

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**FOOD AND WATER WATCH and
FRIENDS OF THE EARTH**

Plaintiffs,

V.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and
BOB PERCIASEPE, Acting Administrator,**

Defendants,

and

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES, VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES, INC., VIRGINIA NUTRIENT CREDIT EXCHANGE ASSOCIATION, INC., MARYLAND ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES, INC., NORTH CAROLINA WATER QUALITY ASSOCIATION, INC., WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION, INC., AND CSO PARTNERSHIP, INC. d/b/a WET WEATHER PARTNERSHIP, AMERICAN FARM BUREAU FEDERATION, AND NATIONAL ASSOCIATION OF HOME BUILDERS

Intervenors.

Case No. 1:12-cv-01639-RC
(Judge Contreras)

MUNICIPAL CLEAN WATER ASSOCIATIONS' ANSWER TO AMENDED COMPLAINT

Intervenor-Defendants National Association of Clean Water Agencies (“NACWA”), the Virginia Association of Municipal Wastewater Agencies, Inc. (“VAMWA”), the Virginia Nutrient Credit Exchange Association, Inc. (the “Virginia Exchange”), the Maryland Association of Municipal Wastewater Agencies, Inc. (“MAMWA”), the North Carolina Water Quality

Association, Inc. (“NCWQA”), the West Virginia Municipal Water Quality Association, Inc. (“WVMWQA”), and the CSO Partnership, Inc. d/b/a the Wet Weather Partnership (the “Partnership”) (collectively, the “Water Associations”), by counsel, hereby respond to Plaintiffs’ Amended Complaint for Declaratory Relief (“Amended Complaint”).

1. Paragraph 1 is Plaintiffs’ characterization of their lawsuit challenging the Chesapeake Bay Total Maximum Daily Loads (the “TMDL”), to which no response is required.

2. Water Associations admit the allegations contained in Paragraph 2.

3. Paragraph 3 is a legal conclusion, to which no response is required.

4. Paragraph 4 is a legal conclusion, to which no response is required.

5. The Water Associations deny the allegations contained in Paragraph 5.

6. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. The Water Associations deny that their members’ NPDES-permit authorized discharges contaminate waters or directly and adversely affect recreational, aesthetic, and economic interests contrary to law. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.

8. The Water Associations deny that water quality trades and offsets are contradictory to environmental health. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. The Water Associations deny that their members’ NPDES-permit authorized discharges contaminate waters or directly and adversely affect recreational, aesthetic, and economic interests contrary to law. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. The Water Associations admit that EPA is a federal agency and that its headquarters are located in the District of Columbia. The Water Associations further admit that EPA has primacy over the administration of the Clean Water Act's National Pollutant Discharge Elimination System ("NPDES") permit program in the District of Columbia. The remaining allegations in Paragraph 10 are legal conclusions, to which no response is required.

11. The Water Associations admit that Bob Perciasepe is the Acting Administrator of the EPA. The second sentence of Paragraph 11 is Plaintiffs' characterization of the responsibilities attendant to Mr. Perciasepe's position as Acting Administrator of the EPA, to which no response is required. The third sentence of Paragraph 11 is a characterization of Plaintiffs' lawsuit, to which no response is required.

12. Paragraph 12 is a legal conclusion, to which no response is required.

13. Paragraph 13 is a legal conclusion, to which no response is required.

14. Paragraph 14 is a legal conclusion and characterization of Plaintiffs' lawsuit, to which no response is required.

15. Paragraph 15 is a legal conclusion, to which no response is required.

16. The Water Associations admit the allegations contained in Paragraph 16.

17. The Water Associations admit the allegations contained in Paragraph 17.

18. The Water Associations admit the allegations contained in Paragraph 18.

19. The Water Associations admit that the Bay watershed contains more than 10,000 streams and rivers that eventually flow into the Bay. Water Associations deny the other allegations in Paragraph 19.

20. The Water Associations admit the allegations contained in Paragraph 20.

21. The Water Associations admit the allegations contained in Paragraph 21.

22. The Water Associations admit the allegations contained in Paragraph 22.

23. Paragraph 23 is a legal conclusion, to which no response is required.

24. The Water Associations admit the allegations contained in Paragraph 24.

25. The Water Associations admit the allegations contained in Paragraph 25.

26. Paragraph 26 is a legal conclusion, to which no response is required.

27. The Water Associations admit the allegations contained in Paragraph 27.

28. The Water Associations admit the allegations contained in Paragraph 28.

29. The Water Associations admit that excessive sediment suspended in the water column impairs the ability of light to penetrate the water column. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 29.

