1-1-92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.

IN THE MATTER OF	:	
	:	
LaBarge, Incorporated	:	Dkt. No. CWA-VII-91-W-0078
	:	
	:	
Respondent	:	

ORDER DENYING MOTION TO STRIKE

Complainant herein filed a motion to strike several affirmative defenses asserted by respondent, including the following:

1. That the complaint "fails to state a claim upon which relief can be granted;"

2. That "the authority of the City of Joplin as the Control Authority is of primary jurisdication in this matter and any actions of EPA in this matter are duplicative and should be held in abeyance pending the exercise of the City's authority;"

3. That "EPA is without authority to take action under Section 309(g) of the Clean Water Act . . . in this matter in that EPA has not shown that the City of Joplin has violated the terms of its . . . (NPDES) permit. The City of Joplin has not exceeded its permit limit for copper".

4. That "EPA is without authority to take action under Section 309(g) of the Clean Water Act . . . on the City of Joplin Industrial Discharge Permit No. 90-30 in that Section 309(g) only authorizes the Administrator of EPA to initiate such actions based on a finding of violation of a permit issued by the

Administrator or by a state."

5. That "EPA is without authority to take action under Section 309(g) . . . in this matter in that EPA has not shown that actions of Respondent have caused 'pass through' or 'interference' as those terms are defined . . . or that Respondent did know or had reason to know that its discharges would cause 'pass through' or 'interference.'"

Last but not least respondent "raises the affirmative defenses of laches, waiver and estoppel and all other legal and equitable defenses not specifically set forth above."

In response to the motion to strike, respondent filed, among other things, a motion to strike complainant's memorandum.

Complainant consumes nearly three pages in explaining why respondent's first affirmative defense should be stricken, and two pages as to why the last defense ("laches. . . . all other legal and equitable defenses. . . .") should be stricken, with varying amounts of space devoted to defenses two through five.

Affirmative defenses are generally viewed with disfavor and are not to be stricken in the absence of a strong showing that they are legally insufficient and that they will impede the progress of the litigation.

The amount of time and energy that has been expended already by both counsel in their efforts here[1] is probably greater than any

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[1] Motion to Strike Complainant's Memorandum (11-14-91); Memorandum (11-14-91); Motion in Opposition to Complainant's Motion to Strike Affirmative Defenses (10-25-91); Memorandum in Opposition to Motion in Opposition to Complainant's Motion to Strike Affirmative Defenses (10-30-91), etc.

time spent in presenting and meeting these defenses. The parties might better spend their time preparing for trial than on motions that do not lie, or are seldom granted, and other nineteenth century style filings. The defenses asserted here are clearly not "Narragansett" in scope or disruptive effect.[2] While it is possible that there is little merit to generalized affirmative defenses, there should also be little difficulty in meeting such defenses.

In this case, it is determined that the risk of prejudice to complainant or of impeding the forward progress of this matter by allowing the affirmative defenses to stand is outweighed by the benefit to be gained from permitting respondent to attempt to prove its case as its counsel sees it.

Motions denied.[3]

J. F. Greene
Administrative Law Judge

Dated: January 17, 1992
Washington, D.C.

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[2] Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp., 418 F. Supp. 798 (D.R.I. 1976).

[3] See motions set out in note 1, supra, p. 2.

CERTIFICATE OF SERVICE

I hereby certify that the Original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on January 17, 1992.

Shirley Smith
Secretary to Judge J. F. Greene

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