

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

DELAWARE RIVERKEEPER NETWORK)
and MAYA K. VAN ROSSUM, *the Delaware*)
Riverkeeper)

Plaintiffs,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, et al.,)

Defendants.)

Case No. 2:24-cv-05308

ANSWER

Defendants U.S. Environmental Protection Agency, et al. (“EPA”), by their attorneys, answer Plaintiffs’ Complaint as set forth herein. Any allegation not specifically admitted, denied, or qualified is denied.

GENERAL RESPONSE

Except for the allegations specifically admitted below, EPA denies each and every allegation in the Complaint.

SPECIFIC RESPONSES

1. This allegation contains Plaintiffs’ characterizations of the action, to which no response is required. To the extent a response is required, EPA admits that Plaintiffs filed their Complaint asserting causes of action under the Administrative Procedure Act and Clean Water Act regarding EPA’s proposed water quality standards for specific zones of the Delaware River.
2. Admit.

3. EPA admits only that on December 1, 2022, the Agency issued an Administrator's Determination for the Delaware River. The remaining allegations in this paragraph purport to characterize the Administrator's Determination, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations in this paragraph are inconsistent with EPA's Administrator's Determination, they are denied.

4. This allegation purports to characterize EPA's letter dated December 1, 2022, responding to a petition submitted by Delaware Riverkeeper Network and other organizations and attaching the Administrator's Determination. The December 1, 2022 letter speaks for itself and is the best evidence of its contents. To the extent the allegation is inconsistent with EPA's response, it is denied.

5. EPA admits only that on December 1, 2022, the Agency issued an Administrator's Determination for the Delaware River. The remaining allegations in this paragraph purport to characterize the Administrator's Determination, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations are inconsistent with EPA's Administrator's Determination, they are denied.

6. EPA admits only that it proposed water quality standards for the Delaware River on December 21, 2023, and, as of the date of this filing, has not promulgated final water quality standards. The remaining allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations are inconsistent with that statute, they are denied.

7. This allegation contains Plaintiffs' characterizations of the action, to which no response is required. To the extent a response is required, EPA admits only that Plaintiffs filed their Complaint asserting causes of action under the Administrative Procedure Act and Clean Water

Act regarding EPA's proposed water quality standards for specific zones of the Delaware River.

8. As to the first sentence in this paragraph, EPA admits only that the Court has subject matter jurisdiction over the Clean Water Act claim in the Complaint. The second sentence of this paragraph characterizes a federal statute that speaks for itself and is the best evidence of its contents. EPA denies the allegations in the second sentence to the extent that they are inconsistent with that statute.

9. EPA admits only that the Court has subject matter jurisdiction over the Administrative Procedure Act claim in the Complaint and denies the remaining allegations.

10. EPA admits only that, as a general matter, the statutes cited in this paragraph provide district courts with the authority to grant declaratory and injunctive relief. EPA denies the remaining allegations in this paragraph.

11. EPA admits only that venue is proper in this district and denies the remaining allegations.

12. This allegation consists of Plaintiffs' legal conclusions, to which no response is required. EPA admits only that it received notice via certified mail on August 4, 2024, that is attached to the Complaint as Exhibit A.

13. EPA lacks knowledge or information sufficient to form a belief as to the truth of the allegations, except to admit that Delaware Riverkeeper Network is a plaintiff in this lawsuit.

14. EPA lacks knowledge or information sufficient to form a belief as to the truth of the allegations, except to admit that Maya K. van Rossum is a plaintiff in this lawsuit.

15. Admit.

16. Admit.

17. Admit.

18. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

19. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

20. The allegations in this paragraph purport to characterize a federal statute and regulation, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or regulation, they are denied.

21. The allegations in this paragraph purport to characterize a federal regulation, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that regulation, they are denied.

22. The allegations in this paragraph purport to characterize a federal judicial decision, *Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 39 (D.D.C. 2011), which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that decision, they are denied.

23. The allegations in this paragraph purport to characterize a federal statute and regulation, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or regulation, they are denied.

24. The allegations in this paragraph purport to characterize a federal statute and regulation, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or regulation, they are denied.

25. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

26. The allegations in this paragraph purport to characterize a federal statute and regulation, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or regulation, they are denied.

27. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

28. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

29. The allegations in this paragraph purport to characterize the Delaware River Basin Compact and a federal judicial decision, *New Jersey v. New York*, 347 U.S. 995 (1954), which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with the Delaware River Basin Compact or that decision, they are denied.

