

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

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:
GULF RESTORATION NETWORK, MISSOURI :
COALITION FOR THE ENVIRONMENT, IOWA :
ENVIRONMENTAL COUNCIL, TENNESSEE CLEAN :
WATER NETWORK, MINNESOTA CENTER FOR :
ENVIRONMENTAL ADVOCACY, SIERRA CLUB, :
WATERKEEPER ALLIANCE, INC., PRAIRIE RIVERS :
NETWORK, KENTUCKY WATERWAYS ALLIANCE, :
ENVIRONMENTAL LAW & POLICY CENTER, and the :
NATURAL RESOURCES DEFENSE COUNCIL, INC., :
:
Plaintiffs, : Civil Action
: No.:
- v. - :
:
LISA P. JACKSON, Administrator of the United States :
Environmental Protection Agency, and THE UNITED :
STATES ENVIRONMENTAL PROTECTION :
AGENCY, :
:
Defendants. :
:
-----X

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTORY STATEMENT

1. Plaintiffs Gulf Restoration Network ("GRN"), Missouri Coalition for the Environment ("MCE"), Iowa Environmental Council ("IEC"), Tennessee Clean Water Network ("TCWN"), Minnesota Center for Environmental Advocacy ("MCEA"), Sierra Club, Waterkeeper Alliance, Prairie Rivers Network, Kentucky Waterways Alliance, Environmental Law & Policy Center ("ELPC"), and Natural Resources Defense Council, Inc. ("NRDC") (collectively "Plaintiffs") assert violations of the Administrative Procedure Act ("APA") by defendants Lisa P. Jackson, Administrator of the United States Environmental Protection

Agency, and the United States Environmental Protection Agency (collectively “EPA”), for EPA’s July 29, 2011 denial of a July 30, 2008 petition submitted pursuant to the APA, 5 U.S.C. § 553(e), for EPA to establish under section 303 of the Clean Water Act (“CWA”), 33 U.S.C. § 1313, revised or new state water quality standards and total maximum daily loads (“TMDLs”) to address excessive nitrogen and phosphorous (collectively “nutrient”) pollution in the waters of the Mississippi River Basin and northern Gulf of Mexico (“Petition”).¹ A copy of the Petition is attached to this complaint as Exhibit A and incorporated herein by reference.

2. Excessive nutrient pollution in the Mississippi River Basin and northern Gulf of Mexico causes or contributes to a massive low-oxygen “dead zone” in the Gulf of Mexico, as well as extensive water quality degradation and impairments that cause substantial harm to aquatic life, human health, and the economic, aesthetic, and recreational values of rivers, lakes, streams, and oceans.

3. CWA Section 303(c)(4)(B) provides that “the Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard . . . in any case where [she] determines that a revised or new standard is necessary to meet the requirements of this Act.”

4. EPA’s denial of the Petition violates the APA for two separate reasons:

(A) The denial violates the APA because it fails to provide reasons for the denial that conform to the relevant statutory factors in Section 303(c)(4)(B) of the CWA.

EPA’s denial was based on the administrative burden of granting the Petition and

EPA’s purported policy of working collaboratively with states, but EPA’s denial

¹ The Petition was submitted by plaintiffs GRN, MCE, IEC, TCWN, MCEA, Sierra Club, PRN, KWA, ELPC, and NRDC, as well as by Louisiana Environmental Action Network, Public Employees for Environmental Responsibility, and Midwest Environmental Advocates. Plaintiffs also include Waterkeeper Alliance. For ease of reference, we will refer to Plaintiffs collectively throughout, and we will refer to the Petition as “Plaintiffs’ Petition.”

does not provide a reasoned explanation as to why revised or new water quality standards to address excessive nutrient pollution in Mississippi River Basin and northern Gulf of Mexico waters are not “necessary to meet the requirements of the [CWA]” within the meaning of Section 303(c)(4)(B).

