



UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION 3  
 Philadelphia, Pennsylvania



IN THE MATTER OF: )  
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 New London Oil Company, Inc. )  
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 RESPONDENTS ) DOCKET NO. III-90-025-DS  
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 )

ORDER ON MOTION-TO STRIKE

This is an administrative enforcement proceeding under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-2(c), being conducted in accordance with the United States Environmental Protection Agency (EPA) "GUIDANCE ON UIC ADMINISTRATIVE ORDER PROCEDURES," issued November 26, 1986 (GUIDANCE). This ORDER addresses Complainant EPA's September 14, 1993 Motion to Strike. The Motion is unopposed, and will be granted.

Complainant's Motion points to language contained in two documents attached to Complainant's Motion, and seeks the exclusion of the language on the grounds of relevance. The first of these documents was telefaxed by the Respondent to EPA's Small Business Ombudsman on May 16, 1993 and the second was telefaxed to the Presiding Officer by the Respondent on May 31, 1993. Complainant asserts that the record of the proceeding contains other irrelevant statements that could be the subject of a motion to strike, but seeks the exclusion only of three specific "statements directed at counsel for EPA, Andrew Duchovnay." The GUIDANCE does not contain express provision for motions to strike. Complainant cites 144.109(d), which imposes a general record-policing duty upon the Presiding Officer. Borrowing from Rule 12(b) of the Federal Rules of Civil Procedure, I believe the Presiding Officer has inherent authority to strike any redundant, irrelevant, immaterial, impertinent or scandalous material from the record. Material that would improperly confuse the record may also be stricken. In the Matter of Valmont Industries, Inc,

EPA Docket No. 07-89-LO68 (Case Examiner's Order on Motion to Strike, February 26, 1990); In the Matter of USX-Gary Works, EPA Docket No. 05-89-LO06 (Case Examiner's Motion to Strike, March 13, 1990).

I have examined the three statements that are the subject of the Motion to Strike, and find that they all go beyond the bounds of legitimate argument about Complainant's position in the case. They are ad hominem attacks on EPA's counsel, made for the apparent purpose of discrediting him in the eyes of Agency officials. Comments like these have no place in an administrative proceeding. They are irrelevant, immaterial and impertinent, and they should be stricken from the record. Complainant's Motion to Strike is GRANTED. The second sentence in the next-to-last paragraph of Respondent's May 16, 1993 FAX to EPA's Ombudsman, and the first and last sentences in the last paragraph of Respondent's May 31, 1993 FAX to the Presiding Officer are hereby ORDERED stricken from the record of this proceeding.

Date: JAN 24 1994

/s

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BENJAMIN KALKSTEIN

Presiding Officer

*Last Updated: October 18, 1999*