

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

DAKOTA RESOURCE COUNCIL,)	
)	Case No. 1:12-cv-64
Plaintiff,)	
v.)	INTERVENOR-DEFENDANT'S
)	AMENDED ANSWER TO
NORTH DAKOTA PUBLIC SERVICE)	PLAINTIFF'S COMPLAINT
COMMISSION)	
)	
Defendant,)	
)	
v.)	
)	
SECRETARY OF THE INTERIOR KEN)	
SALAZAR, in his official capacity,)	
)	
Intervenor- Defendant.)	

Pursuant to Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure, Intervenor-Defendant, the Secretary of the United States Department of the Interior Ken Salazar ("Secretary"), in his official capacity, hereby provides his Amended Answer to Plaintiff's Complaint, filed on May 30, 2012. Intervenor-Defendant filed an answer to the Complaint on December 13, 2012, Dkt. No. 22, and hereby files this Amended Answer pursuant to Rule 15(a)(1)(A) within twenty-one days of that date. Each response corresponds to the same numbered paragraph of Plaintiff's Complaint.

1. The allegations contained in the first sentence of Paragraph 1 consist of Plaintiff's characterization of the case, to which no response is required. The allegations contained in the second sentence of Paragraph 1 consist of Plaintiff's characterization of its

requested relief, to which no response is required. To the extent a response may be required, Intervenor-Defendant denies that Plaintiff is entitled to any relief in this case.

2. Intervenor-Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first through seventh and tenth sentences of Paragraph 2, and on that basis denies the allegations. To the extent the allegations contained in the sixth and seventh sentences constitute legal conclusions, no response is required. The allegations contained in the eighth and ninth sentences of Paragraph 2 consist of legal conclusions, to which no response is required.

3. Intervenor-Defendant admits the allegation contained in the first sentence of Paragraph 3 that the North Dakota Public Service Commission is the state regulatory authority with duties under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”). The remaining allegations contained in the first sentence of Paragraph 3 consist of legal conclusions, to which no response is required. In addition, 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. Intervenor-Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the second and third sentences of Paragraph 3, and on that basis denies the allegations.

4. The allegations contained in Paragraph 4 consist of legal conclusions, to which no response is required. To the extent the allegations contained in Paragraph 4 purport to characterize statutes, those statutes 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 any further response is required, Intervenor-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 and fourth sentences of Paragraph 5 consist of legal conclusions, to which no response is required. To the extent a further response may be required, Intervenor-Defendant 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.

Intervenor-Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the second and third sentences of Paragraph 5, and on that basis denies the allegations.

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. Intervenor-Defendant avers that it received a letter from Plaintiff's 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. Intervenor-Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 6, and on that basis denies the allegations.

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 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. Intervenor-Defendant admits the allegation contained in Paragraph 11 that it approved the state of North Dakota's regulatory program under SMCRA effective December 15, 1980. Intervenor-Defendant also avers that NDPSC has issued numerous policy memoranda since December 15, 1980. To the extent the allegations contained in Paragraph 11 characterize various policy memoranda, those documents 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 consist of legal conclusions, to which no response is required. To the extent a response may be required, Intervenor-Defendant denies the allegations.

13. The allegations contained in Paragraph 13 consist of legal conclusions, to which no response is required. To the extent the allegations contained in Paragraph 13 characterize the referenced policy memoranda or regulations, those documents speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied. To the extent a further response may be required, Intervenor-Defendant denies the allegations.

14. The allegations contained in Paragraph 14 consist of legal conclusions, to which no response is required. To the extent a further response may be required, Intervenor-Defendant denies the allegations.

15. Intervenor-Defendant incorporates by reference each prior response to the allegations contained in Paragraphs 1-14.

16. The allegations contained in Paragraph 16 consist of legal conclusions, to which no response is required. To the extent the allegations contained in Paragraph 16 characterize statutes and regulations, those documents speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and meaning is denied. To the extent a further response may be required, Intervenor-Defendant denies the allegations.

17. The allegations contained in Paragraph 17 consist of legal conclusions, to which no response is required. To the extent the allegations contained in Paragraph 17 characterize statutes and regulations, those documents speak for themselves and are the best evidence of their contents. Any allegation contrary to their plain language and

meaning is denied. To the extent a further response may be required, Intervenor-Defendant denies the allegations.

18. Intervenor-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. The allegations contained in Paragraph 18 also consist of legal conclusions, to which no response is required. To the extent a further response may be required, Intervenor-Defendant denies the allegations.

Plaintiff's Prayer For Relief:

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

GENERAL DENIAL

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

AFFIRMATIVE DEFENSES

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

First Affirmative Defense

Plaintiff has failed to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiff lacks standing to bring the claim asserted in the Complaint.

Third Affirmative Defense

The Court lacks subject matter jurisdiction over Plaintiff's claim.

Fourth Affirmative Defense

Plaintiff's claim is not ripe for adjudication.

Fifth Affirmative Defense

Plaintiff's claim is barred by the statute of limitations.

Sixth Affirmative Defense

To the extent that Plaintiff may be 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

Intervenor-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 December, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on December 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