

From: MacLean, Alex
Sent: Friday, March 04, 2011 7:40 AM
To: Markowitz, Deb
CC: Robinson, Beth
Subject: Re: Amicus Memo in North Carolina v. TVA (U.S.)

We should join.

Thx

Sent from my iPad

On Mar 3, 2011, at 9:41 PM, "Markowitz, Deb" <Deb.Markowitz@state.vt.us> wrote:

> We need to let them know if we will sign on to this suit by tomorrow. The Attorney General is ready to go. It is a petition to reverse a 4th circuit decision to reject a public nuisance claim against the TVA's coal plants. Let's chat tomorrow.

>

>

> Deb Markowitz

> Secretary

> Vermont Agency of Natural Resources

> Center Building, 2nd Floor

> 103 South Main Street

> Waterbury, Vermont 05671-0301

> 802-241-3600

> 802-244-1102 FAX

> www.anr.state.vt.us

>

> From: Mears, David

> Sent: Monday, February 28, 2011 8:44 PM

> To: Markowitz, Deb

> Cc: Recchia, Chris; Johnson, Justin; Ogrady, Elaine; Valentinetti, Dick; Gjessing, Catherine; Groveman, Jon

> Subject: FW: Amicus Memo in North Carolina v. TVA (U.S.)

>

> Dear Deb: I am support Elaine's recommendation below that Vermont join an amicus brief in support of North Carolina's cert petition to reverse the 4th Circuit's rejection of its public nuisance claim under state law against TVA's coal plants. If you agree, we need to get the Governor's approval and reply to the AG's office by the end of the day Thursday (March 3).

>

> This is precisely the kind of lawsuit that Vermont and other Northeast states may want or need to bring against mid-west coal plants in the future. The Maryland AG's office has done a nice job laying out the arguments in the attached documents. If you have time for only one document, I recommend reading the memo. Please let me know if you need additional information. Sincerely,
David

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> From: Ogrady, Elaine
> Sent: Monday, February 28, 2011 9:58 AM
> To: Mears, David; Gjessing, Catherine; Johnson, Justin
> Cc: Valentinetti, Dick; Groveman, Jon
> Subject: FW: Amicus Memo in North Carolina v. TVA (U.S.)
>
> Please find attached a memo inviting states to join an amicus brief that MD is preparing in support of NC's petition for cert., seeking review of the Fourth Circuit's decision in North Carolina ex rel. Cooper v. TVA, 615 F.3d 291 (4th Cir. 2010). The deadline for joining MD's amicus brief is 5:00 pm on March 3rd. In addition, you will find attached NC's petition for cert., and the 4th Circuit's decision in NC v. TVA.
>
> For the reasons, outlined in the attached memo from MD, I recommend that VT join this brief, and initial discussions with the AG's office indicate that they favor joining the brief as well. When reviewing the attached memo, please note VT is a party in Connecticut v. Am. Elec. Power Co., 582 F.3d 309 (2d Cir. 2009) (holding that the CAA did not foreclose the rights of states to bring federal common law nuisance claims against TVA and other utilities that emit greenhouse gases), which is currently before the U.S. Supreme Court. Also, by way of background, it's worth mentioning that VT joined an amicus brief in support of NC before the 4th Circuit.
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> Please let me know if you have any question or would like additional information. If you have any concerns or objections to VT joining MD's amicus brief, please let me know as soon as possible.
>
> Thank you,
> Elaine
>
>
> From: Thea Schwartz [mailto:tschwartz@atg.state.vt.us]
> Sent: Sunday, February 27, 2011 6:47 PM
> To: Ogrady, Elaine
> Subject: FW: Amicus Memo in North Carolina v. TVA (U.S.)
>
> From naag.
>
> <NCvTVACertPetition020111.pdf>
> <AmicusMemo(NCvTVA)022511.pdf>
> <NCvTVAOpinion072610.pdf>