

Plaintiffs' Response to Defendants' Motion to Dismiss

Exhibit 1 – Letter from Department of Justice



**U.S. Department of Justice**

Environment and Natural Resources Division

*Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986*

*Telephone (202) 514-4767  
Facsimile (202) 514-8865*

January 28, 2008

**VIA U.S. Mail and E-Mail**

Blue Eco Legal Council  
Steven B. Pollack, Esquire  
Executive Director  
3390 Commercial Avenue  
Northbrook, IL 60035  
steve@ecoessq.com

*Re: Pollack v. United States Dept. of Justice, et al, No. 1:08-cv-00320 (N.D. Ill.)*

Dear Mr. Pollack:

This letter responds to your e-mail dated January 24, 2008. Thank you for the information regarding the initial status hearing on March 14, 2008. I will be in touch shortly to schedule a mutually agreeable date for a conference (by telephone) to address pre-trial matters in accordance with the Federal Rules of Civil Procedure, the local rules, and Judge Guzman's courtroom procedures. Under the current schedule, our conference should take place by February 29, 2008.

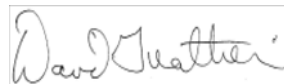
I will in the next couple of days be filing my appearance in this case as lead counsel for the defendants: the United States Department of Justice (including the Federal Bureau of Investigation), the United States Coast Guard, the United States Department of Defense, the United States Navy, and the United States Marine Corps. The defendants will also be represented by counsel from the Torts Branch of the Civil Division of the United States Department of Justice, as well as local counsel from the Office of the United States Attorney for the Northern District of Illinois.

Going forward, all communications with the defendants about this action should be directed to me as lead counsel. As all of the defendants are represented by the Department of Justice in this matter, please refrain from contacting agency counsel directly about the case. With regard to the concerns you raised in your e-mail about the Department of Justice representing the defendants, including the Department of Justice, such representation in this case is required by applicable law and does not present an ethical or legal conflict of interest. The Department of Justice is statutorily responsible for litigating all cases "in which the United States, an agency, or officer thereof is a party, or is interested . . .", 28 U.S.C. § 516, and the Attorney General is to supervise all such litigation. 28 U.S.C. § 519. In litigation such as this, involving multiple federal agencies, the Department of Justice does not represent the interests of any single agency of the United States. Rather, the Department of Justice represents the Executive Branch and conducts litigation in the best interests of the United States as a whole.

The Supreme Court and other courts have sustained this view. *See, e.g., Nevada v. United States*, 463 U.S. 110, 128 (1983) (“The Government does not ‘compromise’ its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has obligated it by statute to do”); *Frost v. Perry*, No. 94-714 (D. Nev. March 27, 1995), slip op. at 6-7 (“to the extent any conflicts may arise in Government counsel’s joint representation of the agency Defendants in this litigation, . . . these types of conflicts are to be resolved by the Attorney General pursuant to her plenary authority as head of the Department of Justice to conduct and supervise litigation on behalf of the United States and its agencies”) (citing 28 U.S.C. §§ 516, 519), aff’d sub. nom. on other grounds, *Kasza v. Browner*, 1998 WL 3586, \*9 (9th Cir. 1998); *United States v. Olin Corporation*, 606 F. Supp. 1301, 1308-09 (N.D. Ala. 1985) (“Congress has reserved the conduct of litigation and the supervision thereof in which the United States, an agency, or officer thereof, is a party to officers of the Justice Department.”) (citing 28 U.S.C. §§ 516, 519).

You indicated in your e-mail that you intend to raise these representation issues with the court. Kindly provide me with a copy of all filings or other communications on this issue that you direct to the court.

Sincerely,



David Gualtieri, Attorney  
Environment and Natural Resources Division  
Environmental Defense Section

cc (via e-mail):

L. Wawzenski, USAO  
J.P. Glynn, DOJ Civil  
D. Fishback, DOJ Civil  
S. Nelson, DOJ Civil

J. Olkiewicz, FBI  
T. Hayes, USCG  
J. Tew, USN  
M. Tencate, USMC  
K. Colmie, DOD