

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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

Plaintiffs,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

Defendant.

Case No. 1:11-CV-0067

(Judge Rambo)

DEFENDANT'S ANSWER TO THE FIRST AMENDED COMPLAINT

Defendant, United States Environmental Protection Agency (“EPA” or “the Agency”), through undersigned counsel, hereby responds to the correspondingly numbered paragraphs in Plaintiffs’ First Amended Complaint (“the Complaint”) as follows:

1. The allegations in Paragraph 1 characterize Plaintiffs’ lawsuit (first sentence) and assert conclusions of law (second sentence) to which no response is required. The remaining allegations require no response because they purport to characterize the final Chesapeake Bay Total Maximum Daily Load (“TMDL”), which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in Paragraph 1.

2. Defendant denies the allegations in the first and second sentences of Paragraph 2. The allegations in the third sentence of Paragraph 2 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in the third sentence of Paragraph 2.

3. Defendant denies the allegations in Paragraph 3.

4. The allegations in Paragraph 4 constitute legal conclusions and Plaintiffs' characterization of their requested relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the relief requested in Paragraph 4.

JURISDICTION AND VENUE¹

5. Defendant admits 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. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 5.

6. Defendant admits that EPA is an agency of the United States. Defendant lacks 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, it is denied. The remaining allegations in Paragraph 6 constitute legal conclusions to which no response is required.

PARTIES

7. Defendant lacks 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. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and, on that basis, they are denied. In addition, the allegations in the second, third, and fourth sentences of Paragraph 8 (including footnote 1) constitute legal conclusions to which no response is required.

¹ For the convenience of the reader, this Answer sets forth the headings and subheadings used in Plaintiffs' Complaint. Defendant intends no admission by adopting this convention.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and, on that basis, they are denied. In addition, the allegations in Paragraph 9 constitute legal conclusions to which no response is required.

10. Defendant admits that the American Farm Bureau Federation provided comments on the Draft Bay TMDL. The remaining allegations in Paragraph 10 require no response because they purport to characterize Plaintiff the American Farm Bureau Federation's comments which speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 10 because they do not accurately characterize the administrative record.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first two 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. To the extent a response is required, Defendant denies the remaining allegations in the second sentence of Paragraph 11. Defendant admits that Pennsylvania Farm Bureau provided comments on the draft Chesapeake Bay TMDL.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first three sentences of Paragraph 12 and, on that basis, they are denied. The remaining allegations in the second and third sentences of Paragraph 12 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the remaining allegations in the second sentence of Paragraph 12. Defendant admits that The Fertilizer Institute provided comments on the draft Chesapeake Bay TMDL.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first four 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. To the extent a response is required, Defendant denies the remaining allegations in the fourth sentence of Paragraph 13. Defendant admits that The National Pork Council provided comments on the draft Chesapeake Bay TMDL.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations in the first four 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. To the extent a response is required, Defendant denies the remaining allegations in the fourth sentence of Paragraph 14. Defendant admits that National Corn Growers Association provided comments on the draft Chesapeake Bay TMDL.

15. Defendant lacks 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. To the extent a response is required, Defendant denies the remaining allegations in the fourth sentence of Paragraph 15. Defendant admits that National Chicken Council provided comments on the draft Chesapeake Bay TMDL.

16. Defendant lacks 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. To the extent a response is required, Defendant

denies the remaining allegations in the third sentence of Paragraph 16. Defendant admits that U.S. Poultry & Egg Association provided comments on the draft Chesapeake Bay TMDL.

17. Defendant lacks 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. To the extent a response is required, Defendant denies the remaining allegations in the fourth sentence of Paragraph 17. Defendant admits that National Turkey Federation provided comments on the draft Chesapeake Bay TMDL.

18. Defendant admits the allegations in Paragraph 18.

STATUTORY AND REGULATORY FRAMEWORK

19. The allegations in Paragraph 19 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 19.

20. The allegations in Paragraph 20 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 20.

A. Overview of Clean Water Act Regulation

21. The allegations in Paragraph 21 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 and footnotes 2 and 3 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 22 and footnotes 2 and 3.

