

4/21/89

APR 28 1989  
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of:	:	
	:	
City of Kalamazoo Water	:	Docket No.: CWA-AO-01-89
Reclamation Plant,	:	
	:	
Respondent.	:	ORDER
	:	

By Motion dated March 31, 1989, the Complainant seeks Leave to Withdraw its Complaint Without Prejudice. In support of the Motion, Complainant argues that in light of the Respondents continued violation of its permit and due to the statutory penalty limits of the statute as well as its lack of authority to include injunctive relief thereunder, the Complainant wishes to withdraw this Complaint and perhaps seek litigation in another forum.

By reply dated April 17, 1989, the Respondent argues that due to the Complainant's failure to properly consult with the relevant state agency prior to the filing of the Complaint, failure to comply with the Court's Order on Discovery and other factual errors in the Complaint, this matter should be Dismissed With Prejudice. The Respondent also seeks costs and attorney fees.

The MDNR, while expressing its concern that the Complaint contained many factual errors, expressed its desire to be involved at all stages of this action, including participation in the hearing, if any.

Having been involved in environmental law for over 28 years and at one time representing several state environmental agencies, I am keenly aware of the delicate balance which is an integral element in the state-federal partnership concerning environmental enforcement which the congress has carefully crafted in all of the federal environmental laws enacted by it.

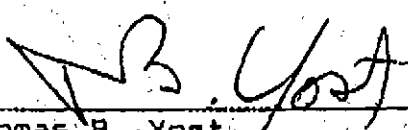
In the instant case, we are not involved in a situation demonstrating a failure of a state to enforce its environmental laws or a case showing state indifference to an environmental problem. On the contrary, this record shows that the MDNR was on top of this matter and was taking appropriate enforcement action.

By making the above observations, I am not suggesting that the EPA is without authority to proceed as it has in this matter, but rather pointing out that the agency's action in this case exhibits a lack of sensitivity to a fellow sovereign whose past actions regarding this Respondent would deserve more respect.

In light of all of the above, I issue the following order:

1. The Complaint is Dismissed Without Prejudice.
2. No costs or attorney fees shall be awarded.
3. The EPA is strongly urged to indulge in a meaningful consultation with the MDNR in an attempt to resolve this matter without the filing of another Complaint in this or other forums.

Date: 4/2/89

  
 Thomas B. Yost  
 Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, Region V (service by first class U.S. mail); and that true and correct copies were served on Complainant and Respondent (service by certified mail - return receipt requested). Dated in Atlanta, Georgia this *24th* day of *April*, 1989.

*MP Dryden*  
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Marsha P. Dryden  
Legal Technician

HONORABLE THOMAS B. YOST  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
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ATLANTA, GEORGIA 30365

404/347-2681, Comm. 257-2681, FT8