30. The Water Associations admit the allegations contained in Paragraph 30.

31. Paragraph 31 is a legal conclusion, to which no response is required.

32. The Water Associations admit the allegations contained in Paragraph 32.

33. The allegations in Paragraph 33 characterize settlement agreements and consent decrees, which speak for themselves and are the best evidence of their content. No response is required.

34. The allegations in Paragraph 34 characterize settlement agreements and consent decrees, which speak for themselves and are the best evidence of their content. No response is required. The allegations in Paragraph 34 further constitute conclusions of law, to which no response is required.

35. The allegations in Paragraph 35 characterize an Executive Order which speaks for itself and is the best evidence of its content. No response is required. The allegations in Paragraph 35 further constitute conclusions of law, to which no response is required.

36. Paragraph 36 is a legal conclusion, to which no response is required.

37. Paragraph 37 is a legal conclusion, to which no response is required.

38. Paragraph 38 is a legal conclusion, to which no response is required.

39. Paragraph 39 is a legal conclusion, to which no response is required.

40. Paragraph 40 is a legal conclusion, to which no response is required.

41. Paragraph 41 is a legal conclusion, to which no response is required.

42. Paragraph 42 is a legal conclusion, to which no response is required.

43. Paragraph 43 is a legal conclusion, to which no response is required.

44. Paragraph 44 is a legal conclusion, to which no response is required.

45. Paragraph 45 is a legal conclusion, to which no response is required.

46. Paragraph 46 is a legal conclusion, to which no response is required.

47. Paragraph 47 is a legal conclusion, to which no response is required.

48. Paragraph 48 is a legal conclusion, to which no response is required.

49. Paragraph 49 is a legal conclusion, to which no response is required.

50. Paragraph 50 is a legal conclusion, to which no response is required.

51. Paragraph 51 is a legal conclusion, to which no response is required.

52. Paragraph 52 is a legal conclusion, to which no response is required.

53. Paragraph 53 is a legal conclusion, to which no response is required.

54. Paragraph 54 is a legal conclusion, to which no response is required.

55. Paragraph 55 is a legal conclusion, to which no response is required.

56. Paragraph 56 is a legal conclusion, to which no response is required.

57. Paragraph 57 is a legal conclusion, to which no response is required.

58. Paragraph 58 is a legal conclusion, to which no response is required.

59. Paragraph 59 is a legal conclusion, to which no response is required.

60. Paragraph 60 is a legal conclusion, to which no response is required.

61. Paragraph 61 is a legal conclusion, to which no response is required.

62. Paragraph 62 is a legal conclusion, to which no response is required.

63. Paragraph 63 is a legal conclusion, to which no response is required.

64. Paragraph 64 is a legal conclusion, to which no response is required.

65. The Water Associations admit the allegations contained in Paragraph 65.

66. The allegations in Paragraph 66 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content. No response is required.

67. Paragraph 67 is a legal conclusion, to which no response is required.

Additionally, the allegations in Paragraph 67 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content. No response is required.

68. The allegations in Paragraph 68 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content. No response is required.

69. The allegations in Paragraph 69 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content. No response is required.

70. The allegations in Paragraph 70 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content. No response is required.

71. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71.

72. The allegations in Paragraph 72 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

73. The allegations in Paragraph 73 characterize the state WIPs, which speak for themselves and are the best evidence of their contents. No response is required.

74. The allegations in Paragraph 74 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

75. The allegations in Paragraph 75 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

76. The Municipal Associations admit the allegations contained in Paragraph 76.

77. The Water Associations deny the allegations contained in Paragraph 77.

78. The Water Associations deny the allegations contained in Paragraph 78.

79. The Water Associations deny the allegations contained in Paragraph 79.

80. The Water Associations deny the allegations contained in Paragraph 80.

81. The Water Associations deny that trading and offsets will perpetuate non-compliance with the TMDL in many areas of the Bay. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 81.

82. The Water Associations lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 regarding where Plaintiffs' members live and recreate; however, the Water Associations admit that certain of their members in the Chesapeake Bay water are actively involved in trading, offsetting, or both

83. The Water Associations admit the allegations contained in Paragraph 83.

84. Paragraph 84 is a legal conclusion, to which no response is required.

85. The Water Associations admit the allegations contained in Paragraph 85.

86. The Water Associations admit the allegations contained in Paragraph 86.

87. The Water Associations deny the allegations contained in Paragraph 87 because, among other reasons, trading and offsetting, as envisioned by the challenged TMDL and as actually conducted by members of the Water Associations, do not contravene the Clean Water Act.