(B) EPA’s denial of the Petition alternatively violates the APA because it is contrary to the undisputed evidence in the Petition that numeric nutrient water quality standards are necessary pursuant to Section 303(c)(4)(B) of the CWA to implement the CWA’s requirements for Mississippi River Basin and northern Gulf of Mexico waters.

5. Plaintiffs request that the court declare that EPA’s denial of the Petition is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” in violation of the APA, 5 U.S.C. § 706(2)(A), and the CWA, 33 U.S.C. § 1313(c)(4)(B), and order EPA to provide an adequate response within 90 days.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the APA, 5 U.S.C. §§ 701 – 06, which provides for judicial review of final agency actions for which there is no other adequate remedy in a court; 28 U.S.C. § 1331, because this case presents a federal question; 28 U.S.C. § 1361, because this is an action “to compel an agency officer or employee of the United States to perform a duty owed to the plaintiff[s]”; and 28 U.S.C. §§ 2201 – 2202, which provide for declaratory and further relief.

7. Venue is proper in this judicial district and in this court pursuant to 28 U.S.C. § 1391(e) because no real property is involved in this action and the first-named plaintiff, GRN,

resides or maintains its principal place of business in New Orleans, Louisiana, which is located in the Eastern District of Louisiana.

PARTIES

8. Plaintiff GRN is a not-for-profit membership corporation incorporated under the laws of the State of Louisiana. As stated in its mission, GRN “is committed to uniting and empowering people to protect and restore the natural resources of the Gulf Region for future generations.” GRN’s vision is that the Gulf of Mexico will continue to be a natural, economic, and recreational resource that is central to the culture and heritage of five states and three nations. The people of the region will be stewards of this vital but imperiled treasure, and they will assume the responsibility of returning the Gulf to its previous splendor. GRN members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition. GRN maintains offices in New Orleans, LA, and St. Petersburg, FL. GRN currently has more than 4,653 members nationwide.

9. Plaintiff MCE is a not-for-profit membership corporation incorporated under the laws of the State of Missouri. MCE’s mission is to work “to protect and restore the environment through education, public engagement, and legal action.” MCE currently has more than 1000 members who depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

10. Plaintiff IEC is a state-wide non-profit organization focused on protecting Iowa's natural environment. IEC is an alliance of nearly 60 member and cooperator organizations--ranging from agricultural, conservation, and public health organizations, to educational groups, business associations, and churches--along with hundreds of individual members. Its vision is an Iowa where waters run clean, soil stays on the land, the air is clear, flora and fauna are diverse, and people are proud to call it home. Its members enjoy swimming, boating, fishing, hiking, biking and many other activities in and along Iowa's rivers, streams and lakes. IEC members rely on these sources for clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

11. Plaintiff TCWN is a not-for-profit corporation organized under the laws of the State of Tennessee. TCWN was organized to advocate for strong policies and programs that result in more effective protection and restoration of Tennessee waters; to educate organizations, decision-makers, and the public about important water resource issues; and to ensure the protection and restoration of Tennessee's waters. TCWN organizes Tennesseans to exercise their right to clean water and healthy communities by fostering civic engagement, building coalitions, and advancing water policy. TCWN is a membership organization whose members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

12. Plaintiff MCEA is a not-for-profit organization based in St. Paul, Minnesota, whose mission is to use law, science and research to preserve and protect Minnesota's wildlife, natural resources and the health of its people. The organization has worked for effective enforcement of the Clean Water Act in the state. MCEA represents 1,000 members across Minnesota who depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

13. Plaintiff Sierra Club is a national, not-for-profit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club advocates for effective enforcement of the Clean Water Act to preserve our nation's waters for recreational, aesthetic, and economic uses. The Club's members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

