

PREET BHARARA
United States Attorney for the
Southern District of New York
By: CHRISTOPHER CONNOLLY
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel.: (212) 637-2761
Fax: (212) 637-2786
E-mail: christopher.connolly@usdoj.gov

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
NATURAL RESOURCES DEFENSE COUNCIL, :
INC., MISSOURI COALITION FOR THE :
ENVIRONMENT, GULF RESTORATION :
NETWORK, ENVIRONMENTAL LAW & :
POLICY CENTER, IOWA ENVIRONMENTAL :
COUNCIL, TENNESSEE CLEAN WATER :
NETWORK, MINNESOTA CENTER FOR :
ENVIRONMENTAL ADVOCACY, SIERRA :
CLUB, WATERKEEPER ALLIANCE, INC., :
PRAIRIE RIVERS NETWORK, and KENTUCKY :
WATERWAYS ALLIANCE, :

Plaintiffs, :

v. :

LISA P. JACKSON, Administrator of the United :
States Environmental Protection Agency, and THE :
UNITED STATES ENVIRONMENTAL :
PROTECTION AGENCY, :

Defendants. :

----- X

No. 12 Civ. 1848 (PAC)

ANSWER

Defendants Lisa P. Jackson and the United States Environmental Protection Agency
("EPA") (collectively, "Defendants"), by their attorney, Preet Bharara, United States Attorney
for the Southern District of New York, answer the Amended Complaint on information and
belief as follows:

Introduction

1. Paragraph 1 consists of Plaintiffs' characterization of this action, to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs purport to bring this action pursuant to the Administrative Procedure Act ("APA") based on EPA's alleged delay in responding to Plaintiffs' November 2007 Petition for Rulemaking ("Petition"), but deny that Plaintiffs are entitled to the relief they seek.

2. Defendants admit that excess quantities of nitrogen and phosphorous can potentially fuel the growth of algae, that unchecked algal growth can potentially threaten human health and harm freshwater and marine aquatic life, that such pollution can potentially contribute to the formation of "dead zones," and that nutrient pollution in the Mississippi River Basin and northern Gulf of Mexico causes or contributes to a low-oxygen "dead zone" in the Gulf of Mexico. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2.

3. Defendants deny the allegations contained in the first sentence of paragraph 3. The second sentence of paragraph 3 consists of Plaintiffs' characterization of their Petition, to which no response is required. To the extent a response is required, the Petition speaks for itself, and Defendants respectfully direct the Court to the Petition for a true and correct statement of its contents.

4. Defendants admit that, as of the date of this Answer, EPA has not responded to Plaintiffs' Petition. The remainder of paragraph 4 consists of Plaintiffs' characterization of this action and conclusions of law, to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs seek the relief described, but deny that they are entitled to it.

Jurisdiction and Venue

5. Defendants neither admit nor deny the allegations contained in paragraph 5 because they are conclusions of law to which no response is required.

6. Defendants neither admit nor deny the allegations contained in paragraph 6 because they are conclusions of law to which no response is required. To the extent a response is required, Defendants admit that no real property is involved in this action and that New York, New York is located in the Southern District of New York, and deny knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff Natural Resources Defense Council maintains its principal place of business in New York, New York.

Parties

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18, but deny that Plaintiffs are entitled to the relief they seek.

19. Defendants admit that Lisa P. Jackson is the Administrator of EPA and is charged with the supervision and management of the agency's responsibilities under the Clean Water Act ("CWA"), and further admit that Plaintiffs sue Administrator Jackson in her official capacity only.

20. Defendants admit that EPA is an agency of the federal government that shares responsibility with other federal agencies and state, local, and tribal authorities under the CWA to protect the waters of the United States from pollution, and otherwise denies.

Statutory Framework

21. The allegations contained in paragraph 21 consist of Plaintiffs' characterization of the CWA, to which no response is required. To the extent a response is required, the CWA speaks

for itself, and Defendants respectfully direct the Court to the CWA for true and correct statements of its contents.

22. The allegations contained in paragraph 22 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

23. The allegations contained in paragraph 23 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

24. The allegations contained in paragraph 24 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

25. The allegations contained in paragraph 25 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

26. Defendants admit the allegations contained in the first and second sentences of paragraph 26. With respect to the allegations in the third sentence of paragraph 26, Defendants admit that EPA published an assessment of the state of secondary treatment technology pursuant to § 304 in 1985, but deny that such publication was EPA's last assessment of the state of secondary treatment technology.

27. The allegations contained in paragraph 27 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

28. The allegations contained in paragraph 28 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

29. The allegations contained in paragraph 29 consist of Plaintiffs' characterization of the cited statute, to which no response is required. To the extent a response is required, the statute speaks for itself, and Defendants respectfully direct the Court to the statute for a true and correct statement of its contents.

Statement of Facts

30. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30, because those allegations are vague and refer to unspecified "previous information concerning secondary treatment published pursuant to § 304."

31. Defendants admit that the current secondary treatment standards, codified at 40 C.F.R. § 133, do not include a specific requirement to remove nutrients, and aver that, to the extent any nutrient removal is achieved pursuant to secondary treatment processes, such removal is not mandated under the current secondary treatment standards.

32. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 32, because those allegations are vague, refer to unspecified

“„secondary treatment’ technology,” and use undefined terms such as “high degree of nutrient removal.”

33. Defendants admit the allegations contained in paragraph 33.

34. Defendants admit that, as of the date of this Answer, EPA has not responded to the Petition.

35. Defendants admit the allegations contained in paragraph 35, except deny to the extent Plaintiffs allege that EPA has an obligation to provide Plaintiffs with notice of the date by which it intends to respond to the Petition or information concerning reasons, if any, for its timing in responding to the Petition.

First Claim for Relief

36. Defendants deny the allegations contained in paragraph 36.

37. Defendants deny the allegations contained in paragraph 37.

38. Defendants deny the allegations contained in paragraph 38.

Prayer for Relief

The remainder of the Amended Complaint contains Plaintiffs’ Prayer for Relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief they seek.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted insofar as Plaintiffs challenge the timing of EPA's response to the Petition pursuant to 5 U.S.C. § 706(1), including because EPA has reasonably exercised its discretion.

SECOND DEFENSE

Because defendants' processing of Plaintiffs' Petition has been reasonable, the Court in its equitable discretion should deny Plaintiffs the relief requested in the Amended Complaint.

THIRD DEFENSE

To the extent Plaintiffs' claims may be barred by one or more affirmative defenses not specifically cited above, Defendants incorporate all such affirmative defenses herein.

WHEREFORE, Defendants respectfully request that this Court enter judgment dismissing the Amended Complaint in its entirety, and for such other relief as the Court deems proper, including costs.

Dated: New York, New York
June 18, 2012

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: /s/ Christopher Connolly
CHRISTOPHER CONNOLLY
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2761
Facsimile: (212) 637-2786
E-mail: christopher.connolly@usdoj.gov

TO: Ann Alexander, Esq. (by ECF)
Thomas Joseph Cmar, Esq. (by ECF)
Natural Resources Defense Council
2 N. Riverside Plaza, Ste. 2250
Chicago, IL 60606
Counsel for Plaintiffs

Jessica Dexter, Esq. (by ECF)
Environmental Law & Policy Center
35 East Wacker, Suite 1600
Chicago, IL 60601
Counsel for Plaintiff Environmental Law & Policy Center