

Sewage Spill Case Continues After Court Strikes Most of City's Affirmative Defenses

In our last [newsletter](#), we summarized standing issues addressed by the U.S. District Court for the Middle District of Florida in *Suncoast Waterkeeper*. In this case, a group of environmental non-profit organizations filed suit against the City of Gulfport for an alleged violation of section 301(a) of the Clean Water Act claiming that the City is responsible for discharging pollutants into certain waters of the United States located in the Tampa Bay area. After the court ruled that the Plaintiffs had standing, the City filed its answer, which included nineteen affirmative defenses. The Plaintiffs moved to strike all of the affirmative defenses for failing to plea and, specifically, six for failing as a matter of law.

The court granted the Plaintiffs' motion to strike four of the City's affirmative defenses for failing as a matter of law. The court struck the City's failure to state a claim and indemnification and contribution affirmative defenses because they were not properly asserted as affirmative defenses. The court also struck the act of God or war affirmative defense because the defense is not available for violations of section 301(a) of the CWA, and the act or omission of a third party affirmative defense because potential third party responsibility for the spill is irrelevant to the Plaintiffs' claims against the City.

The court denied the Plaintiffs' motion to strike the City's laches affirmative defense. This defense had been considered in an environmental case in the Eleventh Circuit and therefore did not fail as a matter of law. The court also denied the Plaintiffs' motion to strike the City's standing affirmative defense. The Plaintiffs argued that because the court already ruled on the issue of standing in a prior proceeding, the defense should be stricken. The court disagreed and concluded that (1) standing is a subject matter jurisdiction issue and challenges to subject matter jurisdiction can be made at any time and (2) this particular affirmative defense is considered a *factual* attack on the Plaintiffs' standing that can be challenged at a later date. The court distinguished the City's prior challenge to standing as a *facial* attack by the City.

Finally, the court concluded that affirmative defenses do not require the same heightened pleading standard and factual specificity as complaints. Federal Rules of Civil Procedure 8(b)(1)(A) and 8(c)(1) only require that a party state its defenses. The court ruled that only one of the City's affirmative defenses ("Uncertainty") was deficient in this regard, and granted the Plaintiffs' motion to strike that defense.