

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Nelcon, Inc.) **Docket No. CWA-08-2012-0025**
)
Respondent)

RECEIVED BY GAIL W
2013 JUL -2 PM 1:25

UNOPPOSED MOTION TO AMEND COMPLAINT

Complainant United States Environmental Protection Agency Region 8 (Complainant), by and through undersigned counsel, moves to amend the complaint filed in this matter (Motion). This Motion is made pursuant to Sections 22.14(c) and 22.7 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules of Practice), 40 C.F.R. §§ 22.14(c) and 22.7. The undersigned has spoken with counsel for Respondent about this Motion. Counsel for Respondent has authorized the undersigned to inform the Presiding Officer that counsel for Respondent has no objection to this Motion.

As counsel informed the court in its settlement status report filed on June 17, 2013, the parties have reached a settlement in principle resolving all allegations made in the complaint initiating this proceeding, as well as additional related matters discovered by Complainant after the complaint was filed.

Because the parties intend to settle both the matters alleged in the complaint and other related matters discovered by Complainant after the complaint was filed, Complainant must first move this court to allow the amendment of the complaint to incorporate the additional matters.

The complaint alleges that during the construction of a drinking water pipeline from the new Blackfeet Community Water Treatment Plant near East Glacier, Montana, to the Town of

Browning, Respondent discharged pollutants to waters of the United States without a permit; in particular, at the location where the pipeline crosses Montana Highway 49 and the Two Medicine River just south of the MT Highway 49 bridge.

After the complaint was filed Complainant learned that Respondent's pipeline construction project also crossed Willow Creek. A representative of Complainant inspected the Willow Creek crossing on two occasions. Based on these inspections, and on other information, Complainant has concluded that it has sufficient evidence to allege and prove that Respondent discharged pollutants to Willow Creek, a waters of the United States, without a permit, on at least four dates.

Complainant first raised these new allegations with Respondent and the Alternative Dispute Resolution Judge during the period the parties engaged in the alternative dispute resolution (ADR) process. Although the parties did not reach an agreement during the ADR process, the parties continued to negotiate in an effort to settle both the Two Medicine River allegations and the Willow Creek allegations. The parties now have reached a settlement that resolves all of the Two Medicine River and Willow Creek allegations.

Attached hereto as Attachment 1 is a copy of the complaint as Complainant proposes it be amended. As explained in new paragraph 1, the amendments to the complaint would be as follows: the addition of a new introductory paragraph 1; modifications to certain allegations, and the addition of new allegations to include relevant information relating to the Willow Creek crossing; additions to Count I relating specifically to the Willow Creek crossing; and other language reflecting the addition of the Willow Creek allegations.

If the Presiding Officer grants the motion to amend the complaint the parties will execute a consent agreement as promptly as possible thereafter and file the executed consent agreement with the Regional Judicial Officer for inclusion in a consent order, if appropriate, pursuant to 40 C.F.R. § 22.18(b)(2).


Granting of this motion will further the Agency's interest in settling administrative proceedings in a manner consistent with both the Clean Water Act, as amended (Act), 33 U.S.C. § 1251 *et seq.* (*see, e.g.*, section 309 of the Act), and the Rules of Practice (*see*, 22 C.F.R. § 22.18(b)). Further, granting of this motion likely will result in each party, and the Office of the Administrative Law Judges, not being required to expend additional scarce resources on a separate administrative or judicial proceeding to address the additional Willow Creek matters identified by Complainant after the Complaint was filed.

Complainant, therefore, requests that the Presiding Officer grant this Motion.

Respectfully submitted,

United States Environmental Protection Agency Region 8

Date: 7/1/13

By: 

Charles L. Figur, Senior Attorney
Legal Enforcement Program (ENF-L)
United States Environmental Protection Agency Region 8
1595 Wynkoop Street
Denver, Co 80202
Figur.Charles@epa.gov
(303) 312 6915

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Nelcon, Inc.,

Respondent

)
)
)
)
)

Docket No. CWA-08-2012-0025

PROPOSED
ORDER GRANTING MOTION TO AMEND COMPLAINT

Having considered Complainant's Unopposed Motion to Amend Complaint in this matter (Motion), and good cause being shown,

IT IS HEREBY ORDERED THAT complainant may amend the complaint in substantially the form set forth in the attachment to Complainant's Motion.

Susan L. Biro
Chief Administrative Law Judge

Dated: July _____, 2013
Washington, D.C.

CERTIFICATE OF SERVICE

I certify that on the date below, I sent by first class mail, a copy of the foregoing *Motion to Amend Complaint* to:

Rebecca L. Summerville
Datsopoulos, MacDonald & Lind, P.C.
Central Square Building
201 W. Main Street, Suite 201
Missoula, MT 59802

and, pursuant to the Order of Designation in this matter dated May 7, 2013, the original and one copy of the foregoing *Motion to Amend Complaint* were mailed to:

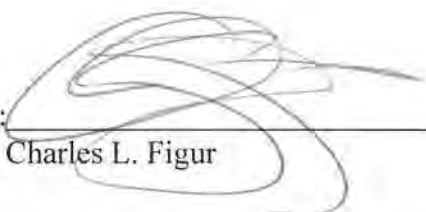
Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and, pursuant to the Prehearing Order of the Presiding Officer in this matter dated May 17, 2013, an electronic copy of the execution original of the foregoing *Motion to Amend Complaint* was emailed to the Office of Administrative Law Judges at (oyaljfilng@epa.gov), with a courtesy copy to counsel for Respondent.

Date:

7/1/13

By:



Charles L. Figur