

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

**AMERICAN FARM BUREAU
FEDERATION, *et al.*,
Plaintiffs**

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
Defendant,**

and

**NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES, MARYLAND
ASSOCIATION OF MUNICIPAL
WASTEWATER AGENCIES, and
VIRGINIA ASSOCIATION OF MUNICIPAL
WASTEWATER AGENCIES,
Proposed Intervenors.**

**Case No.
11-CV-00067-SHR
(Judge Rambo)**

MUNICIPAL CLEAN WATER ASSOCIATIONS' ANSWER

The National Association of Clean Water Agencies (“NACWA”), the Maryland Association of Municipal Wastewater Agencies, Inc. (“MAMWA”), and the Virginia Association of Municipal Wastewater Agencies, Inc. (“VAMWA”),

(collectively, “Municipal Intervenors”), by counsel, hereby respond to Plaintiffs’ First Amended Complaint. Because the scope of Municipal Intervenors’ intervention is limited to Plaintiffs’ First Claim for Relief (“EPA’s Final TMDL Violates the Clean Water Act and EPA Regulations”) and Fourth Claim for Relief (“EPA’s Final TMDL is *Ultra Vires*”), this Answer responds exclusively to the numbered paragraphs in Plaintiffs’ First Amended Complaint that pertain to the First and Fourth Claims for Relief.

1. The allegations in the first sentence of Paragraph 1 are Plaintiffs’ characterization of their lawsuit to which no response is required. The second sentence asserts legal conclusions to which no response is required. The third sentence is admitted.

2. Municipal Intervenors deny the first sentence of Paragraph 2. The allegations in the second and third sentences constitute legal conclusions to which no response is required.

3. The second sentence of Paragraph 3 is a legal conclusion to which no response required. The first, third and fourth sentences of Paragraph 3 do not pertain to the scope of Municipal Intervenors’ intervention and, therefore, are neither admitted nor denied.

4. The allegations in Paragraph 4 constitute legal conclusions and Plaintiffs' characterization of their requested relief, to which no response is required.

5. Municipal Intervenors admit the allegations in the first sentence of Paragraph 5. The allegations in the second sentence of Paragraph 5 constitute legal conclusions to which no response is required.

6. Municipal Intervenors admit that EPA is an agency of the United States. Municipal Intervenors lack knowledge or information to form a belief as to the truth of the allegation that Plaintiffs reside in this judicial district, and, on that basis, the allegations are denied.

7. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and, on that basis, they are denied.

8. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 8, and, on that basis, they are denied. The allegations in the second and third sentences of Paragraph 8, as well as and footnote 1, constitute legal conclusions to which no response is required.

9. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 9, and, on that

basis, they are denied. Furthermore, the remaining allegations in Paragraph 9 constitute legal conclusions to which no response is required.

10. Municipal Intervenors admit that the American Farm Bureau Federation provided comments on the Draft Bay TMDL.

11. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first and second sentences of Paragraph 11, and, on that basis, they are denied. The remaining allegations in the second sentence of Paragraph 11 constitute legal conclusions to which no response is required. Municipal Intervenors admit that the Pennsylvania Farm Bureau provided comments to EPA on the Draft TMDL.

12. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first, second, and third sentences of Paragraph 12. The remaining allegations in the second and third sentences of Paragraph 12 constitute legal conclusions to which no response is required. Municipal Intervenors admit that the Fertilizer Institute provided comments on the draft Chesapeake Bay TMDL.

13. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first, second, third, and fourth sentences of Paragraph 13, and, on that basis, they are denied. The remaining allegations in the fourth sentence of Paragraph 13 constitute legal

conclusions to which no response is required. Municipal Intervenors admit that the National Pork Council provided comments on the draft Chesapeake Bay TMDL.

14. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first, second, third, and fourth sentences of Paragraph 14, and, on that basis, they are denied. The remaining allegations in the fourth sentence of Paragraph 14 constitute legal conclusions to which no response is required. Municipal Intervenors admit that National Corn Growers Association provided comments on the draft Chesapeake Bay TMDL.

15. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first four sentences of Paragraph 15, and, on that basis, they are denied. The remaining allegations in the fourth sentence of Paragraph 15 constitute legal conclusions to which no response is required. Municipal Intervenors admit that National Chicken Council provided comments on the draft Chesapeake Bay TMDL.

16. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first three sentences of Paragraph 16, and, on that basis, they are denied. The remaining allegations in the third sentence of Paragraph 16 constitute legal conclusions to which no response is

required. Municipal Intervenors admit that U.S. Poultry & Egg Association provided comments on the draft Chesapeake Bay TMDL.

17. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first four sentences of Paragraph 17, and, on that basis, they are denied. The remaining allegations in the fourth sentence of Paragraph 17 constitute legal conclusions to which no response is required. Municipal Intervenors admit that National Turkey Federation provided comments on the draft Chesapeake Bay TMDL.

18. Municipal Intervenors admit the allegations in Paragraph 18.

19. The allegations in Paragraph 19 constitute legal conclusions to which no response is required.

20. The allegations in Paragraph 20 constitute legal conclusions to which no response is required.

21. The allegations in Paragraph 21 constitute legal conclusions to which no response is required.

22. The allegations in Paragraph 22 and footnotes 2 and 3 constitute legal conclusions to which no response is required.

23. The allegations in Paragraph 23 constitute legal conclusions to which no response is required.

24. The allegations in Paragraph 24 constitute legal conclusions to which no response is required.

25. The allegations in Paragraph 25 constitute legal conclusions to which no response is required.

26. The allegations in Paragraph 26 constitute legal conclusions to which no response is required.

27. The allegations in Paragraph 27 constitute legal conclusions to which no response is required.

28. The allegations in Paragraph 28 constitute legal conclusions to which no response is required.

29. The allegations in Paragraph 29 constitute legal conclusions to which no response is required.

30. The allegations in Paragraph 30 constitute legal conclusions to which no response is required.

31. The allegations in Paragraph 31 and footnote 4 constitute legal conclusions to which no response is required.

32. The allegations in Paragraph 32 constitute legal conclusions to which no response is required.

33. The allegations in Paragraph 33 constitute legal conclusions to which no response is required.

34. The allegations in Paragraph 34 constitute legal conclusions to which no response is required.

35. The allegations in Paragraph 35 are admitted.

36. Municipal Intervenors admit the allegations of Paragraph 36.

37. Municipal Intervenors admit the allegations of Paragraph 37.

38. Municipal Intervenors admit the allegations of Paragraph 38.

39. Municipal Intervenors admit that prior non-TMDL efforts have led to water quality improvement, but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 39, which on that basis are denied.

40. Municipal Intervenors admit that farmers have made major contributions to protecting the Bay through improvements, but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40, which on that basis are denied.

41. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 41, and, on that basis, they are denied.

42. Municipal Intervenors admit that the agricultural community has made significant loading reductions, but lack knowledge or information sufficient

to form a belief as to the truth of the remaining allegations in Paragraph 42, which on that basis are denied.

43. The allegations in Paragraph 43 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents.

44. The allegations in Paragraph 44 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

45. The allegations in Paragraph 45 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents. Additionally, the allegations in the second sentence of Paragraph 45 constitute legal conclusions to which no response is required.

46. The allegations in Paragraph 46 require no response because they purport to characterize the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL, each of which speaks for itself and is the best evidence of its contents.

47. The allegations in Paragraph 47 require no response because they purport to characterize the draft Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents. Furthermore, the allegations in each sentence in Paragraph 47 contain legal conclusions to which no response is required.

48. Municipal Intervenors admit the first sentence of Paragraph 48. The allegations in the second and third sentences constitute legal conclusions to which no response is required.

49. The allegations in Paragraph 49 require no response because they purport to characterize the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL, each of which speaks for itself and is the best evidence of its contents.