23. The allegations in Paragraph 23 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 23,

24. The allegations in Paragraph 24 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 24.

25. The allegations in Paragraph 25 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 25.

B. Development of Water Quality Standards

26. The allegations in Paragraph 26 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 26.

27. The allegations in Paragraph 27 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 27.

C. Development of TMDLs for Listed Waters

28. The allegations in Paragraph 28 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 28.

29. The allegations in Paragraph 29 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 30.

D. Implementation of TMDLs

31. The allegations in Paragraph 31 and footnote 4 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 31 and footnote 4.

32. The allegations in Paragraph 32 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 32.

E. Addressing Impairment Caused by Nonpoint Sources

33. The allegations in Paragraph 33 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 33.

34. The allegations in Paragraph 29 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 34.

FACTUAL BACKGROUND

A. Chesapeake Bay Program and Tributary Strategies

35. The allegations Paragraph 35 constitute legal conclusions to which no response is required. Further, the allegations in Paragraph 35 require no response to the extent they purport to characterize the Chesapeake Bay Program's structure, membership, or agreements, the relevant Chesapeake Bay Program documents, and other parts of the administrative record,

which speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendant denies the allegations in Paragraph 35 because they do not accurately characterize the administrative record.

36. In response to the first sentence of Paragraph 36 Defendant admits that, in April 2003, EPA published a water quality guidance document titled *Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries* (EPA, April 2003), which was subsequently supplemented by several addenda. Defendant admits that Secretary Tayloe Murphy on behalf of the Principle Steering Committee of the Chesapeake Bay Program issued a memo to the other Bay jurisdictions regarding the distribution of nutrient and sediment loadings in 2003. To the extent the allegations of Paragraph 36 purport to characterize the water quality guidance document or allocation memo, no response is required because those documents speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 36.

37. Defendant admits that Maryland, Virginia, the District of Columbia, and Delaware adopted water quality standards for the tidal waters of the Chesapeake Bay. To the extent the allegations of Paragraph 37 purport to characterize those water quality standards, no response is required because those documents speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 37.

38. Defendant admits that in 2007 the seven watershed jurisdictions and EPA reached consensus on a target date of 2025 for necessary pollution control measures to be in place, and denies the remainder of the allegations in Paragraph 38.

39. With respect to the allegations in the first sentence of Paragraph 39, Defendant denies that efforts prior to establishment of the Bay TMDL were making sufficient improvements in the water quality and overall health of the Chesapeake Bay. The allegations in the second sentence of Paragraph 39 require no response because they purport to characterize the administrative record, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 39 because they do not accurately characterize the administrative record.

B. Success of Bay Watershed Agricultural Community in Reducing Pollution to the Bay

40. With respect to the allegations in Paragraph 40, Defendant admits that many farmers in the Chesapeake Bay watershed have contributed to protecting the Bay through improved farmland practices in recent years, including more efficient use of fertilizer and best management practices. The remaining allegations in Paragraph 40 require no response because they purport to characterize the administrative record, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the remaining allegations because they do not accurately characterize the administrative record.

41. Defendant admits that the Natural Resources Conservation Service (“NRCS”) released a review draft of a report in October 2010. The remaining allegations in Paragraph 41 require no response because they purport to characterize the NRCS draft report or the administrative record, which speak for themselves and are the best evidence of their contents. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 41 because they do not accurately characterize the draft report or the administrative record.

42. The allegations in Paragraph 42 require no response because they purport to characterize a document used by Defendant at a public meeting in Washington, DC, regarding

the draft Chesapeake Bay TMDL, which document speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in Paragraph 42 because they do not accurately characterize the administrative record.

