

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
University of Kansas Medical Center,)	OBJECTION TO EPA'S MOTION FOR
)	LEAVE TO AMEND THE COMPLAINT
Respondent.)	
)	Docket No. RCRA-07-2006-0261
)	
Proceedings Under Section 3008(g) of the)	
Resource Conservation and Recovery Act,)	
as amended, 42 U.S.C. §6928 (a) and (g))	

**UNIVERSITY OF KANSAS MEDICAL CENTER'S OBJECTION TO
EPA'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

COMES NOW, University of Kansas Medical Center ("KUMC") by and through its undersigned counsel and hereby objects to Complainant's Motion for Leave to File an Amended Complaint (hereinafter referred to as the "Motion"). The lack of a legitimate reason for requesting the amendment illustrates a dilatory motive on the part of EPA and causes undue delay in the proceedings. EPA's request is not justified because it is due to its own negligence or motivations, and is not based on new facts, unforeseen circumstances, or a change in the law. The proposed amendment substantially changes the allegations in the original complaint, causing undue delay in the proceeding and undue prejudice to KUMC. Finally, the timing of EPA's request - on the eve of the deadline for filing of the Respondent's prehearing exchange - raises questions about EPA's motives for taking this action at this particular time.

ARGUMENT

The Motion should be denied. The Supreme Court in Foman v. Davis, 371 U.S. 178 (1962) lists circumstances under which it may be appropriate to deny leave to amend a complaint. These circumstances include undue delay, bad faith, or dilatory motive on the part of the movant; and undue prejudice to the opposite party. The evidence shows that these circumstances apply in this case.

First, the absence of a legitimate reason for the proposed amendment to the Complaint shows at a minimum, a dilatory motive on the part of EPA. The proposed amendment to the Complaint is not based on new facts, unforeseen circumstances or changes in the law. Conversely, EPA claims in its Motion that it recently recognized what it calls "minor inaccuracies" in the original Complaint and wants to correct them now. This is despite the fact that EPA possessed all of the facts that form the basis of its Motion for over a year. Moreover, the original Complaint was filed by EPA on September 28, 2006, almost seven months ago. Therefore, EPA also knew – or should have known – of the "minor inaccuracies" in its Complaint for the past seven months. This negligence on the part of EPA is evidence of a dilatory motive and is grounds for denying the Motion.

Second, the proposed amended complaint makes significant substantive changes to the allegations that will result in undue delay in the proceeding and undue prejudice to KUMC. The proposed amended complaint adds two new laboratories and one additional storage room that were not in the original Complaint. It also dramatically increases the number of alleged violations in one of the laboratories from 6 to 250. If the Motion is granted, KUMC will have to amend its answer and its prehearing exchange, thus causing undue prejudice to KUMC and undue delay in this proceeding. KUMC will have to conduct additional document reviews, site visits, and witness interviews to adequately defend itself against these new allegations. These actions will cause KUMC to incur significant additional expenses that would have been avoided absent this action by

EPA. It is unfair to cause KUMC, at this late stage in the proceeding, and after substantial resources have been expended in investigation and mediation, to defend itself against a new set of allegations that EPA had ample time and opportunity to raise at an earlier time. Granting the Motion would create undue delay in the proceeding and a substantial hardship to KUMC and should therefore be denied.

Finally, the timing of the request to amend the complaint raises questions about EPA's motives. The request to amend the Complaint was filed just two business days before the prehearing exchanges were due to be submitted. The proposed amendment is not based on new facts or unforeseen circumstances. It is not based on a change in the law. Instead, EPA claims that after seven months, it just now noticed that there were "minor inaccuracies" in the original Complaint. Yet EPA knew – or should have known – all of the facts necessary to make this determination amend the Complaint for a period of seven months. Still, for some reason, EPA took no action to correct these errors during that time. The fact that this "discovery" coincides almost exactly with the filing deadline for the prehearing exchange is suspect. Under Foman, inappropriate motives for seeking to amend the Complaint are grounds for denying such a request. This attempt by EPA to delay the disclosure of these new allegations EPA's claim is unjustified and prejudicial and should not be permitted.

WHEREFORE, for the foregoing reasons, KUMC requests that EPA's Motion for Leave to File an Amended Complaint be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

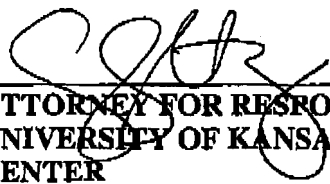
I hereby certify that on this 13th day of April, 2007, a copy of this document was served by U.S. Mail, postage prepaid, upon:

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