50. The allegations in the Paragraph 50 constitute legal conclusions to which no response is required.

51. The allegations in the first, fourth, and fifth sentences of Paragraph 51 constitute legal conclusions to which no response is required. The allegations in the second sentence of Paragraph 51 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents. The allegations in the third sentence of Paragraph 51, including footnote 5, require no response because they purport to characterize the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL, each of which speaks for itself and is the best evidence of its contents.

52. The allegations in Paragraph 52 require no response because they purport to characterize the administrative record, which speaks for itself and is the best evidence of its contents.

53. The allegations in Paragraph 53 constitute legal conclusions to which no response is required.

54. The allegations in Paragraph 54 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

55. The allegations in Paragraph 55 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

56. The allegations in Paragraph 56 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

57. The allegations in Paragraph 57 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

58. The allegations in Paragraph 58 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

59. The allegations in Paragraph 59 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

60. The allegations in Paragraph 60 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

61. The allegations in Paragraph 61 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

62. The allegations in Paragraph 62 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

63. The allegations in Paragraph 63 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

64. The allegations in Paragraph 64 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

65. The allegations in Paragraph 65 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

66. The allegations in Paragraph 66 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

67. The allegations in Paragraph 67 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

68. The allegations in Paragraph 68 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

69. The allegations in Paragraph 69 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

70. Municipal Intervenors admit the allegations in the first sentence of Paragraph 70. The allegations in the remainder of Paragraph 70 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents.

71. The allegations in Paragraph 71 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents.

72. Municipal Intervenors admit the allegations in Paragraph 72.

73. Municipal Intervenors admit the allegations in Paragraph 73.

74. The allegations in Paragraph 74 require no response because they purport to characterize the final Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents. The allegations in Paragraph 74 also constitute legal conclusions to which no response is required.

75. Municipal Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first sentence of Paragraph 75, and on that basis, they are denied. The remaining allegations in Paragraph 75 require no response because they purport to characterize the final Chesapeake Bay TMDL and other parts of the administrative record, each of which speaks for itself and is the best evidence of its contents.

76. Municipal Intervenors hereby re-allege and incorporate all preceding paragraphs.

77. The allegations in Paragraph 77 constitute legal conclusions to which no response is required.

78. The allegations in Paragraph 78 constitute legal conclusions to which no response is required.

79. The allegations in Paragraph 79 constitute legal conclusions to which no response is required.

80. The allegations in Paragraph 80 constitute legal conclusions to which no response is required.

81. The allegations in Paragraph 81 constitute legal conclusions to which no response is required.

82. The allegations in Paragraph 82 constitute legal conclusions to which no response is required.

83. The allegations in Paragraph 83 constitute legal conclusions to which no response is required.

84. Municipal Intervenors hereby re-allege and incorporate all preceding paragraphs.

85. The allegations in Paragraph 85 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

86. The allegations in Paragraph 86 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

87. The allegations in Paragraph 87 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

88. The allegations in Paragraph 88 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

89. Municipal Intervenors hereby re-allege and incorporate all preceding paragraphs.

90. The allegations in Paragraph 90 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

91. The allegations in Paragraph 91 do not pertain to the scope of Municipal Intervenors' intervention and, therefore, are neither admitted nor denied.

92. Municipal Intervenors hereby re-allege and incorporate all preceding paragraphs.

93. The allegations in Paragraph 93 constitute legal conclusions to which no response is required.

GENERAL DENIAL

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

AFFIRMATIVE DEFENSES

Plaintiffs have failed to state a claim as to the First Claim for Relief and the Fourth Claim for Relief.

WHEREFORE, Municipal Intervenors respectfully request that this Court enter judgment in favor of Defendant and against Plaintiffs on Plaintiff's First and

Fourth Claims for Relief, and grant Municipal Intervenor's such other relief as the Court deems appropriate.

Dated this 25th day of May 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2011, a true and correct copy of the foregoing document was electronically filed and served on the following in accordance with the Rules of the United States District Court for the Middle District of Pennsylvania:

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