C. Development of a Federal TMDL – Usurping State Authority

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. To the extent a response is required, Defendant denies the allegations in Paragraph 43 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

44. The allegations in the first sentence of Paragraph 44 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 44. Defendant denies the allegations in the remainder of Paragraph 44.

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. To the extent a response is required, Defendant denies the allegations in Paragraph 45 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

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. To the extent a response is required, Defendant denies the allegations in Paragraph 46 because they do not accurately

characterize the administrative record, including the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL.

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. The allegations in all three sentences of Paragraph 47 contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48. The allegations in the second and third sentences of Paragraph 48 also 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. To the extent a response is required, Defendant denies the allegations in Paragraph 49 because they do not accurately characterize the administrative record, including the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL.

50. Defendant denies the allegations in the first sentence of Paragraph 50. The allegations in the second sentence of Paragraph 50 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 50.

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. To the extent a response is required, Defendant denies the allegations in Paragraph 51.

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. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 52 because they do not accurately characterize the administrative record.

53. The allegations in Paragraph 53 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 53.

D. Development of a Federal TMDL – Model Networks

54. Defendant admits the allegations in Paragraph 54.

55. In the first sentence, Defendant admits that many factors including those alleged in Paragraph 55 influence aquatic life uses and parameters of the Chesapeake Bay. Regarding the second and third sentences, in paragraph 55, Defendant also admits that, while nitrogen, phosphorus, and sediment are essential for aquatic life, too much of those substances are not beneficial to a healthy Bay ecosystem and may negatively impact dissolved oxygen, water clarity, submerged aquatic vegetation as well as chlorophyll *a* criteria

56. Because the meaning of the phrase “EPA does not know precisely” is not clear, especially in this highly technical context, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the first two sentences of Paragraph 56 and on

that basis, denies them. Regarding the allegations in the third sentence of Paragraph 56, Defendant admits that it used computer models to estimate the loading of these pollutants and their impacts on water quality.

57. With respect to the first sentence of Paragraph 57, Defendant admits that it (and others) developed and used a sophisticated series of interrelated models to estimate pollutant loading and its effects on Bay water quality. Defendant denies the allegations in the second and fourth sentences of Paragraph 57. With respect to the third sentence of Paragraph 57, Defendant admits that, as a hypothetical matter, a “fundamental flaw” in one of its models could undermine the accuracy and validity of the models’ projections. Defendant denies that there was any such “fundamental flaw” in its Bay models.

58. Defendant denies the allegations in the first and fifth sentences of Paragraph 58. The allegations in the second, third, and fourth sentences of Paragraph 58 require no response because they purport to characterize the final Chesapeake Bay TMDL or the Watershed Model, each of which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in the second, third and fourth sentences of Paragraph 58 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL and the Watershed Model.

59. Defendant denies the allegations in the first and fourth sentences of Paragraph 59. The allegations in the second and third sentences of Paragraph 59 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. To the extent a response is required, Defendant denies the allegations in the second and third sentences of Paragraph 59 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

60. The allegations in Paragraph 60 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. To the extent a response is required, Defendant denies the allegations in Paragraph 60 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL and the associated models.

61. Defendant denies the allegations in the first sentence of Paragraph 61. The allegations in the second and third sentences require no response because they purport to characterize events that occurred after the decision that is the subject of this APA case, and are not, therefore, subject to this Court's jurisdiction. To the extent a response is required, Defendant denies the allegations in the second and third sentences of Paragraph 61. The allegations in the fourth sentence of Paragraph 61 are legal conclusions, which require no response.

E. Development of a Federal TMDL – Public Review and Comment

62. Defendant admits the allegations in the first sentence of Paragraph 62. Defendant also admits that it provided a 45-day public comment period on the draft TMDL. The allegations in the remainder of Paragraph 62 purport to characterize the draft Chesapeake Bay TMDL, which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in the remainder of Paragraph 62 because they do not accurately characterize the administrative record, including the draft Chesapeake Bay TMDL.

