

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB,)	
)	
Plaintiff,)	Case No. 16-2461
v.)	
)	
SCOTT PRUITT, Administrator,)	
United States Environmental Protection)	
Agency,)	
)	
Defendant.)	
_____)	

DEFENDANT’S ANSWER TO THE COMPLAINT

Defendant, Scott Pruitt, Administrator of the United States Environmental Protection Agency (“EPA”),¹ responds to the allegations in the Complaint as follows:

1. The first sentence of Paragraph 1 characterizes Plaintiff’s claim, and so requires no response. EPA denies the allegations in the second sentence of Paragraph 1. With respect to the third through the fifth sentences in Paragraph 1 and Table A, EPA denies that the final governing standards for commercial and industrial solid waste incineration units (“CISWI”) were promulgated on March 21, 2011, and further affirmatively states that the final standards for CISWI were promulgated on February 7, 2013. EPA admits that EPA has not promulgated a federal plan for the final standards; that EPA’s standards for other categories of solid waste incineration units (“OSWI”) were promulgated December 16, 2005; and that EPA has not reviewed and revised EPA’s standards for OSWI units pursuant to §§ 7411 and 7429 of the

¹ Pursuant to Fed. R. Civ. P. 25(d), Defendant Gina McCarthy’s successor, Scott Pruitt, the current Administrator of the U.S. Environmental Protection Agency, is automatically substituted as the Defendant in this case.

Clean Air Act. The remaining allegations in the third through fifth sentences of Paragraph 1 and Table A are conclusions of law and so require no response.

2. Paragraph 2 characterizes Plaintiff's claim, and so requires no response.

3. The first sentence of Paragraph 3 characterizes Plaintiff's claim, and so requires no response. The second, third, and fourth sentences of Paragraph 3 are conclusions of law and so require no response.

4. EPA admits the allegations in Paragraph 4.

5. EPA states that the current EPA Administrator, Scott Pruitt, resides within the jurisdiction of this court, and was substituted as the Defendant in this case under Federal Rule of Civil Procedure 25(d). The remainder of Paragraph 5 is a conclusion of law and so requires no response.

6. EPA is without knowledge to admit or deny the allegations in Paragraph 6 and so denies the same.

7. EPA denies the allegation in the first sentence of Paragraph 7 that Gina McCarthy is the Administrator of EPA, and states that the current Administrator of EPA is Scott Pruitt. The second sentence of Paragraph 7 is a conclusion of law and requires no response.

8. Paragraph 8 characterizes a federal statute which is the best evidence of its content. EPA denies the allegations in Paragraph 8 to the extent they are inconsistent with the Clean Air Act.

9. With respect to the first sentence of Paragraph 9, EPA admits that toxic air pollutants may be emitted when solid waste is burned. The remainder of the first sentence of Paragraph 9 consists of ambiguous subjective characterizations, not allegations of fact. EPA lacks sufficient information to admit or deny those characterizations, and therefore denies the

same. The second sentence characterizes a federal statute which is the best evidence of its content. EPA denies the allegations in the second sentence of Paragraph 9 to the extent they are inconsistent with the Clean Air Act.

10. Paragraph 10 states a conclusion of law and so requires no response.

11. Paragraph 11 states conclusions of law and so requires no response.

12. Paragraph 12 states conclusions of law, and so requires no response.

13. Paragraph 13 states conclusions of law, and so requires no response.

14. Paragraph 14 states conclusions of law, and so requires no response.

15. Paragraph 15 states conclusions of law, and so requires no response.

16. Paragraph 16 states conclusions of law, and so requires no response.

17. Paragraph 17 states conclusions of law and so requires no response.

18. Paragraph 18 states conclusions of law and so requires no response.

19. Paragraph 19 states conclusions of law and so require no response.

20. The second sentence of Paragraph 20 characterizes a federal statute which is the best evidence of its content. EPA denies the allegations in the second sentence of Paragraph 20 to the extent they are inconsistent with the Clean Air Act. The remaining sentences of Paragraph 20 are conclusions of law and so require no response.

21. The allegations of Paragraph 21 are conclusions of law and so require no response.

22. The allegations of Paragraph 22 are conclusions of law and so require no response.

23. The allegations of Paragraph 23 are conclusions of law and so require no response.

24. The allegations of Paragraph 24 are conclusions of law and so require no response.

25. EPA admits the allegations in Paragraph 25.

26. Paragraph 26 characterizes a legal decision and a federal regulation, which are the best evidence of their contents. EPA denies the allegations of Paragraph 26 to the extent they are inconsistent therewith.

