of the monitor.

20. Included in the FOIA request was a request for a fee waiver, based on the six factors in 40 C.F.R. § 2.017. As grounds for the fee waiver, FBRF stated:

Factor 1: The subject of the request directly and clearly concerns the operations of government, specifically those affecting air quality and public health.

Factor 2: The informative value of the records to be disclosed is high. FBRF is not aware of any other information in the public domain about the subject of this request, or the current status of the air monitor and future of the nonattainment designation.

Factor 3: The response to this request will contribute to an understanding by the public of the subject matter. FBRF has the expertise and ability to process the information and distribute it to its members and the public through its website, the news media, or other sources.

Factor 4: The disclosure is likely to significantly contribute to the public understanding about the future of the nonattainment designation for Sheboygan



County, since there is little available information about this subject and the disputed air monitor since EPA finalized the nonattainment rule last year.

Factor 5: The requester has no commercial interest.

Factor 6: The requester's primary interest aligns with the public interest. FBRF is a group of citizens concerned about the environment in and around Sheboygan County, including air quality. FBRF wishes to learn about efforts to move the county into attainment for ozone and the basis for those efforts. These are not commercial interests but public interests.

21. The FOIA request was submitted to the Office of the Administrator via FOIA Online, a website maintained by the federal government for agencies to receive and respond to FOIA requests. Counsel for FBRF received confirmation the day the request was submitted that it was assigned tracking number EPA-HQ-2017-006511 and was classified as a "simple" request.

22. An identical request was submitted to U.S. EPA's Region V offices in Chicago, Illinois, and was assigned tracking number EPA-R5-2017-006512. It was later denied as duplicative.

23. Based on the April 24, 2017, date of the request, FBRF should have received a response on May 22, 2017 (20 business days), or June 6, 2017 (extra 10 business days) at the latest.

24. On May 12, 2017, FBRF received notice that its fee waiver for request EPA-HQ-2017-006511 was determined to be not applicable because "the request is not billable."

25. On August 22, 2017, Kevin Bailey, Director, Resources Management and Operations Division, with the U.S. EPA, made initial contact with FBRF's attorney who submitted the request, Christa Westerberg, to discuss the April 24, 2017 FOIA request. In Bailey's email, he asked Westerberg if she was available for a telephone call on August 22

or 23. Westerberg responded the same day indicating that she was free to talk between 1:00 and 5:00 that day.

26. On August 25, 2017, Westerberg sent a follow-up email to Bailey indicating she had not heard from him and inquiring as to when she could expect a response to the FOIA request.

27. On August 28, 2017, Bailey responded to Westerberg's August 25 email, asking clarifying questions regarding the FOIA request. Westerberg answered his questions the same day and indicated that their correspondence did not reset the EPA's clock for a response deadline.

28. Bailey and Westerberg spoke later on August 28, 2017, and Bailey indicated the Administrator's office would provide the EPA's April 24, 2017, response to the letter from Senator Johnson and Representative Grothman. He also stated he would redirect the request to EPA's Region V Air & Radiation Division. Westerberg noted FBRF had made the same request to Region V and it was denied as duplicative. Bailey said he would "personally expedite" the request to Region V's Air & Radiation Division.

29. At some point, FBRF's request was assigned an estimated date of completion of September 7, 2017, according to FOIAOnline.

30. On September 12, 2017, Westerberg sent a follow-up email to Bailey inquiring as to the status of the FOIA request and when a response could be expected. She did not receive a reply.

31. On September 15, 2017, Eric Cederholm, with U.S. EPA Region V's Air and Radiation Division, sent an email to Westerberg requesting clarification of the initial April 24, 2017 FOIA request. In Cederholm's email, he stated that the request is being

placed on hold “until we are able to clarify your request, and establish a more narrowed scope.”

32. Westerberg responded to Cederholm’s email on September 19, 2017, to provide examples of the types of records that were being sought by FBRF. Westerberg requested that the unauthorized “hold” be ceased and that the agency provide the responsive records.

33. On September 20, 2017, Cederholm and Westerberg spoke about the FOIA request. Cederholm clarified that Region V would provide records relating to the portion of the request about the air monitor in Kohler-Andrae State Park, including routine data certifications, the state Department of Natural Resources network plan, information about the technical systems audit for ozone, as well as about sixty-five email messages.