14. Plaintiff Waterkeeper Alliance is a national not-for-profit corporation organized under the laws of the State of New York representing the interests of more than 49,500 individual members and nearly 200 member Waterkeeper Organizations. Waterkeeper Alliance and Waterkeeper Organizations promote water quality protection and the restoration of waters, through litigation, education, scientific research, and other legal means; advocate for compliance

with environmental laws such as the CWA; respond to citizen complaints; identify threats to water bodies; and generally work to guarantee the public's right to a pollution-free environment. Individual members of Waterkeeper Alliance and Waterkeeper Organizations depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

15. Plaintiff PRN, the state affiliate of the National Wildlife Federation, is a not-for-profit organization that strives to protect the rivers, streams and lakes of Illinois and to promote the lasting health and beauty of watershed communities. PRN represents more than 600 members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

16. Plaintiff KWA is a not-for-profit organization that strives to protect and restore the rivers, streams and lakes of Kentucky and to promote the lasting health and beauty of watershed communities. KWA represents more than 700 members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

17. Plaintiff ELPC is a Midwest public interest environmental advocacy organization. ELPC's goals include developing sound environmental management practices that conserve natural resources and improve the quality of life in our communities. ELPC strives to help effectively enforce the Clean Water Act in order to improve the quality of life in our

communities and ensure clean water. ELPC currently has 467 members nationwide who depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

18. Plaintiff NRDC is a national, not-for-profit membership corporation with its principal place of business in New York, New York. Founded in 1970, NRDC represents more than 350,000 members nationwide. NRDC's mission is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC's board and staff of lawyers, scientists, and other environmental specialists have for decades actively supported and advocated for effective enforcement of the CWA on behalf of NRDC's membership. NRDC members depend on clean water for drinking water, aesthetic and/or recreational use and enjoyment, and/or for their businesses and jobs, including water bodies that are adversely affected by nitrogen and phosphorous pollution and would be improved by the actions requested in the Petition.

19. Plaintiffs bring this action on their own behalf and on behalf of their members. Plaintiffs and their members have been and continue to be injured by EPA's denial of their Petition and failure to promptly promulgate numeric nutrient standards for waters within the Mississippi River Basin and northern Gulf of Mexico. Plaintiffs' members are injured because, *inter alia*, they use and enjoy waters within the Mississippi River Basin that are impaired by nutrient discharges and/or use and enjoy waters of the Gulf of Mexico. EPA's failure to act impairs Plaintiffs' members use and enjoyment of these waters, causing Plaintiffs' members to curtail activities they would otherwise enjoy, derive less enjoyment from other activities, and suffer reasonable concerns and anxiety about the potential for future harm. These injuries are

actual, concrete and irreparable. They cannot be redressed by money damages. The requested relief will redress these injuries.

20. Defendant Lisa P. Jackson, Administrator of the United States Environmental Protection Agency, is charged with the supervision and management of the agency's responsibilities under the CWA, including the statute's requirements under Section 303 that are at issue here. Ms. Jackson is sued in her official capacity only.

21. Defendant United States Environmental Protection Agency is an agency of the federal government, which has the primary responsibility under the CWA to protect the waters of the United States from pollution.

STATUTORY FRAMEWORK

22. The CWA is the principal federal statute enacted to protect the quality of the waters of the United States. Stated goals of the CWA are "to restore and maintain the chemical, physical and biological integrity of the Nation's waters" and "to eliminate[]" "the discharge of pollutants into the navigable waters." 33 U.S.C. § 1251(a).

23. The CWA also seeks to attain "water quality which provides for the protection and propagation of fish, shellfish, and wildlife." 33 U.S.C. § 1251(a)(2).

24. "To achieve these ambitious goals, the Clean Water Act establishes distinct roles for the Federal and State Governments." PUD No. 1 of Jefferson Co. v. Washington Dep't of Ecology, 511 U.S. 700, 704 (1994).

25. Section 303 of the CWA "requires each State, subject to federal approval, to institute comprehensive water quality standards establishing water quality goals for all intrastate waters." P.U.D. No. 1 of Jefferson Co., 511 U.S. at 704 (citing 33 U.S.C. §§ 1311(b)(1)(C), 1313).

