

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**ANACOSTIA RIVERKEEPER, INC.
and FRIENDS OF THE EARTH**

Plaintiffs,

v.

Case No. 1:09-cv-00097-RWR

STEPHEN L. JOHNSON,
Administrator,
United States Environmental
Protection Agency

Defendants.

ANSWER OF THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

Intervenor-Defendant District of Columbia Water and Sewer Authority (“WASA”) states as its Answer to the Complaint filed in this action the following:

INTRODUCTION

1. In response to Paragraph 1 of the Complaint, Intervenor admits that Plaintiffs seek review of decisions of the United States Environmental Protection Agency (“EPA”) to approve and establish pollution limits (“total maximum daily loads” or TMDLs”) for sediment and suspended solids (“TSS”) in the Anacostia River and its tributaries. The allegations in Paragraph 1 of the Complaint that such pollution limits fail to comply with the Clean Water Act is a legal conclusion that requires no response. To the extent that Paragraph 1 of the Complaint alleges other facts, Intervenor denies such facts.

PARTIES

2. Intervenor is without knowledge or information sufficient to form a belief as to the truth of Paragraph 2 of the Complaint and, therefore, denies such allegations.
3. Intervenor is without knowledge or information sufficient to form a belief as to the truth of Paragraph 3 of the Complaint and, therefore, denies such allegations.
4. Intervenor is without knowledge or information sufficient to form a belief as to the truth of Paragraph 4 of the Complaint and, therefore, denies such allegations.
5. In response to Paragraph 5 of the Complaint, Intervenor admits that the EPA is the United States agency primarily responsible for the implementation of the Clean Water Act in the District of Columbia, including the requirements of section 303 of the Act.
6. In response to Paragraph 6 of the Complaint, Intervenor denies that Stephen L. Johnson is the Administrator of EPA and has certain supervisory and management responsibilities for the EPA. To the extent that Paragraph 6 alleges other facts, Intervenor denies such facts.

JURISDICTION AND RIGHT OF ACTION

6. Intervenor notes that the paragraphs of the Complaint are numbered incorrectly, resulting in two paragraphs which are both numbered as Paragraph 6. Plaintiffs' allegations in the second Paragraph 6 of the Complaint concerning the jurisdictional bases for this action state legal conclusions that require no response.

GENERAL ALLEGATIONS

7. Paragraph 7 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute speaks for

itself.

8. Paragraph 8 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute speaks for itself.
9. Paragraph 9 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute and regulation speak for themselves.
10. Paragraph 10 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute speaks for itself.
11. Paragraph 11 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute and regulations speak for themselves.
12. Paragraph 12 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute and regulations speak for themselves.
13. Paragraph 13 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the regulations speak for themselves.
14. Paragraph 14 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute speaks for itself.

15. Paragraph 15 of the Complaint alleges legal conclusions to which Intervenor is not required to respond in this Answer. Intervenor further avers that the statute and regulations speak for themselves.
16. Intervenor admits that the Anacostia River experiences turbid conditions, which often follow rain events. To the extent that Paragraph 16 of the Complaint alleges other facts, Intervenor denies such facts.
17. Intervenor admits that the District did not submit TMDLs for TSS through 1999. To the extent that Paragraph 17 of the Complaint alleges legal conclusions, Intervenor is not required to respond in this Answer. To the extent that Paragraph 17 of the Complaint alleges other facts, Intervenor denies such facts. Intervenor further avers that the statute and referenced case law speak for themselves.
18. Intervenor admits that EPA approved TMDLs for TSS for the Anacostia River in March 2002. To the extent that Paragraph 18 of the Complaint alleges legal conclusions, Intervenor is not required to respond in this Answer. Intervenor further avers that the referenced case law speaks for itself.
19. Intervenor admits that EPA approved revised TMDLs for TSS for the Anacostia River and its tributaries on July 24, 2007. To the extent that Paragraph 19 of the Complaint alleges other facts, Intervenor denies such facts.
20. Paragraph 20 of the Complaint characterizes EPA's decision documents and the District of Columbia's regulations and requires no response. Intervenor further avers that the referenced documents and regulations speak for themselves.
21. Intervenor admits that turbidity can affect the growth of SAV. Intervenor is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 of the Complaint and, therefore, denies such allegations.

22. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of Paragraph 22 of the Complaint, including all subparts, and, therefore, denies such allegations. To the extent that Paragraph 22 of the Complaint, including all subparts, alleges legal conclusions, Intervenor is not required to respond in this Answer. Intervenor further avers that the regulations speak for themselves.
23. To the extent that Paragraph 23 of the Complaint alleges facts, Intervenor denies such facts. To the extent that Paragraph 23 of the Complaint alleges legal conclusions, Intervenor is not required to respond in this Answer.
24. To the extent that Paragraph 24 of the Complaint alleges facts, Intervenor denies such facts. To the extent that Paragraph 24 of the Complaint alleges legal conclusions, Intervenor is not required to respond in this Answer.

CLAIMS FOR RELIEF

25. Intervenor incorporates by reference its responses to Paragraphs 1-24 of the Complaint.
26. Intervenor denies Paragraph 26 of the Complaint and each of its subparts. Intervenor further avers that the statute and regulations speak for themselves.
27. Intervenor denies Paragraph 27 of the Complaint.
28. Intervenor denies any allegation in the Complaint requiring a response to which they have not specifically responded.
29. Intervenor denies that Plaintiffs are entitled to any relief demanded under the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing under Article III of the United States Constitution to assert the claims set forth in the Complaint.

THIRD AFFIRMATIVE DEFENSE

Intervenor reserves the right to assert any additional defenses deemed appropriate after further investigation and discovery.

WHEREFORE, having fully answered, the Intervenor requests that this action be dismissed, that judgment be entered for Defendants, and that the Court grant such other and further relief as it deems appropriate.

Respectfully submitted,

DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY

By Counsel

/s/ David E. Evans

David E. Evans (DC Bar No. PA0017)
Darin K. Waylett
McGuireWoods LLP
901 East Cary Street
Richmond, Virginia 23219
Telephone: (804) 775-1000
Facsimile: (804) 225-5410

Avis Marie Russell
General Counsel
District of Columbia
Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

*Counsel for the District of Columbia
Water and Sewer Authority*

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, a true copy of the foregoing Memorandum in Support of the District of Columbia Water and Sewer Authority's Motion to Intervene was mailed first-class, postage pre-paid, to:

Jennifer C. Chavez
Katherine D. Renshaw
Earthjustice
Massachusetts Ave., NW, Suite 702
Washington, DC 20036-2212
(202) 667-4500
Counsel for Plaintiffs

Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1101A EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Eric H. Holder
Attorney General
United States of America
950 Pennsylvania Ave., NW
Washington, DC 20530

Jeffrey A. Taylor
United States Attorney
District of Columbia
Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20530

/s/ David E. Evans