

ILLINOIS POLLUTION CONTROL BOARD  
January 11, 1995

INTERNATIONAL UNION, UNITED )  
AUTOMOBILE, AEROSPACE AND )  
AGRICULTURAL IMPLEMENT WORKERS )  
OF AMERICA AND UAW LOCAL 974; )  
AND CITIZENS FOR A BETTER )  
ENVIRONMENT, )  
Complainants, )  
v. )  
CATERPILLAR INC., ) PCB 94-240  
Respondent, ) (Enforcement)  
----- )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Party-in-Interest. )

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a motion to strike affirmative defenses filed by the complainants on December 13, 1994 in which they object to all 16 affirmative defenses raised in the respondent, Caterpillar Inc.'s December 2, 1994 answer to the complaint. Caterpillar filed a response to the motion on December 22, 1994 asking that we deny the relief requested in the motion.

In general terms, the affirmative defenses concern the sufficiency of the pleadings, the reasonableness of the respondent's corrective action at the site and Caterpillar's participation in the Illinois Environmental Protection Agency's 4(q) program. The complainants suggest that the affirmative defenses are repetitive of arguments raised in Caterpillar's motion to dismiss this case which we denied on November 3, 1994. Complainants also argue that the defenses are insufficiently pled because they do not constitute "facts" and are merely conclusions of law.

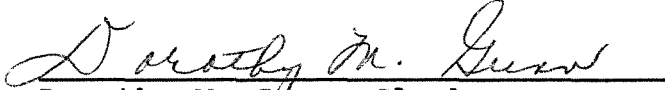
We hereby deny the motion to strike in its entirety. We will not deprive Caterpillar the opportunity to offer facts and arguments at hearing which would support or prove any of the affirmative defenses raised in the answer. While Caterpillar may have set forth its affirmative defenses without pleading any additional facts to those already alleged in the complaint, Caterpillar was under no requirement to do so. When the defense

is directed to the facts set forth in the complaint, no additional facts need be pled. (Fitzpatrick v. City of Chicago, 131 Ill. App. 3d 582, 475 N.E. 2 995, 998 (1985); see also 35 Ill. Adm. Code 103.122(d).)

Moreover, though many of Caterpillar's affirmative defenses are similar to the arguments put forth in Caterpillar's motion to dismiss, we do not find this to be an adequate basis to strike these defenses. Our November 3, 1994 order merely determined that the complaint pled sufficient facts to survive a motion to dismiss. Our denying Caterpillar's motion to dismiss did not foreclose Caterpillar from raising defenses that based on a fully developed record, may show that the alleged violations of the Environmental Protection Act did not occur or that the relief requested by the complainant is improper. Further, many of the defenses relate to Caterpillar's participation in the Agency's 4(q) program and as we have already determined in our November 3, 1994 order (see page 4), we will not deny Caterpillar, or the complainants, the opportunity to offer proof regarding this issue.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17<sup>th</sup> day of January, 1995, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board