



Pro se plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [\*Bell Atlantic Corp. v. Twombly\*, 550 U.S. 544, 569-70 \(2007\)](#); *see also* [\*Ashcroft v. Iqbal\*, 129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See* [\*Martin v. Sargent\*, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [\*Burke v. North Dakota Dep’t of Corr. & Rehab.\*, 294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

### III. DISCUSSION OF CLAIMS

The court liberally construes the Complaint to allege a claim against the Environmental Protection Agency (“EPA”) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). *See* [42 U.S.C. §§ 9601- 75](#). However, the court may only exercise jurisdiction over such a claim if Plaintiff has provided the EPA with notice of his intent to sue. [42 U.S.C. § 9659\(e\)](#) *see, e.g.,* [\*Hallstrom v. Tillamook Cnty.\*, 493 U.S. 20, 28 \(1989\)](#) (dismissing citizen suit based on similar pre-filing notice requirement in section 6972 of the Resource Conservation and Recovery Act). *See also* [\*Tyler v. Env’tl. Prot. Agency\*, No. 11-1671, 426 Fed.Appx. 475 \(8th Cir. Aug. 29, 2011\)](#) (upholding the district court’s dismissal of Plaintiff Billy Tyler’s case where Tyler failed to allege he had provided written notice to the EPA of his intent to sue as required under CERCLA).

Here, Plaintiff has failed to allege or submit proof that he provided the EPA with notice of his intent to sue. Thus, even with the most liberal construction, Plaintiffs’ Complaint does not include “sufficient facts to support the claims advanced.” [\*Stringer v. St. James R-1 School Dist.\*, 446 F.3d 799, 802 \(8th Cir. 2006\)](#).

On the court's own motion, Plaintiff shall have 30 days in which to amend the Complaint in order to allege sufficient facts to show that he provided the EPA with notice of his intent to sue. If Plaintiff fails to file a sufficient amended complaint, this matter will be dismissed without further notice for failure to state a claim upon which relief may be granted.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until 30 days from the date of this Memorandum and Order to amend his Complaint to clearly state a claim upon which relief may be granted against the defendant in accordance with this Memorandum and Order. If Plaintiff fails to file an amended complaint, Plaintiff's claims against the defendant will be dismissed without further notice.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for amended complaint on November 8, 2013.

3. Plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal without further notice.

DATED this 8<sup>th</sup> day of October, 2013.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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