

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-CV-1687 (EGS)
)	
HARLEY-DAVIDSON, INC.,)	
HARLEY-DAVIDSON MOTOR COMPANY)	
GROUP, LLC,)	
HARLEY-DAVIDSON MOTOR COMPANY,)	
INC., and)	
HARLEY-DAVIDSON MOTOR COMPANY)	
OPERATIONS, INC.,)	
)	
Defendants.)	
_____)	

NOTICE OF INTENT TO FILE *AMICUS* BRIEF

The States of Iowa, Maine, Maryland, New York, Oregon, Rhode Island, Vermont, Washington and the Commonwealth of Massachusetts, by and through their respective Attorneys General, and the Puget Sound Clean Air Agency (collectively “States”), hereby provide notice of their intent to file an *amicus* brief in opposition to the United States’ Motion for Entry of Consent Decree (Dkt. No. 7). The brief will explain the States’ view of why entry of the proposed Consent Decree does not satisfy the applicable standard for entry of a consent decree, including why it is not in the public interest. States in addition to those filing this Notice may join the brief.

LCvR 7(o)(1) provides that a state may file an *amicus curiae* brief without the consent of the parties or leave of the court. LCvR 7(o)(3) provides that an *amicus*

brief shall be filed within such time as the Court may allow. The States intend to file their *amicus* brief by January 10, 2018, which is 30 days after filing of the United States' Motion for Entry of Consent Decree, unless the Court sets a different deadline. The States believe that the January 10, 2018 deadline is reasonable given the upcoming holidays and the States' need to coordinate among themselves and obtain required approvals.

The States have an interest in protecting their residents from emissions of harmful pollutants emitted at increased levels as a result of Defendants' alleged unlawful conduct that is the subject of this case. More particularly, the States have an interest in ensuring that excess emissions resulting from Defendants' alleged unlawful conduct are mitigated.

The original Consent Decree provided for such mitigation. It would have required Harley Davidson to spend \$3 million on a program, to be administered by the American Lung Association of the Northeast, to retrofit, replace, or upgrade higher polluting wood-burning appliances, such as woodstoves, resulting in reduced emissions of pollutants allegedly emitted at increased levels as a result of Defendants' conduct. (Dkt. No. 2-1, ¶17 & Appendix A). Based on the designated administrator for those funds— American Lung Association of the Northeast—the undersigned States in and around the Northeast believe that a portion of the \$3 million would have been used to reduce emissions in those States. Moreover, all of the undersigned States share an interest in the mitigation of excess pollution emitted from noncompliant Harley-Davidson motorcycles.

The modified Consent Decree that the United States now requests the Court to approve and enter is identical to the original decree except that it does not include the \$3 million mitigation project. The States submitted comments to the United States on the modified Consent Decree, which objected to the elimination of the mitigation project and requested the United States to restore it. Dkt. No. 7-1, at 50-60. In the alternative, the States offered their assistance in developing an alternative approach to mitigate excess emissions. *Id.* at 1, 8. The United States has declined to restore the original mitigation project or to discuss with the States alternative approaches to mitigate the ongoing excess emissions of harmful air pollutants caused by the Defendants' unlawful conduct.

Based on the States' interests and responsibilities as sovereigns for protecting the health and welfare of their citizens, the States are in a position to provide the Court with information and argument that may assist the Court in its consideration of the United States' Motion to Enter Consent Decree.

Respectfully submitted,

THOMAS J. DONOVAN, JR.
Attorney General of Vermont

By /s/ Nicholas F. Persampieri
Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186

FOR THE STATE OF IOWA

THOMAS J. MILLER
Attorney General
JACOB LARSON
Assistant Attorney General
Office of Iowa Attorney General
Hoover State Office Building
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5341

FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
Maine Attorney General's Office
6 State House Station
Augusta, ME, 04333-0006
(207) 626-8545

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General
STEVEN M. SULLIVAN
Solicitor General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
(410) 576-6427

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General
CHRISTOPHE COURCHESNE
Chief
SETH SCHOFIELD
Senior Appellate Counsel
TURNER SMITH
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2423

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General
MICHAEL J. MYERS
Senior Counsel
MORGAN A. COSTELLO
Chief, Affirmative Litigation Section
NICHOLAS C. BUTTINO
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
(518) 776-2382

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593

FOR THE STATE OF RHODE
ISLAND

PETER F. KILMARTIN
Attorney General
GREGORY S. SCHULTZ
Special Assistant Attorney General
The State of Rhode Island
Department of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
ATTORNEY GENERAL

Katharine G. Shirey
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6769

FOR THE PUGET SOUND CLEAN
AIR AGENCY

JENNIFER A. DOLD
General Counsel
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101
(206) 689-4015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record through the Court's CM/ECF system on this 12th day of December, 2017.

/s/ Nicholas F. Persampieri
Nicholas F. Persampieri
Assistant Attorney General
Vermont Attorney General's Office