26. Under Section 303 of the CWA, water quality standards developed by States “shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.” 33 U.S.C. § 1313(c)(2)(A).

27. Section 303 of the CWA requires States, “at least once each three year period,” to “hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.” 33 U.S.C. § 1313(c)(1). “Results of such review shall be made available to the [EPA] Administrator.” Id. If the State proposes to revise or modify any of its water quality standards, such revisions or modification must be submitted to EPA for the agency to determine whether they are consistent with the CWA’s requirements and approve or reject them. Id. § 1313(c)(2)(A), (3).

28. Section 303(c)(4) of the CWA provides that EPA “shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard” if the agency determines that a revised or new water quality standard submitted by a State is not consistent with the CWA’s requirements. 33 U.S.C. § 1313(c)(4)(A).

29. In addition, even when a State has not submitted a revised or new water quality standard to EPA for review and approval, Section 303(c)(4) of the CWA provides that EPA “shall promptly prepare and publish proposed regulations setting forth a revised or new water

quality standard . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the CWA].” 33 U.S.C. § 1313(c)(4)(B).

30. Section 303(d) of the CWA requires each State to “identify those waters within its boundaries” for which existing pollutant discharge limitations “are not stringent enough to implement any water quality standard applicable to those waters.” 33 U.S.C. § 1313(d)(1)(A). For any such waters identified, each State is required to establish, in order of priority, a “total maximum daily load” (“TMDL”) for those pollutants that are contributing to water quality impairments. Id. § 1313(d)(1)(C). Each State must submit its list of such waters, along with any TMDLs established, to EPA for approval. Id. § 1313(d)(2). If EPA disapproves, the EPA Administrator “shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them” Id.

STATEMENT OF FACTS

A. Plaintiffs’ Petition to EPA to Establish Numeric Nutrient Standards and TMDLs for the Mississippi River Basin and Northern Gulf of Mexico

31. On July 30, 2008, Plaintiffs petitioned EPA under 5 U.S.C. § 553(e) to establish numeric nutrient criteria for nitrogen and phosphorous where they were absent from state water quality standards. The petition specifically identified waters of the Mississippi River Basin and the northern Gulf of Mexico as needing such criteria under CWA Section 303(c)(4)(B). Plaintiffs also petitioned EPA to establish TMDLs for nitrogen and phosphorous for those waters.

32. As part of the Petition, Plaintiffs submitted voluminous evidence to EPA that excessive nitrogen and phosphorous pollution from states throughout the Mississippi River Basin

and northern Gulf of Mexico has devastating impacts on water quality and the ability of waters to support their designated uses, both in the states themselves and in downstream waters.

33. Plaintiffs' Petition documents how excessive nitrogen and phosphorous pollution in the Mississippi River Basin and northern Gulf of Mexico has caused a large zone of hypoxia (i.e., a low oxygen "dead zone") to develop in the northern Gulf of Mexico. The Gulf's dead zone is the largest in North America and the second largest in the world.

34. Plaintiffs' Petition further documents how the Gulf's dead zone caused by excessive nitrogen and phosphorous pollution is having significant adverse impacts on the ecology of the Gulf, species diversity within the Gulf, and the Gulf's \$2.8 billion commercial and recreational fishing industry, and how an approach that requires reductions in nitrogen and phosphorous pollution throughout the Mississippi River Basin and northern Gulf of Mexico is needed to achieve the level of reductions necessary to protect water quality and designated uses in the northern Gulf of Mexico.

