

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

.....
ANNE ANDERSON, et al.,
Plaintiffs,
v.
CRYOVAC, INC., et al.,
Defendants.
.....

Civil Action
No. 82-1672-S

ANSWER OF W. R. GRACE & CO. AND
ITS CRYOVAC DIVISION TO
SECOND AMENDED COMPLAINT

For its answer to the plaintiffs' Second Amended Complaint, defendant W. R. Grace & Co., doing business as Cryovac Division, says as follows on behalf of itself and its Cryovac Division.

First Defense

1. Defendant W. R. Grace & Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in plaintiffs' Complaint, except as hereinafter set forth. Therefore, in accordance with Rule 8(b), Fed. R. Civ. P., all allegations of the Complaint not herein expressly admitted shall be taken as denied.

2. With respect to paragraph 1 of the Complaint, defendant denies that it disposed of any toxic chemicals which could have or did contaminate the groundwater used by plaintiffs.

3. Defendant admits the allegations of paragraph 31; except it denies that its Cryovac Division is an entity separate or apart from defendant W. R. Grace & Co. or having capacity to be sued as such.

4. Defendant admits the allegations of paragraph 32.

5. With respect to paragraph 37, defendant understands that such paragraph merely defines the sense in which various terms are used by the plaintiffs elsewhere in their Complaint, wherefore no answer is required. Defendant denies that the terms are defined correctly and completely in accordance with accepted usage in the technical fields involved, and defendant denies that the Environmental Protection Agency ("EPA") or other guidelines, estimates, standards, measures, recommendations and suggestions referred to are accurately and completely described or have any foundation in fact or are accurate, meaningful or relevant to this case.

6. Defendant admits the allegations of paragraph 38.

7. With respect to paragraphs 44.A.(2) and B.(2) and 45.A.(2), B.(2), C.(2) and D.(2), defendant says that such paragraphs assert legal conclusions to which no answer is required.

8. Defendant denies that the EPA or other guidelines, estimates, standards, measures, recommendations and suggestions referred to in paragraphs 44.A.(3) and B.(3) are accurately and completely described or have any foundation in fact or are accurate, meaningful or relevant to this case.

9. With respect to paragraph 47, defendant admits that Ecology and Environment, Inc., a private company acting under contract to the EPA, issued a Final Report dated March 8, 1982 (the "E & E

Report"), reporting on its investigations in East Woburn. Defendant lacks knowledge or information sufficient to form a belief as to the validity or accuracy of the sampling and analytic methodology employed by Ecology and Environment, Inc. or its subcontractors, and defendant therefore denies, in accordance with Rule 8(b), Mass. R. Civ. P., that the substances or concentrations reported in the E & E Report were in fact found or existed. Defendant denies that the EPA or other estimates referred to are accurately and completely described or have any foundation in fact or are accurate, meaningful or relevant to this case.

10. With respect to paragraph 48, defendant denies that any findings reported in the E & E Report indicated any plume with a source beginning approximately where the Cryovac plant is located. Defendant says that the E & E Report suggested only that contaminants may be coming from unspecified geographical areas located somewhere to the west and to the north and/or northeast of wells G and H, in a large area of East Woburn containing scores of industrial operations owned and operated by persons other than defendant. Defendant says further that the E & E Report is on its face a report of preliminary and incomplete investigations; that it identifies no specific industries or persons as potential sources of contamination; and that it does not purport to identify any present, ongoing operation, any transient dumping by outside sources, any discontinued use by persons no longer located in the area, or the like, as sources of contamination. Defendant lacks knowledge or information sufficient to form a belief as to the validity or accuracy of the sampling and analytic methodology employed

by Ecology and Environment, Inc. or its subcontractors, and defendant therefore denies, in accordance with Rule 8(b), Mass. R. Civ. P., that the reported substances or concentrations were in fact found or existed and that the suggestion of possible source areas has any foundation in fact or is accurate or meaningful.

11. Defendant admits the allegations of paragraph 49, except it lacks knowledge or information sufficient to form a belief as to the truth of the allegation that its Cryovac Division plant is within the Aberjona River Valley trench.

12. With respect to paragraphs 50 and 51, defendant denies that it disposed of any substances which could have or did flow from its Cryovac plant to wells G and H, and defendant denies that any EPA testing confirms the existence of any such plume.

13. With respect to paragraph 64, defendant denies that any injury or harm which the plaintiffs may have suffered is a result of any action or omission of defendant W. R. Grace & Co. or its Cryovac Division.

14. With respect to paragraphs A through V of the Complaint, defendant says that such paragraphs assert legal conclusions to which no answer is required. To the extent that such paragraphs contain any allegations of fact, defendant denies such allegations.

Second Defense

The plaintiffs' Complaint fails to state any claim or cause of action upon which relief can be granted.

Third Defense

Defendant Cryovac Division of W. R. Grace & Co. lacks capacity to be sued.

Fourth Defense

Defendant at all times exercised due care under the circumstances, and acted in good faith in accordance with reasonable and customary standards in the industry and in the locality.

Fifth Defense

Any contamination of the groundwater referred to in the Complaint is the result, in whole or in part, of actions of others for whose conduct defendant is not responsible or liable. Accordingly, plaintiffs' claims are barred; or any damages which may have been sustained by plaintiffs must be apportioned according to the relative contributions of all such persons.

Sixth Defense

The plaintiffs' claims are barred by the applicable statutes of limitations and/or laches.

Seventh Defense

Plaintiffs have failed to join parties known to plaintiffs that are indispensable to the just adjudication of this litigation.

Eighth Defense

Plaintiffs' claims are preempted, in whole or in part, by applicable federal and state statutes in the field of water and air pollution and solid and hazardous waste management.

Ninth Defense

Plaintiffs' claims are barred, in whole or in part, because their own negligence exceeded any negligence of defendants.

Tenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

Eleventh Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of assumption of risk.

Twelfth Defense

Defendant's acts or omissions, if any, were neither the cause in fact nor the legal cause of any alleged introduction of materials into the environment. Instead, the intervening acts of other third parties over whom defendant exercised no control were the efficient and superseding cause of the harm, if any, asserted in plaintiffs' complaint.

Thirteenth Defense

At all relevant times defendant acted reasonably and in good faith with due care for the rights and safety of others.

Fourteenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.


Fifteenth Defense

Plaintiffs are barred from recovery, in whole or in part, or their claims are reduced in an appropriate amount, for their failure to mitigate their alleged damages, if any.

Sixteenth Defense

Defendant is not responsible for any alleged adverse or potentially adverse impact on the environment or human health as a result of technical, medical or environmental considerations not known or foreseeable at the time any of the activities or omissions alleged in the Complaint occurred.

By its attorneys,



William J. Cheeseman
Foley, Hoag & Eliot
One Post Office Square
Boston, Massachusetts 02109
(617) 482-1390

Dated: April 1, 1983