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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

THE MATTER OF)
CITY OF CAMBRIDGE, WATER) Docket No. 5-CWA-97-
021)
POLLUTION CONTROL CENTER)
Respondent)

ORDER GRANTING WITHDRAWAL OF COMPLAINT WITHOUT PREJUDICE

On April 10, 1998, Complainant Environmental Protection Agency ("EPA") filed a Motion to Withdraw Complaint Without Prejudice. The Motion was triggered by EPA's belief that there may be related ongoing violations. This belief has caused EPA to conclude that it needs to seek injunctive relief, which relief is not available in this forum. For that reason and for judicial economy, EPA seeks an Order granting its Motion.

The City of Cambridge ("Respondent" or "City") filed a Reply to EPA's Motion, stating that it "does not oppose the motion of USEPA to withdraw its Complaint in this proceeding without prejudice . . . so long as the City also is not prejudiced by USEPA's withdrawal of its Complaint." Reply at 2.

Specifically, the City seeks to have the Order provide that ". . . USEPA's withdrawal of its Complaint shall not prejudice the City or result in a waiver with respect to any rights, defenses or claims which it may have regarding the subject matters of this proceeding." The City also seeks permission to withdraw its "Answer to USEPA's Complaint and the Joint Statement Regarding the City of Cambridge's Challenge to Proposed Penalty. . . [as it] . . . does not wish to be prejudiced by any admission or statement made in this proceeding if USEPA's request to withdraw its Complaint is granted, since additional facts or newly discovered evidence may cause the City to take a different position in the future with respect to the violations alleged in the Complaint."

Underlying the City's request is its concern that it not be prejudiced by its earlier statements if "additional facts or newly discov[ered] evidence may cause the City to take a different position in the future . . ."

With the withdrawal of EPA's Complaint, Respondent's answer is also withdrawn, as there can be no answer to a nonexistent complaint. As to Respondent's concerns that its earlier statements may be construed as admissions when a new complaint is filed by EPA, the Respondent's concerns are, it concedes, speculative, and therefore, premature to raise. These issues should be presented, to the extent they materialize, in the new forum.

To the extent that Respondent is concerned about the possibility of additional facts or newly discovered evidence, it is noted that the Federal Rules of Civil Procedure allow for the liberal amendment of pleadings.

Accordingly, EPA's Motion is GRANTED and Respondent's Answer is withdrawn. So Ordered.

William B. Moran
Administrative Law Judge

Dated: April 29, 1998
Washington, DC

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