35. Plaintiffs' Petition also documents how, in addition to contributing to the Gulf of Mexico dead zone, excessive nitrogen and phosphorous pollution also cause water quality problems within the Mississippi River Basin itself, and other freshwater ecosystems, due to "the stimulating effect these pollutants have on plant and microbial growth, altering the balance of natural communities, robbing the water column of oxygen, and promoting the growth of pathogenic and toxin-producing microorganisms." Petition at 13. "These problems prevent waters from attaining the basic Clean Water Act 'fishable/swimmable' goals, threaten the health of human and wildlife users of those waters, . . . [and causes] [d]amage to recreational use of waters, . . . [d]amage to drinking water supplies, and [d]amage to the aesthetic quality of waters."

Id.

36. Plaintiffs' Petition documents over a decade of EPA statements and actions regarding excessive nitrogen and phosphorous pollution in the Mississippi River Basin and the northern Gulf of Mexico. The Petition documents how neither EPA nor state actions have been effective at reducing excessive nitrogen or phosphorous pollution that contributes to the Gulf dead zone or to water quality impairments throughout the states themselves. Specifically, the Petition documents that existing state water quality standards in the ten Mississippi River mainstem states are largely general and "narrative" (i.e., non-numeric) in nature and have not been effective in reducing excessive nitrogen and phosphorous pollution or protecting designated uses, and that the ten Mississippi River mainstem states have not made significant progress toward adopting numeric nutrient standards on their own. In addition, the Petition documents how "states have largely failed to prepare TMDLs necessary for numerous waters in the Mississippi Basin that are impaired by nitrogen and/or phosphorus pollution and that no TMDL has been established for the mainstem of the Mississippi River or any portion of the Gulf of Mexico." Petition at 70.

37. Plaintiffs' Petition concludes that

It is clear that action by EPA is needed now – not simply more studies, reports, task forces and conferences. EPA has long known concrete steps that should be taken to begin to control nitrogen and phosphorus pollution

[N]umeric water quality standards for nitrogen and a TMDL are needed to protect the area of the Gulf of Mexico within the jurisdiction of the Clean Water Act outside of the jurisdiction of any state.

Further, it is clear from the foregoing that numeric water quality standards for nitrogen and phosphorus are necessary to meet the requirements of the Clean Water Act. . . .

At a minimum, the evidence demonstrates that EPA must prepare and publish water quality standards [to control nitrogen and phosphorous pollution] for the Gulf of Mexico and those water bodies in the Mississippi River watershed. Jurisdictional considerations alone dictate that EPA must establish water quality standards to control nitrogen and phosphorus pollution in the mainstem of the

Mississippi River and the northern Gulf of Mexico, but the evidence of what has happened over the last decade demonstrates the EPA must establish numeric criteria for all water bodies in the Basin.

Petition at 69-71.

B. EPA Denial of Plaintiffs' Petition

38. On July 29, 2011, EPA denied Plaintiffs' Petition in a letter from Michael H. Shapiro, Deputy Assistant Administrator for Water. A copy of EPA's July 29, 2011 denial letter is attached to this complaint as Exhibit B and incorporated herein by reference.

39. EPA's denial letter states that the Agency "is in agreement with many of [Petitioners'] environmental concerns" regarding nitrogen (N) and phosphorus (P) pollution, and it concedes that "nutrient loadings to the Mississippi River and its tributaries are both harming upstream water quality and contributing significantly to hypoxia ... in the Gulf of Mexico." Letter at 1-2. EPA in its denial letter also agrees "that N and P pollution is a significant water quality problem in the MARB [Mississippi-Atchafalaya River Basin] and northern Gulf of Mexico" and states that "reducing N and P pollution is and should be a high priority for EPA's water programs." Letter at 2, 6.

40. EPA's denial letter concludes, however, that EPA "do[es] not believe that the comprehensive use of federal rulemaking authority is the most effective or practical means of addressing these concerns at this time." Letter at 1. Rejecting Plaintiffs' request for EPA to set federal numeric nutrient criteria (NNC) for nitrogen and phosphorus, EPA states "that the most effective and sustainable way to address widespread and pervasive nutrient pollution . . . is to build on" existing technical support efforts "and work cooperatively with states and tribes to strengthen nutrient management programs." Letter at 4.