34. Later on September 20, 2017, Westerberg sent an email to Bailey confirming she had spoken to Region V about providing a portion of the records, and inquiring as to when FBRF could expect a response to the FOIA request for records possessed by the Administrator’s office. She specifically noted that Bailey had earlier promised a copy of the Administrator’s response to the letter from Senator Johnson and Representative Grothman. She did not receive a reply.

35. On September 22, 2017, Cederholm sent a follow-up email to Westerberg asking if FBRF would be agreeable to a response due date of October 20, 2017. Without agreeing that this was a timely response, Westerberg stated that October 20 was acceptable.

36. On October 24, 2017, Westerberg emailed Cederholm indicating that FBRF had still not received the responsive records even though October 20 had passed.

37. Cederholm responded that same day, and noted that Region V had closed out the request on October 18, 2017. He indicated that since the request was a Headquarters level FOIA, then EPA Headquarters will have to close out the request. Cederholm then provided the contact information for the FOIA Liaison at Office of Government Information Services (“OGIS”), an ombudsman within the National Archives and Records Administration that resolves FOIA disputes between agencies and requesters.

38. Westerberg responded to Cederholm and copied Bailey and OGIS on October 24, 2017, again asking for compliance with the request.

39. On November 21, 2017, Westerberg contacted OGIS by e-mail requesting assistance with the April 24, 2017 FOIA request. Westerberg received an auto-reply from OGIS stating that “due to an increase in the demand for our services, there may be a delay in our response.”

40. Westerberg contacted Cederholm by e-mail on December 11, 2017, indicating that she had not received the requested records and requesting that he put her in touch with the Region V FOIA office or FOIA counsel. In response to this e-mail, Westerberg received a voicemail and e-mail from a Region V employee, Jessica Wheatley, relaying the contact information for Loreto Tillery at EPA Headquarters.

41. On December 12, 2017, Westerberg responded to Wheatley indicating that she had reached out to Tillery a few weeks prior and had not heard back. Westerberg e-mailed Tillery again and requested that at least the Region V records that had been prepared and available for two months be provided to her promptly.

42. Wheatley responded to Westerberg on December 13, indicating that she had also reached out to Tillery and would continue to try to contact her and inquire as to

whether the records could be released. Westerberg did not receive any further response from Wheatley.

43. On February 15, 2018, OGIS responded to FBRF's November 21, 2017, request for assistance. The response stated, "[w]e contacted the U.S. Environmental Protection Agency (EPA) FOIA staff and learned the agency is processing your request and is unable to provide us with an estimated date of completion."

44. On June 5, 2018, FBRF received an email from Ms. Tillery notifying it that FOIA request EPA-HQ-2017-006511 is "currently 298 in the queue." EPA relied on a formula for "complex" requests to estimate a new response date of October 18, 2018.

45. As of the date this action was filed, FBRF has not received any records responsive to FOIA request EPA-HQ-2017-006511, or a formal response to the request.

46. None of FOIA's nine exemptions to mandatory disclosure apply to the information currently being withheld by the EPA that is responsive to FOIA request EPA-HQ-2017-006511.

47. As of the date this action was filed, the statutory deadline for EPA to issue a timely determination on FOIA request EPA-HQ-2017-006511 has passed.

48. "[I]n order to make a "determination" ... the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013).

49. As of the date this action was filed, EPA has not provided a determination on FOIA request EPA-HQ-2017-006511.

50. As of the date this action was filed, EPA has failed to gather and review all of the documents responsive to FOIA request EPA-HQ-2017-006511.

51. As of the date this action was filed, EPA has failed to fully communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents.

52. As of the date this action was filed, EPA has failed to inform FBRF of its appeal rights under FOIA.

53. As of the date this action was filed, EPA has failed to inform FBRF which responsive records, if any, it believes are exempt under FOIA's narrow exemptions.

54. Because EPA has not issued a determination on FOIA request EPA-HQ-2017-006511, FBRF could not file an administrative appeal of any determination, and therefore has constructively exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

55. FBRF has been required to expend costs and to obtain the services of a law firm to prosecute this claim.

56. FBRF's claims presented herein are not insubstantial within the meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

## CAUSES OF ACTION

### CLAIM I

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO MAKE A DETERMINATION BY STATUTORY DEADLINE**

57. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

58. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

59. FBRF has a right to processing of its FOIA request in a manner that complies with the FOIA. EPA was, and is, required to determine within 20 business days after the receipt of FBRF's FOIA request whether to comply with the request, and to immediately notify FBRF of EPA's determination and the reasons therefor, and the right of FBRF to appeal to the head of the EPA any adverse determination.