63. Defendant admits that Plaintiffs and other commenters requested Defendant to extend the public comment period. Defendant also admits EPA did not extend the comment period.

64. Defendant denies the allegations in Paragraph 64.

65. The allegations of Paragraph 65 require no response because they purport to characterize an email communication from EPA staff, the final TMDL, and other parts of the administrative record, each of which speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant denies the allegations in Paragraph 65 because they do not accurately characterize the administrative record.

66. The allegations in Paragraph 66 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. To the extent a response is required, Defendant denies the allegations in Paragraph 66 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL and the associated models.

67. Defendant denies the allegations in the first sentence of Paragraph 67. The allegations in the remainder of Paragraph 67 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. To the extent a response is required, Defendant denies the allegations in the remainder of Paragraph 67 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

68. Defendant denies the allegations in the first sentence of Paragraph 68. The allegations in the remainder of Paragraph 68 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. To the extent a response is required, Defendant denies the allegations in the remainder of Paragraph 68 because they do not accurately characterize the administrative record, including the draft Chesapeake Bay TMDL and the final Chesapeake Bay TMDL.

69. The allegations in Paragraph 69 constitute legal conclusions to which no response is required. The allegations in Paragraph 69 also 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. To the extent a response is required, Defendant denies the allegations in Paragraph 69.

F. EPA's Final TMDL for the Chesapeake Bay Watershed

70. Defendant admits it established the final Chesapeake Bay TMDL on December 29, 2010. 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. To the extent a response is required, Defendant denies the allegations in the remainder of Paragraph 70 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

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. To the extent a response is required, Defendant denies the allegations in Paragraph 71 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

72. The allegations in Paragraph 72 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. To the extent a response is required, Defendant denies the allegations in Paragraph 72 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

73. The allegations in Paragraph 73 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. To the extent a response is required, Defendant denies the allegations in Paragraph 73 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

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. To the extent a response is required, Defendant denies the allegations in Paragraph 74.

G. Significant Impacts of the Final TMDL on Plaintiffs' Members

75. The 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. To the extent a response is required, Defendant denies the allegations in Paragraph 75 because they do not accurately characterize the administrative record, including the final Chesapeake Bay TMDL.

FIRST CLAIM FOR RELIEF

76. Defendant hereby re-alleges and incorporates all preceding paragraphs.

77. Defendant denies the allegations in Paragraph 77.

78. Defendant denies the allegations in Paragraph 78.

79. Defendant denies the allegations in Paragraph 79.

80. Defendant denies the allegations in Paragraph 80.

81. Defendant denies the allegations in Paragraph 81.

82. Defendant denies the allegations in Paragraph 82.

83. Defendant denies the allegations in Paragraph 83.

SECOND CLAIM FOR RELIEF

84. Defendant hereby re-alleges and incorporates all preceding paragraphs.

85. Defendant denies the allegations in Paragraph 85.

86. Defendant denies the allegations in Paragraph 86.

87. Defendant denies the allegations in Paragraph 87.

88. Defendant denies the allegations in Paragraph 88.

THIRD CLAIM FOR RELIEF

89. Defendant hereby re-alleges and incorporates all preceding paragraphs.

90. The allegations in Paragraph 90 constitute legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 90.

91. Defendant denies the allegations in Paragraph 91

FOURTH CLAIM FOR RELIEF

92. Defendant hereby re-alleges and reincorporates all preceding paragraphs.

93. Defendant denies the allegations in Paragraph 93.

GENERAL DENIAL

Defendant hereby denies 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 on some or all of the issues raised in their Complaint.

WHEREFORE Defendant respectfully requests that this Court enter judgment in favor of Defendant and against Plaintiffs on all Plaintiffs' claims, award Defendant its costs, and grant Defendant such other relief as the Court deems appropriate.

Dated this 21st day of April, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 21, 2011, a copy of the foregoing Answer to the First Amended Complaint was served by electronic service via the Court's ECF system pursuant to Standing Order 03-1, ¶ 12 upon:

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