27. Paragraph 27 characterizes a federal regulation and correspondence, which are the best evidence of their contents. EPA denies the allegations of Paragraph 27 to the extent they are inconsistent therewith.

28. The first through fifth sentences of Paragraph 28 characterize a federal regulation and correspondence, which are the best evidence of their contents. EPA denies the allegations of the first through fifth sentences of Paragraph 28 to the extent they are inconsistent therewith. EPA admits that pathological waste incinerators emit air pollutants. The remainder of the sixth sentence of Paragraph 28 consists of ambiguous subjective characterizations, not allegations of fact. EPA lacks sufficient information to admit or deny those characterizations, and therefore denies the same.

29. EPA admits that the air pollutants emitted by CISWI and OSWI units can have adverse effects on human health, including carcinogenic effects and acute harm from short-term exposure. The remainder of the first, second, and last sentences of Paragraph 29 consists of ambiguous subjective characterizations, not allegations of fact. EPA lacks sufficient information to admit or deny those characterizations, and therefore denies the same. The allegations in the third sentence of Paragraph 29 characterize a legal decision and a Congressional document,

which are the best evidence of their contents. EPA denies the remaining allegations of the third sentence of Paragraph 29 to the extent they are inconsistent therewith.

30. EPA admits that lead compounds are persistent toxic pollutants that poses a danger to human health and ecosystems. The remaining allegations in Paragraph 30 characterize documents, which are the best evidence of their contents. EPA denies the remaining allegations of Paragraph 30 to the extent they are inconsistent therewith.

31. The allegations in Paragraph 31 characterize documents, which are the best evidence of their contents. EPA denies the allegations of Paragraph 31 to the extent they are inconsistent therewith.

32. The allegations in Paragraph 32 characterize a document, which is the best evidence of its contents. EPA denies the allegations of Paragraph 32 to the extent they are inconsistent therewith.

33. EPA admits the allegations in the first sentence of Paragraph 33. The remaining allegations in Paragraph 33 characterize a document, which is the best evidence of its contents. EPA denies the remaining allegations of Paragraph 33 to the extent they are inconsistent therewith.

34. EPA admits the allegations in the first sentence of Paragraph 34. The remaining allegations in Paragraph 34 characterize a document, which is the best evidence of its contents. EPA denies the remaining allegations of Paragraph 34 to the extent they are inconsistent therewith.

35. The allegations in Paragraph 35 characterize a document, which is the best evidence of its contents. EPA denies the allegations of Paragraph 35 to the extent they are inconsistent therewith.

36. The allegations in Paragraph 36 characterize a document, which is the best evidence of its contents. EPA denies the allegations of Paragraph 36 to the extent they are inconsistent therewith.

37. The allegations in Paragraph 37 characterize a document, which is the best evidence of its contents. EPA denies the allegations of Paragraph 37 to the extent they are inconsistent therewith.

38. The allegations in Paragraph 38 characterize documents, which are the best evidence of their contents. EPA denies the allegations of Paragraph 38 to the extent they are inconsistent therewith.

39. The allegations in Paragraph 39 characterize documents, which are the best evidence of their contents. EPA denies the allegations of Paragraph 39 to the extent they are inconsistent therewith.

40. EPA admits that the level of exposure to hazardous air pollutants emitted from CISWI and OSWI units, and therefore the potential adverse health impacts, vary across populations. EPA denies the remaining allegations in Paragraph 40.

41. EPA admits the allegations of Paragraph 41. EPA states that the 2011 version of the emission guidelines for CISWI never went into effect. EPA further affirmatively states that the Administrator promulgated the final standards for CISWI units on February 7, 2013, at 78 Fed. Reg. 9112.

42. EPA admits the allegation in Paragraph 42.

43. The allegations of Paragraph 43 are conclusions of law and so require no response.

44. The allegations of Paragraph 44 are conclusions of law and so require no response.

45. The allegations of Paragraph 45 are conclusions of law and so require no response.

46. (a) EPA admits that some states have submitted neither an approvable state plan nor a negative declaration since the superseded CISWI guidelines were promulgated on March 21, 2011. EPA further affirmatively states that some states have submitted neither an approvable SIP nor a negative declaration since the final CISWI guidelines were promulgated on February 7, 2013.

(b) EPA admits the allegations in Paragraph 46(b).

(c) EPA admits the allegations in Paragraph 46(c).

