

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

DACOTA CHAPTER OF SIERRA CLUB)	
and DAKOTA RESOURCE COUNCIL,)	Case No. 1:12-cv-65
)	
Plaintiffs,)	DEFENDANT'S ANSWER TO
v.)	PLAINTIFFS' COMPLAINT
)	
SECRETARY OF THE INTERIOR KEN)	
SALAZAR, in his official capacity,)	
)	
Defendant.)	

Defendant Ken Salazar, Secretary of the United States Department of the Interior, states the following in response to Plaintiffs' Complaint filed on May 30, 2012. Each response corresponds to the same numbered paragraph of Plaintiffs' Complaint.

1. The allegations contained in the first sentence of Paragraph 1 consist of Plaintiffs' characterization of their case, to which no response is required. The allegations contained in the second sentence of Paragraph 1 consist of Plaintiffs' characterization of their requested relief, to which no response is required. To the extent a response may be required, Defendant denies that Plaintiffs are entitled to any relief in this case.

2. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first ten sentences of Paragraph 2, and on that basis denies the allegations. The allegations contained in the eleventh and twelfth sentences of Paragraph 2 consist of legal conclusions, to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the thirteenth and fourteenth sentences of Paragraph 2, and on

that basis denies the allegations. The allegations contained in the fifteenth sentence of Paragraph 2 consist of legal conclusions, to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the sixteenth and seventeenth sentences of Paragraph 2, and on that basis denies the allegations.

3. The allegations contained in the first sentence of Paragraph 3 consist of legal conclusions, to which no response is required. The allegations contained in the first sentence also purport to characterize a statute, which speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied. Defendant admits that Ken Salazar is the Secretary of the Interior, that he has duties under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and that the Office of Surface Mining Reclamation and Enforcement (OSM) is a bureau within the Department of the Interior. Concerning the second sentence of Paragraph 3, Defendant admits that 1849 C Street, NW, Washington, DC 20240 is the headquarters of the Department of the Interior.

4. The allegations contained in the first sentence of Paragraph 4 consist of legal conclusions, to which no response is required. To the extent any further response may be required, Defendant denies any alleged failure to perform a mandatory, nondiscretionary action. The allegations contained in the second sentence of Paragraph 4 characterize a statute, which speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied. The allegations contained in the third and fourth sentences of Paragraph 4 consist of legal conclusions, to which no

response is required. To the extent any further response is required, Defendant denies that 28 U.S.C. §§ 1331, 2201, or 2202 confer jurisdiction or authorize any relief for this case.

5. The allegations contained in the first sentence of Paragraph 5 consist of legal conclusions, to which no response is required. To the extent a response may be required, Defendant denies that venue is proper under 28 U.S.C. § 1391 and avers that 30 U.S.C. § 1270(c) provides venue in this Court only for certain actions alleging a violation of SMCRA and its implementing regulations related to surface coal mining operations located in North Dakota. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 5, and on that basis denies the allegations. The allegations contained in the third sentence of Paragraph 5 consist of legal conclusions, to which no response is required. To the extent the third sentence alleges any violations of law by the Defendant, the allegations are denied. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the fourth sentence of Paragraph 5, and on that basis denies the allegations. To the extent the allegations contained in the fourth sentence of Paragraph 5 consist of legal conclusions, no response is required.

6. The allegations contained in the first sentence of Paragraph 6 consist of legal conclusions, to which no response is required. The allegations contained in the first sentence also characterize a letter or similar document, which speaks for itself and is the best evidence of its contents. Any allegation contrary to the document's plain language and meaning is denied. Defendant avers that it received a letter from Plaintiffs' counsel

dated March 26, 2012 regarding a Notice of Intent “to file a federal civil lawsuit to compel compliance with [SMCRA] against the Director” of OSM, the State of North Dakota, and the North Dakota Public Service commission that described some, but not all, of the facts alleged in Plaintiffs’ Complaint. The allegations contained in the second sentence of Paragraph 6 consist of legal conclusions, to which no response is required.

