

Case No. _____

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

BLUE WATER BALTIMORE, INC., NATURAL RESOURCES
DEFENSE COUNCIL, INC., and AMERICAN RIVERS,

Petitioners,

v.

SCOTT PRUITT, in his official capacity as Administrator of the U.S.
Environmental Protection Agency; CECIL A. RODRIGUES, in his
official capacity as Acting Regional Administrator for Region III of the
U.S. Environmental Protection Agency; and the U.S.
ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

**PETITION FOR REVIEW
of a final action of the U.S. Environmental Protection Agency**

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PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and section 509(b) of the Clean Water Act, 33 U.S.C. § 1369(b), Blue Water Baltimore, Natural Resources Defense Council, and American Rivers petition this Court to review and set aside the final action of the U.S. Environmental Protection Agency (EPA) denying a petition to require Clean Water Act permits for specified stormwater discharges in the Back River watershed in Baltimore, Maryland. EPA denied the petition by letter, entitled “Re: Petition for a Determination on the use of Residual Designation Authority in the Back River Watershed (Baltimore, Maryland),” signed and dated on November 3, 2016. EPA’s action became final on November 17, 2016, pursuant to 40 C.F.R. § 23.2. A copy of the letter is attached to this petition as Exhibit A.

Petitioners believe that this challenge to the agency’s petition denials belongs in district court pursuant to 33 U.S.C. § 1365 and 28 U.S.C. § 1331. Nonetheless, in light of the “jurisdictional badminton” caused by the Clean Water Act’s bifurcated judicial review, *NRDC v. EPA*, 512 F.2d 1351, 1361 (D.C. Cir. 1975) (Wright, J., dissenting in part) (discussing the Clean Air Act’s similar scheme), and the strict

statute of limitations for initiating review of agency action in a court of appeals, 33 U.S.C. § 1369(b)(1), they file this petition for review to preserve their rights. *See Inv. Co. Inst. v. Bd. of Governors of Fed. Reserve*, 551 F.2d 1270, 1282 (D.C. Cir. 1977) (“[W]e would expect competent counsel to file petitions in both courts . . . if there is any doubt as to the appropriate forum for judicial review.”). Petitioners have sent notice to respondents pursuant to 33 U.S.C. § 1365 of their intent to bring suit in district court, and will file a complaint in the U.S. District Court for the District of Maryland once the mandatory sixty-day notice period runs.

Dated: February 28, 2017

s/ Sarah V. Fort
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