(d) EPA denies the allegations in Paragraph 46(d). EPA further affirmatively states that the Agency did propose federal plan requirements for the 2013 CISWI standard at 82 Fed. Reg. 3554 (Jan. 11, 2017), and accepted comments on that proposal through February 27, 2017.

47. EPA admits the allegations in Paragraph 47.

48. EPA admits the allegations in Paragraph 48.

49. EPA is without knowledge to admit or deny the allegations in Paragraph 49 and so denies the same.

50. EPA is without knowledge to admit or deny the allegations in Paragraph 50 and so denies the same.

51. EPA admits that exposure to air pollutants emitted by CISWI and OSWI units may have adverse health effects, which may include respiratory, neurological, developmental,

and reproductive harm; damage to bodily organs and the central nervous system; and cancer.

EPA denies the remaining allegations of Paragraph 51 to the extent they are inconsistent with EPA's responses to Paragraphs 26-39.

52. EPA is without knowledge to admit or deny the allegations in Paragraph 52 and so denies the same.

53. EPA admits that exposure to air pollutants emitted by CISWI and OSWI units may damage wildlife, plants, waters, land, communities, and ecosystems. EPA is without knowledge to admit or deny the allegations of the remainder of the first sentence of Paragraph 53 and so denies the same. EPA denies the allegations in the second and third sentences of Paragraph 53 to the extent they are inconsistent with EPA's responses to earlier Paragraphs herein and further denies that lead, particulate matter and sulfur dioxide are hazardous air pollutants. EPA is without knowledge to admit or deny the allegations of the fourth sentence and so denies the same.

54. EPA is without knowledge to admit or deny the allegations in Paragraph 54 and so denies the same.

55. EPA is without knowledge to admit or deny the allegations in Paragraph 55 and so denies the same.

56. EPA is without knowledge to admit or deny the allegations in the first sentence of Paragraph 56 and so denies the same. EPA admits that the current OSWI standards exempt certain types of OSWI units, including pathological waste incinerators, and EPA admits that in a Federal Register notice announcing a proposed rule in 2010, the Agency stated that it "intends to regulate [pathological waste incinerators] under other solid waste incineration (OSWI) standards," 75 Fed. Reg. 31,948/1. The remaining allegations of the second sentence of

Paragraph 56 are conclusions of law and so require no response. EPA admits that the current OSWI standards exempt units that recover energy. The remaining allegations of the fourth sentence of Paragraph 56 characterizes a legal decision, which is the best evidence of its content. EPA denies the allegations in the fourth sentence to the extent they are inconsistent therewith. EPA is without knowledge to admit or deny the allegations in the fifth sentence, and so denies the same. EPA denies the allegations in the sixth sentence of Paragraph 56.

57. EPA is without knowledge to admit or deny the allegations in Paragraph 57 and so denies the same.

58. Paragraph 58 states conclusions of law and so requires no response.

59. EPA is without knowledge to admit or deny the allegations in the first three sentences of Paragraph 59 and so denies the same. EPA denies the allegations in the last two sentences of Paragraph 59.

60. Paragraph 60 consists of ambiguous subjective characterizations, not allegations of fact. EPA lacks sufficient information to admit or deny those characterizations, and therefore denies the same.

61. EPA is without knowledge to admit or deny the allegations in Paragraph 61 and so denies the same.

62. Paragraph 62 states conclusions of law and so requires no response.

63. EPA incorporates by references Paragraph 1-62 above.

64. Paragraph 64 states conclusions of law and so requires no response.

65. Paragraph 65 states conclusions of law and so requires no response.

66. Paragraph 66 states conclusions of law and so requires no response.

67. Paragraph 67 states conclusions of law and so requires no response.

68. Paragraph 68 states conclusions of law and so requires no response.

69. The remaining paragraphs of Plaintiff's complaint consist of Plaintiff's request for relief, which does not require a response. To the extent a response is required, the Administrator denies that Plaintiffs are entitled to any of the relief sought, or any other relief.

GENERAL DENIAL

All allegations not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

Without limiting or waiving any other defenses available to it, the United States hereby asserts the following defense to the Complaint.

1. With respect to one or more of its claims, Plaintiff has failed to state a claim for which relief can be granted.

Respectfully submitted,

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Environment and Natural Resources Division

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CERTIFICATE OF SERVICE

I, Heather E. Gange, certify that on this 26th day of May, 2017, I electronically filed the foregoing Defendant's Answer to the Complaint through the CM/ECF system which caused all Parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

GORDON SOMMERS
Counsel for Plaintiff

/s/ Heather E. Gange
Heather E. Gange