88. The Water Associations incorporate the preceding responses.

89. The Water Associations deny the allegations contained in Paragraph 89.

90. The Water Associations deny the allegations contained in Paragraph 90.

91. The Water Associations deny the allegations contained in Paragraph 91.

92. The Water Associations deny the allegations contained in Paragraph 92.

93. The Water Associations deny the allegations contained in Paragraph 93.

94. The Water Associations deny the allegations contained in Paragraph 94.

95. The Water Associations deny the allegations contained in Paragraph 95, because, among other reasons, the trading provisions of the challenged TMDL are essential to (a) the viability of the TMDL itself, (b) future economic growth in the Bay watershed, and (c) attainment of the best degree of water quality possible in the Chesapeake Bay.

96. The Water Associations deny the allegations contained in Paragraph 96.

97. The Water Associations deny the allegations contained in Paragraph 97.

98. The Water Associations deny the allegations contained in Paragraph 98.

99. The Water Associations deny the allegations contained in Paragraph 99.

100. The Water Associations deny the allegations contained in Paragraph 100.

101. The Water Associations incorporate the preceding responses.

102. The allegations in Paragraph 102 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

103. The allegations in Paragraph 103 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

104. The allegations in Paragraph 104 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

105. The allegations in Paragraph 105 characterize the TMDL, which speaks for itself and is the best evidence of its content. No response is required.

106. The Water Associations deny the allegations contained in Paragraph 106.

107. Paragraph 107 is a legal conclusion, to which no response is required.

108. Paragraph 108 is a legal conclusion, to which no response is required.

109. The Water Associations deny the allegations contained in Paragraph 109.

110. The Water Associations deny that EPA's authorization of offsets violates the agency's CWA implementing regulations. The remaining allegations in Paragraph 110 are legal conclusions, to which no response is required.

111. The Water Associations deny the allegations contained in Paragraph 111.

112. The Water Associations deny the allegations contained in Paragraph 112.

113. The Water Associations incorporate the preceding responses.

114. The Water Associations deny the allegations contained in Paragraph 114.

115. Paragraph 115 is a legal conclusion, to which no response is required.

116. The allegations in Paragraph 116 characterize the challenged TMDL, which speaks for itself and is the best evidence of its content; and no response is required. The

allegations in Paragraph 116 further constitute conclusions of law, to which no response is required.

117. The allegations in Paragraph 117 characterize the TMDL, which speaks for itself and is the best evidence of its content; and no response is required. The allegations in Paragraph 117 further constitute conclusions of law, to which no response is required.

118. The allegations in Paragraph 118 characterize the TMDL, which speaks for itself and is the best evidence of its content; and no response is required. The allegations in Paragraph 118 further constitute conclusions of law, to which no response is required.

119. The allegations in Paragraph 119 characterize the TMDL, which speaks for itself and is the best evidence of its content; and no response is required. The allegations in Paragraph 119 further constitute conclusions of law, to which no response is required.

120. The Water Associations deny the allegations contained in Paragraph 120.

121. The Water Associations deny the allegations contained in Paragraph 121.

122. Paragraph 122 is a legal conclusion, to which no response is required.

The remaining allegations in the Amended Complaint are Plaintiffs' Prayer for Relief, which requires no response. To the extent a response is required, the Water Associations deny that Plaintiffs are entitled to such relief.

GENERAL DENIAL

Water Associations hereby deny each and every allegation in Plaintiffs' Amended Complaint not specifically admitted or otherwise responded to in this Answer.

AFFIRMATIVE DEFENSES

Plaintiffs have failed to state a claim for which relief can be granted with respect to one or more of the claims set forth in the Amended Complaint.

Water Associations reserve the right to raise any affirmative defense—including, but not limited to, those expressly found in Federal Rule of Civil Procedure 8(c)—that may be supported by the record in the instant action.

WHEREFORE, Water Associations respectfully request that this Court enter judgment in favor of Defendants and against Plaintiffs, and grant Water Associations such other relief as the Court deems appropriate.

Dated this 22nd day of April 2013.

Respectfully submitted,

/s/ Christopher D. Pomeroy
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Partnership, Inc. d/b/a Wet Weather
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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2013, a true and correct copy of the foregoing document was electronically filed with the Clerk of court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on April 22, 2013, a true and correct copy of the foregoing document was mailed by First-Class Mail, postage prepaid, to the following non-CM/ECF participant, addressed as follows:

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