

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CLEAN AIR COUNCIL,
et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Case No. 2:17-cv-04977-PD

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STRIKE
AND REPLY IN SUPPORT OF REQUEST FOR STATUS CONFERENCE**

Contrary to Defendants' characterization in their motion to strike, Plaintiffs' Notices of Supplemental Authority constitute permissible supplemental authority and are not sur-reply arguments. In this action, near-daily events demonstrate the worsening effects of climate change, Defendants' knowledge of those effects, and Defendants' actions to add to that continually worsening situation. Plaintiffs are obligated to update the Court on these important developments, as they demonstrate the need for swift action to halt Defendants' harmful Rollbacks. Defendants assume, with no support, that these updates cannot be considered "supplemental authority" like that filed by Defendants on September 5, 2018 (ECF No. 30), because they do not constitute only case law. However, other courts have

allowed provision of agency interpretations, like the National Climate Assessment Plaintiffs presented in their December 5, 2018 filing (ECF No. 41). *See Pennsylvania v. Navient Corp.*, No. 3:17-CV-1814, 2018 WL 6606218, at *1 (permitting filing of agency interpretation in notice of supplemental authority). Regardless, the Court has discretion to consider any relevant arguments, like those provided in Plaintiffs' recent filings, provided after initial briefing. *See, e.g., Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, No. 07-CV-01078, 2011 WL 11559549, at *18 (E.D. Pa. Mar. 24, 2011); *McNiff v. Asset Mgmt. Specialists, Inc.*, 337 F. Supp. 2d 685, 687 n.1 (E.D. Pa. 2004).¹

Regarding Plaintiffs' request for a status conference, Defendants notably cite no authority in support of their argument that the Court should deny Plaintiffs' request simply because Defendants' motion to dismiss is still pending. A status conference is necessary because of the importance of swift action to stop Defendants' Rollbacks, including the need to set a trial date. Defendants' motion to dismiss has no bearing upon those considerations.

Dated: December 24, 2018

Respectfully submitted,

/s/ Michael D. Hausfeld

Michael D. Hausfeld

¹ If the Court would prefer that Plaintiffs file an amended complaint that incorporates these developments, Plaintiffs can do so. Alternatively, to the extent the Court considers Plaintiffs' filings to fall under Rule 15(d), Plaintiffs ask that the Court grant leave for those filings to remain on the docket as a necessary factual record regarding the deteriorating situation caused by Defendants' Rollbacks.

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CERTIFICATE OF SERVICE

I, Michael D. Hausfeld, hereby certify that I caused a true and correct copy of the foregoing Plaintiffs' Response to Defendants' Motion to Strike and Reply in Support of Request for Status Conference to be served on all counsel of record via CM/ECF on December 24, 2018.

/s/ Michael D. Hausfeld
Michael D. Hausfeld