

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
(Huntington Division)

OHIO VALLEY ENVIRONMENTAL)
COALITION, *et al.*,)
)
Plaintiffs,)
)
v.) Civil Action No. 3:02-CV-59
)
CHRISTIE WHITMAN, Administrator,)
United States Environmental Protection Agency,)
)
Defendant,)
)
and)
)
WEST VIRGINIA MUNICIPAL WATER)
QUALITY ASSOCIATION *et al.*,)
)
Intervenor-Defendants.)

**JOINT ANSWER OF
WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION
WEST VIRGINIA MUNICIPAL LEAGUE, AND
ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES**

Intervenor-Defendants the West Virginia Municipal Water Quality Association, the West Virginia Municipal League, and the Association of Metropolitan Sewerage Agencies (collectively, the “Municipal Associations”), state as their Answer to the Complaint filed in this action the following.

INTRODUCTION

1. In response to Paragraph 1 of the Complaint, the Municipal Associations admit that Plaintiffs seek review of a decision of the United States Environmental Protection Agency (“EPA”) to approve a West Virginia regulation entitled “Antidegradation

Implementation Procedures.” The Municipal Associations deny that this decision was made in violation of EPA’s duties under the Clean Water Act or its implementing regulations and deny that Plaintiffs are entitled to the relief they state in Paragraph 1.

JURISDICTION AND VENUE

2. Plaintiffs’ allegations in Paragraph 2 of the Complaint concerning the jurisdictional bases for this action state legal conclusions that require no response.
3. Plaintiffs’ allegations in Paragraph 3 of the Complaint concerning proper venue for this action state legal conclusions that require no response.

PARTIES

4. In response to Paragraph 4 of the Complaint, the Municipal Associations admit that Christine T. Whitman is the Administrator of EPA and has certain supervisory and management responsibilities for the EPA. To the extent that Paragraph 4 alleges other facts, the Municipal Associations deny such facts.
5. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 5 and, therefore, deny such allegations.
6. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 6 and, therefore, deny such allegations.
7. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 7 and, therefore, deny such allegations.
8. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 8 and, therefore, deny such allegations.
9. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 9 and, therefore, deny such allegations.

10. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 10 and, therefore, deny such allegations.
11. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 11 and, therefore, deny such allegations.
12. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 12 and, therefore, deny such allegations.
13. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 13 and, therefore, deny such allegations.
14. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 14 and, therefore, deny such allegations.
15. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 15 and, therefore, deny such allegations.
16. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 16 and, therefore, deny such allegations.
17. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 17 and, therefore, deny such allegations.
18. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 18 and, therefore, deny such allegations.
19. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 19 and, therefore, deny such allegations.
20. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 20 and, therefore, deny such allegations.

21. The Municipal Associations are without knowledge or information sufficient to form a belief as to the truth of Paragraph 21 and, therefore, deny such allegations.

STATUTORY AND REGULATORY BACKGROUND

22. Paragraph 22 of the Complaint alleges legal conclusions to which the Municipal Associations are not required to respond in this Answer. The Municipal Associations further aver that the statute speaks for itself.

23. Paragraph 23 of the Complaint alleges legal conclusions to which the Municipal Associations are not required to respond in this Answer. The Municipal Associations further aver that the statute speaks for itself.

24. Paragraph 24 of the Complaint alleges legal conclusions to which the Municipal Associations are not required to respond in this Answer. The Municipal Associations further aver that the statute speaks for itself.

25. Paragraph 25 of the Complaint alleges legal conclusions to which the Municipal Associations are not required to respond in this Answer. The Municipal Associations further aver that the regulation speaks for itself.

26. Paragraph 26 of the Complaint alleges legal conclusions to which the Municipal Associations are not required to respond in this Answer. The Municipal Associations further aver that the regulation speaks for itself.

FACTS

27. The Municipal Associations admit Paragraph 27 of the Complaint.

28. The Municipal Associations deny Paragraph 28 of the Complaint and deny each of its subparts 28.A through and including 28.S.

29. The Municipal Associations admit Paragraph 29 of the Complaint.

CLAIM

30. The Municipal Associations incorporate by reference their collective responses to Paragraphs 1-29.
31. The Municipal Associations deny Paragraph 31 of the Complaint.
32. The Municipal Associations deny Paragraph 32 of the Complaint.
33. The Municipal Associations deny any allegation in the Complaint requiring a response to which they have not specifically responded.
34. The Municipal Associations deny that Plaintiffs are entitled to any relief demanded under the Complaint.

FIRST DEFENSE

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

SECOND DEFENSE

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

THIRD DEFENSE

This Court lacks jurisdiction with respect to Plaintiffs' claims.

FOURTH DEFENSE

Plaintiffs have failed to exhaust their administrative remedies.

FIFTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of laches and estoppel.

SEVENTH DEFENSE

The Municipal Associations reserve the right to assert any additional defenses deemed appropriate after further investigation and discovery.

WHEREFORE, having fully answered, the Municipal Associations request that this action be dismissed and that judgment be entered for Defendants.

Respectfully submitted,

WEST VIRGINIA MUNICIPAL WATER
QUALITY ASSOCIATION

WEST VIRGINIA MUNICIPAL LEAGUE

ASSOCIATION OF METROPOLITAN
SEWERAGE AGENCIES

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