

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

FILED
MAR 25 2002
SAMUEL L. KAY, CLERK
U. S. District & Bankruptcy Courts
Southern District of West Virginia

OHIO VALLEY ENVIRONMENTAL)
COALITION, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CHRISTINE TODD WHITMAN,)
 Administrator, United States)
 Environmental Protection Agency,)
)
 Defendant.)

Case No. 3:02-0059

DEFENDANT'S ANSWER

Christine Todd Whitman, Administrator, United States Environmental Protection Agency ("EPA"), by counsel, hereby answers plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint") as follows:

INTRODUCTION

1. The first sentence of Paragraph 1 contains plaintiffs' characterization of this action and no response is required but, to the extent a response to that sentence is deemed necessary, EPA admits that EPA approved the West Virginia Antidegradation Implementation Procedures Rule - Title 60 Code of State Regulation Series 5 ("60 C.S.R. 5") - as set forth in the November 26, 2001 letter and enclosure thereto from Rebecca Hanmer, Director, Water Protection Division, EPA Region III to Allyn G. Turner, Division of Water Resources, West Virginia Department of Environmental Protection. Those documents speak for themselves. The second sentence of Paragraph 1 states a conclusion of law to which no response is required but, to the extent a response to that sentence is deemed necessary, EPA denies the allegations in that sentence. The third sentence of Paragraph 1 contains plaintiffs' characterization of the

relief that plaintiffs seek in this action and no response is required.

2. Paragraph 2 states conclusions of law to which no response is required.

3. Paragraph 3 states conclusions of law to which no response is required but, to the extent a response is deemed necessary, EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations regarding the residence of several plaintiffs in this action.

4. With respect to the first sentence of Paragraph 4, EPA admits that Christine Todd Whitman is the Administrator of EPA and states that the remainder of that sentence contains plaintiffs' characterization of this action to which no response is required. The second sentence of Paragraph 4 is vague and ambiguous and no response is required but, to the extent a response is deemed necessary, EPA admits that CWA section 303, 33 U.S.C. § 1313, vests in the Administrator of EPA the authority to carry out the responsibilities set forth therein, which includes the authority to approve or disapprove state water quality standards.

5. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 5.

6. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 8.

9. EPA is without knowledge of information sufficient to form a belief as to the truth

of the allegations of Paragraph 9.

10. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 10.

11. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 11.

12. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 12.

13. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 14.

15. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 15.

16. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

17. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

19. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations of Paragraph 19.

20. EPA is without knowledge of information sufficient to form a belief as to the truth

of the allegations in the first sentence of Paragraph 20. EPA denies the remaining allegations of Paragraph 20.

21. EPA is without knowledge of information sufficient to form a belief as to the truth of the allegations in the first through seventh sentences of Paragraph 21. EPA denies the remaining allegations of Paragraph 21.

STATUTORY AND REGULATORY BACKGROUND

22. Paragraph 22 states conclusions of law to which no response is required. EPA further states that the statutory sections excerpted and discussed in this paragraph speak for themselves.

23. Paragraph 23 states conclusions of law to which no response is required. EPA further states that the statutory and regulatory sections discussed in this paragraph speak for themselves.

24. Paragraph 24 states conclusions of law to which no response is required. EPA further states that the statutory and regulatory sections discussed in this paragraph speak for themselves.

25. Paragraph 25 states conclusions of law to which no response is required. EPA further states that the regulatory section discussed in this paragraph speaks for itself.

26. Paragraph 26 states conclusions of law to which no response is required. EPA further states that the regulatory sections discussed in this paragraph speak for themselves.

FACTS

27. EPA admits that by letter dated July 5, 2001 and pursuant to CWA section 303(c)(2)(A), West Virginia submitted to EPA the antidegradation implementation procedures

identified as 60 C.S.R. 5. That document speaks for itself.

28. Paragraph 28 states conclusions of law to which no response is required but, to the extent a response is deemed necessary, EPA denies that the West Virginia antidegradation procedures submitted to EPA by letter dated July 5, 2001 are inconsistent with 40 C.F.R. § 131.12. EPA further states that the regulatory sections discussed in subparts A - S of Paragraph 28 speak for themselves.

29. EPA admits that, pursuant to CWA section 303(c)(3), EPA approved the antidegradation implementation procedures identified as 60 C.S.R. 5 and submitted by West Virginia by letter dated July 5, 2001, as set forth in the EPA letter dated November 26, 2001 and enclosure thereto. Those documents speak for themselves.

30. Paragraph 30 merely incorporates by reference the allegations of Paragraphs 1-29 and no response is required but, to the extent a response is deemed necessary, EPA incorporates by reference its responses to Paragraphs 1-29.

31. Paragraph 31 states a conclusion of law to which no response is required but, to the extent a response is deemed necessary, EPA denies the allegations in that paragraph.

32. Paragraph 32 states conclusions of law to which no response is required but, to the extent a response is deemed necessary, EPA denies the allegations in that paragraph.

RELIEF

1 - 4. Paragraphs 1 - 4 of the Relief section of the Complaint merely state plaintiffs' requests for relief and no response is required but, to the extent a response is deemed necessary, EPA denies that plaintiffs are entitled to the relief that plaintiffs seek.

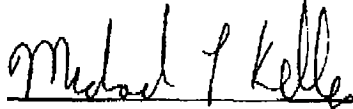
GENERAL DENIAL

Except as expressly admitted or otherwise stated herein, EPA denies each and every allegation of the Complaint.

WHEREFORE, EPA requests that the Court enter judgment in favor of EPA, that plaintiffs' prayers for relief be denied in their entirety and that EPA be awarded such relief that the Court deems just and proper under the circumstances.

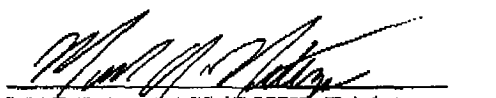
Respectfully submitted,

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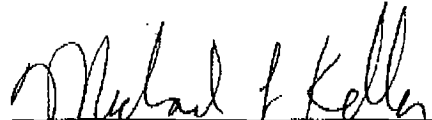
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANT'S ANSWER was served upon counsel at the addresses listed below by first class mail this 25th day of March 2002.

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