41. With respect to EPA's authority under CWA Section 303(c)(4)(B) to establish revised or new water quality standards "in any case where [EPA] determines that a revised or

new standard is necessary to meet the requirements of the [CWA],” EPA’s denial letter states that “U.S. EPA has used this authority in one recent instance (Florida) to develop federal NNC and retains its discretion to use it elsewhere, as appropriate. . . . While U.S. EPA may at some future time use its authority in response to specific circumstances, U.S. EPA’s current approach, consistent with the CWA and Agency policy, is to address N and P pollution and accelerate state adoption of NNC by working in partnership with states and stakeholders to reduce nutrient loadings from both point and non-point sources.” Letter at 5.

42. In denying Plaintiffs’ Petition, EPA specifically stated that, “[i]n taking this action, U.S. EPA is not determining that NNC are not necessary to meet CWA requirements with respect to the waters . . . identified.” Letter at 6. Rather, EPA’s denial letter states that it is only “exercising its discretion to allocate its resources in a manner that supports targeted regional and state activities to accomplish our mutual goal of reducing N and P pollution and accelerating the development and adoption of state approaches to controlling N and P.” *Id.*

CLAIMS FOR RELIEF

First Claim for Relief (Petition Denial Not Based on Relevant Statutory Factors)

43. EPA’s denial of Plaintiffs’ Petition is “final agency action for which there is no other adequate remedy in a court” within the meaning of the APA, 5 U.S.C. § 704.

44. CWA Section 303(c)(4)(B) provides that “the Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard . . . in any case where [she] determines that a revised or new standard is necessary to meet the requirements of this Act.”

45. EPA’s denial of Plaintiffs’ Petition fails to provide reasons for the denial that conform to the relevant statutory factors in Section 303(c)(4)(B) of the CWA, in that it does not

provide reasons why revised or new water quality standards to address excessive nutrient pollution in Mississippi River Basin and northern Gulf of Mexico waters are not “necessary to meet the requirements of the [CWA].”

46. EPA’s denial of Plaintiffs’ Petition constitutes an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of the APA, 5 U.S.C. § 706(2)(A), and the CWA, 33 U.S.C. § 1313(c)(4)(B).

Second Claim for Relief (Petition Denial Contrary to Undisputed Evidence)

47. EPA’s denial of Plaintiffs’ Petition is “final agency action for which there is no other adequate remedy in a court” within the meaning of the APA, 5 U.S.C. § 704.

48. Plaintiffs’ Petition provides undisputed evidence that numeric nutrient water quality standards for the waters of the Mississippi River Basin and northern Gulf of Mexico are “necessary to meet the requirements of the [CWA],” within the meaning of Section 303(c)(4)(B) of the CWA.

49. EPA’s failure in its response to the Petition to determine, within the meaning of CWA Section 303(c)(4)(B), that numeric nutrient water quality standards for the ten Mississippi River mainstem states are necessary to meet the requirements of CWA is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of the APA, 5 U.S.C. § 706(2)(A), and the CWA, 33 U.S.C. § 1313(c)(4)(B).

50. EPA’s denial of Plaintiffs’ Petition constitutes an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” in violation of the APA, 5 U.S.C. § 706(2)(A), and the CWA, 33 U.S.C. § 1313(c)(4)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment:

(1) declaring that EPA's denial of Plaintiffs' Petition is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA, 5 U.S.C.

§ 706(2)(A), and the CWA, 33 U.S.C. § 1313(c)(4)(B);

(2) ordering EPA to provide a response to Plaintiffs' Petition within 90 days that is not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law";

(3) awarding Plaintiffs their litigation costs and reasonable attorneys' fees in this action, as authorized in 28 U.S.C. § 2412; and

(4) ordering such other relief as the Court may deem just and proper.

Dated: March 13, 2012

Respectfully submitted,

/s/ Machel Lee Hall

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