30. The allegations in this paragraph purport to characterize the Delaware River Basin Compact, the Delaware River Basin Commission Delaware River Basin Water Code, and the regulation at 18 C.F.R. Part 410, which speak for themselves and are the best evidence of their contents.¹ To the extent the allegations are inconsistent with the Delaware River Basin

¹ At paragraph 30 of the Complaint, Plaintiffs erroneously cite to 18 C.F.R. § 410. Defendants assume Plaintiffs intended to cite to 18 C.F.R. Part 410.

Compact, the Delaware River Basin Commission Delaware River Basin Water Code, or the regulation at 18 C.F.R. Part 410, they are denied.

31. The allegations in this paragraph purport to characterize the Delaware River Basin Compact, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with the Delaware River Basin Compact, they are denied.

32. The allegations in this paragraph purport to characterize a federal statute, the Delaware River Basin Compact, and a Delaware River Basin Commission Resolution, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with the statute, the Delaware River Basin Compact, or the Delaware River Basin Commission Resolution, they are denied.

33. The allegations in this paragraph purport to characterize a federal statute and two federal judicial decisions, which speak for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or two decisions, they are denied.

34. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

35. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

36. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

37. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

38. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis.

39. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and denies them on that basis. To the extent that the allegations in this paragraph refer to a Delaware River Basin Commission resolution, that resolution speaks for itself and is the best evidence of its contents. To the extent the allegations in this paragraph are inconsistent with the resolution, they are denied.

40. EPA admits only that Plaintiffs and four other organizations petitioned EPA and its Administrator on April 29, 2022, to engage in a rulemaking to revise the water quality standards for specific zones of the Delaware River. The remaining allegations in this paragraph purport to characterize the petition, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations in this paragraph are inconsistent with the petition, they are denied.

41. EPA admits only that on December 1, 2022, the Agency issued an Administrator's Determination for the Delaware River. The remaining allegations in this paragraph purport to characterize the Administrator's Determination, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations in this paragraph are inconsistent with EPA's Administrator's Determination, they are denied.

42. EPA admits only that on December 1, 2022, the Agency sent a letter dated December 1, 2022, responding to a petition submitted by Delaware Riverkeeper Network and other organizations and attaching the Administrator's Determination. The remaining allegations in this paragraph purport to characterize the December 1, 2022 letter, which speaks for itself and

is the best evidence of its contents. To the extent the remaining allegations in this paragraph are inconsistent with EPA's December 1, 2022 letter, they are denied.

43. EPA admits only that on December 21, 2023, the Agency proposed revised water quality standards for aquatic life for specific zones of the Delaware River. The remaining allegations in this paragraph purport to characterize EPA's proposed rule, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations in this paragraph are inconsistent with EPA's proposed rule, they are denied.

44. The allegations in this paragraph purport to characterize EPA's proposed rule, which speaks for itself and is the best evidence of its contents. To the extent the allegations in this paragraph are inconsistent with EPA's proposed rule, they are denied.

45. EPA admits only that it proposed water quality standards for the Delaware River on December 21, 2023. The remaining allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the remaining allegations are inconsistent with that statute, they are denied.

46. This allegation purports to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

47. Admit. EPA avers that it aims to promulgate the final water quality standards by summer 2025.

48. EPA incorporates by reference all preceding paragraphs.

49. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

50. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

51. Admit.

52. Admit. EPA avers that it aims to promulgate the final water quality standards by summer 2025.

53. The allegations in this paragraph state a conclusion of law that requires no response. In addition, they purport to characterize a federal statute and regulations, which speaks for themselves and are the best evidence of their contents. To the extent the allegations are inconsistent with that statute or regulations, they are denied.

54. EPA incorporates by reference all preceding paragraphs.

55. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

56. The allegations in this paragraph purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

57. The allegations in this paragraph state a conclusion of law that requires no response. In addition, it purports to characterize a federal statute, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with that statute, they are denied.

58. Admit.

59. Admit. EPA avers that it aims to promulgate the final water quality standards by summer 2025.

60. Deny.

61. Deny.

* * *

The allegations in the Prayer for Relief and subparagraphs are legal conclusions and require no response.

Dated: December 9, 2024

/s/ Jeffrey Hammons
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