60. FBRF, through FOIA request EPA-HQ-2017-006511, properly asked for records within EPA's control.

61. EPA received FOIA request EPA-HQ-2017-006511 on April 24, 2017. The twentieth business day following April 24—excepting Saturdays, Sundays, and legal public holidays—was May 22, 2017.

62. As of the date on which FBRF filed this action, EPA had not produced any records to FBRF in response to its FOIA request.

63. As of the date on which FBRF filed this action, EPA had never claimed any FOIA exemptions in response to FBRF's FOIA request.

64. As of the date on which FBRF filed this action, EPA had never informed FBRF that it could appeal any adverse portion of EPA's communications regarding FBRF's FOIA request.

65. As of the date on which FBRF filed this action, EPA had violated FBRF's rights by unlawfully delaying its response to FOIA request EPA-HQ-2017-006511 beyond the determination deadlines imposed by FOIA.

66. As of the date on which FBRF filed this action, EPA was unlawfully withholding from public disclosure records sought by FBRF, records to which FBRF is legally entitled.

67. Based on the nature of FBRF's activities, its will undoubtedly continue to employ FOIA's provisions in information requests to EPA in the foreseeable future.

68. FBRF's activities will be adversely affected if EPA is allowed to continue violating FOIA's decision deadlines as it has in this case.

69. Unless enjoined and made subject to a declaration of FBRF's legal rights by this Court, EPA will continue to violate the rights of FBRF to have its information requests processed as required by the FOIA.

70. FBRF is entitled to reasonable costs of litigation and attorneys' fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).



## CLAIM II

### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFULLY WITHHOLDING RESPONSIVE RECORDS**

71. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

72. EPA is required, upon receipt of a request for records from FBRF, to make those records promptly available to FBRF, unless the records may be withheld under one of FOIA's narrow exemptions. 5 U.S.C. § 552(a)(3)(A), (b).

73. FBRF, through FOIA request EPA-HQ-2017-006511, properly asked for agency records within EPA's control.

74. EPA received FBRF's request on April 24, 2017.

75. EPA has not produced any records to FBRF in response to its FOIA request.

76. As of the date on which FBRF filed this action, EPA had never claimed any exemption in response to FBRF's FOIA request.

77. There is no legal basis for EPA to assert that any of FOIA's nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

78. FBRF's rights in this regard were violated when EPA failed to produce records responsive to FBRF's request promptly after receiving FBRF's FOIA request on April 24, 2017.

79. EPA is improperly and unlawfully withholding from public disclosure information that is sought by FBRF and to which it is entitled.

80. FBRF is entitled to reasonable costs of litigation and attorneys' fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

### CLAIM III

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO PROVIDE AN ESTIMATED DATE ON WHICH THE AGENCY WILL COMPLETE ACTION ON THE FOIA REQUEST**

81. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

82. FOIA requires federal agencies to provide the requester, via an information telephone line or Internet service, with tracking information about the status of the agency's response to a request, including an estimated date on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7)(B)(ii).

83. FBRF asked EPA numerous times for an estimated date on which EPA would complete action on FBRF's FOIA request.

84. EPA has consistently failed to provide an estimated date in accordance with statute on which EPA would complete action on FBRF's FOIA request, at various times and in various forms stating that the estimated date was September 7, 2017, October 20, 2017, or October 18, 2018, while at other times stating that no estimated date was available at all.

85. EPA has consistently failed to use its online tracking system to provide accurate or useful tracking information, maintaining an estimated date of completion of September 7, 2017, on its website as of the date of this complaint.

86. FBRF is entitled to reasonable costs of litigation and attorneys' fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

## RELIEF REQUESTED

WHEREFORE, FBRF requests judgment as follows:

1. Declare EPA's failure to make a timely determination on FBRF's FOIA request to be unlawful under FOIA;
2. Declare EPA's failure to promptly provide FBRF with records responsive to FBRF's FOIA request to be improper and unlawful under FOIA;
3. Declare EPA's failure to provide FBRF with an estimated date on which EPA would complete action on FBRF's FOIA request, to be unlawful under FOIA;
4. Order EPA, in the form of injunctive relief, to promptly provide FBRF with all of the records responsive to its FOIA request;
5. Award FBRF its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E), or any other applicable law;
6. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
7. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted this 31st day of October, 2018.

PINES BACH LLP

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