7. The allegations contained in Paragraph 7 characterize statutes, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

8. The allegations contained in Paragraph 8 characterize statutes, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

9. The allegations contained in Paragraph 9 characterize statutes and regulations, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

10. The allegations contained in Paragraph 10 characterize regulations, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

11. The allegations contained in Paragraph 11 characterize regulations, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

12. The allegations contained in Paragraph 12 characterize regulations, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

13. The allegations contained in Paragraph 13 characterize regulations, which speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

14. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14, and on that basis denies the allegations.

15. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15, and on that basis denies the allegations.¹

16. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16, and on that basis denies the allegations.

17. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17, and on that basis denies the allegations.

¹ Plaintiffs' Complaint contains repeated allegations characterizing campaign finance disclosures. Those documents speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain language and meaning are denied.

18. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18, and on that basis denies the allegations.

19. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 19, and on that basis denies the allegations.

20. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20, and on that basis denies the allegations.

21. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21, and on that basis denies the allegations. To the extent the allegations of this paragraph characterize a letter or document, that document speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied.

22. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22, and on that basis denies the allegations.

23. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 23, and on that basis denies the allegations.

24. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 24, and on that basis denies the allegations.

25. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25, and on that basis denies the allegations. To the extent the allegations of this paragraph characterize a letter or document, that document speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied.

26. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26, and on that basis denies the allegations.

27. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27, and on that basis denies the allegations.

28. Concerning the allegations contained in the first sentence of Paragraph 28, Defendant admits it received a letter from Plains Justice on October 3, 2008, regarding alleged "Inadequate State Enforcement of North Dakota Coal Program Under SMCRA." To the extent the remaining allegations of the first sentence of Paragraph 28 characterize a letter or document, that document speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations contained in the second sentence of Paragraph 28, and on that basis denies the allegations.

29. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29, and on that basis denies the allegations. To the extent the allegations of this paragraph characterize the contents of an email and/or other documents, the email and/or documents speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied.

30. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30, and on that basis denies the allegations.

31. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31, and on that basis denies the allegations.

32. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32, and on that basis denies the allegations.

33. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33, and on that basis denies the allegations.

34. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34, and on that basis denies the allegations.

35. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35, and on that basis denies the allegations.

36. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36, and on that basis denies the allegations.

37. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 37, and on that basis denies the allegations.

38. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38, and on that basis denies the allegations.

39. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39, and on that basis denies the allegations.

40. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40, and on that basis denies the allegations.

41. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 41, and on that basis denies the allegations.

42. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 42, and on that basis denies the allegations.

43. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43, and on that basis denies the allegations.

44. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44, and on that basis denies the allegations.

45. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45, and on that basis denies the allegations.

46. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46, and on that basis denies the allegations.

47. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 47, and on that basis denies the allegations.

48. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48, and on that basis denies the allegations.

49. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49, and on that basis denies the allegations.

50. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 50, and on that basis denies the allegations.

51. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 51, and on that basis denies the allegations.

52. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 52, and on that basis denies the allegations.

53. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 53, and on that basis denies the allegations.

54. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 54, and on that basis denies the allegations.

55. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 55, and on that basis denies the allegations.

56. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 56, and on that basis denies the allegations.

57. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57, and on that basis denies the allegations. To the extent the allegations of this paragraph characterize a letter or document, that document speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied.

58. Concerning the first sentence of Paragraph 58, Defendant admits receiving a letter dated on or about August 10, 2011, from Plains Justice regarding “Financial Contributions by Interested Parties in South Heart Lignite Mine Application to North Dakota Public Service Commissioners.” To the extent the allegations contained in the first sentence of the paragraph characterizes a letter or document, that document speaks for itself and is the best evidence of its contents. Any allegation contrary to its plain language and meaning is denied. Any remaining allegations in the first sentence are denied. Concerning the second sentence of Paragraph 58, Defendant denies the allegation that it made any decision not to pursue the matter any further. Defendant avers that during the last quarter of 2011, OSM’s Deputy Ethics Counselor communicated via telephone with Plaintiffs’ counsel regarding the letter dated on or about August 10, 2011,

and that during this conversation OSM notified Plaintiffs' counsel that OSM's Ethics Office does not have authority to issue a legal opinion on the matter raised in the letter dated on or about August 10, 2011. Defendant avers that this position is consistent with 43 U.S.C. § 1455 and the policies and procedures of the Department of Interior.

59. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 59, and on that basis denies the allegations.

60. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 60, and on that basis denies the allegations.

61. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 61, and on that basis denies the allegations. To the extent the allegations contained in this paragraph contain legal conclusions as to persons who "own, control, or work for coal companies," no response is required.

62. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 62, and on that basis denies the allegations. To the extent this paragraph alleges that certain parties are "owners of South Heart Coal LLC" or any party is deemed an "owner" of a surface coal mining operation under SMCRA or its implementing regulations, then the allegations constitute conclusions of law, to which no response is required.

63. The allegations contained in Paragraph 63 which assert that SMCRA has been violated consist of conclusions of law, to which no response is required. To the extent a response may be required, Defendant denies that it violated any provision of SMCRA or its implementing regulations. Defendant admits that Plaintiffs' counsel contacted OSM on at least two occasions regarding some campaign contributions to Commissioners on the North Dakota Public Service Commission, as well as regarding other matters, but Defendant denies the allegation that it took no action on the basis of the information provided by Plaintiffs' counsel. To the extent the allegations of the paragraph characterize actions taken by NDPSC, Defendant lacks sufficient information or knowledge to form a belief as to the truth of those allegations, and denies them on that basis.

64. The allegations contained in Paragraph 64 consist of legal conclusions, to which no response is required. To the extent a further response may be required, Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations, and denies them on that basis.

65. Defendant incorporates each prior response for Paragraphs 1-64.

66. The allegations contained in Paragraph 66 consist of legal conclusions, to which no response it required. To the extent the allegations in Paragraph 66 characterize statutes and regulations, those documents speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain language and meaning are denied.

67. The allegations contained in Paragraph 67 consist of legal conclusions, to which no response is required. To the extent the allegations in Paragraph 67 characterize statutes and regulations, those documents speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain language and meaning are denied. To the extent a further response may be required, Defendant denies that it violated any provision of SMCRA, including the alleged “mandatory, nondiscretionary duty” referred to in this paragraph, or acted in any way inconsistent with SMCRA or its implementing regulations.

Plaintiffs’ Prayer For Relief:

The allegations contained in the remaining, unnumbered paragraphs of Plaintiffs’ Complaint constitute a prayer for relief, to which no response is required. To the extent a further response may be required, Defendant denies that Plaintiffs are entitled to any relief whatsoever.

GENERAL DENIAL

To the extent any allegations have not been specifically addressed in the preceding paragraphs, Defendant hereby denies such allegations.

AFFIRMATIVE DEFENSES

Without limiting or waiving any available defenses, Defendant hereby asserts the following affirmative defenses:

First Affirmative Defense

Plaintiffs have failed to state a claim upon which relief can be granted.

Second Affirmative Defense

Some or all of Plaintiffs lack standing to bring the claim asserted in the Complaint.

Third Affirmative Defense

The Court lacks subject matter jurisdiction over Plaintiffs' claim.

Fourth Affirmative Defense

Plaintiffs' claim is not ripe for adjudication.

Fifth Affirmative Defense

To the extent that Plaintiffs are challenging regulations implementing 30 U.S.C. § 1267(g), any such challenge is barred by the statute of limitation provision at 30 U.S.C. § 1276 (a)(1).

REQUEST FOR RELIEF

Defendant respectfully requests the Court to dismiss this action with prejudice, enter judgment in favor of Defendant, and grant any other relief the Court deems just and proper.

Respectfully submitted this 21st day of August, 2012.

IGNACIA S. MORENO
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2012, the above-captioned document was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to all counsel of record.

/s/ Joanna K. Brinkman

Joanna K. Brinkman