

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 North 5th Street
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

APR 11 2010
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EPA REGION VII

IN THE MATTER OF)
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)
MORAN BEEF, INC.,)
)
)
Respondent)
)
Docket No. CWA-07-2010-0080
)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINANT'S MOTION FOR LEAVE TO AMEND COMPLAINT

Introduction

1. The Complaint in this matter was filed March 31, 2010. The Complaint contains two counts alleging that Respondent violated the Clean Water Act ("CWA"). The first count alleges that Respondent is a point source that discharged pollutants into a water of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of Section 301 of the CWA. The second count alleges that Respondent failed to apply for a NPDES permit in violation of Sections 301, 308 and/or 402 of the CWA. In the original complaint, EPA pleaded up to the statutory maximum of \$177,500.
2. Respondent, Moran Beef, Inc., filed an Answer with EPA's Regional Hearing Clerk on April 30, 2010.
3. Hearing on this matter is currently scheduled for April 6 - 8, 2011, in Des Moines, Iowa.

4. In June and September 2010, EPA inspectors conducted follow-up inspections and observed additional violations of the CWA at Respondent's Concentrated Animal Feeding Operation ("CAFO") facility.
5. Complainant seeks to amend the Complaint to include the additional CWA violations identified by EPA after the original Complaint was filed.
6. Complainant seeks to amend the Complaint to allege that Respondent is subject to CWA discharge requirements as a Large or Medium CAFO.
7. Complaint seeks to amend the proposed penalty from up to the CWA statutory maximum to \$79,000.
8. Pursuant to 40 C.F.R. 22.14, the Complainant may amend the complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer.
9. Such motions are freely granted where the ends of justice are served and no prejudice to the opposing party results.
10. This motion to amend, supported by the attached memorandum, states appropriate grounds for relief and will not cause prejudice to the Respondent. This amendment is in the public interest and will promote the justiciable disposition of this matter.
11. For the reasons cited above, Complainant respectfully requests leave of the Court to amend the Complaint. A Memorandum in support of this Motion and the Amended Complaint are attached hereto.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2011, I hand-delivered the original and one true copy of this Memorandum in Support of Complainant's Motion for Leave to Amended Complaint, to Sybil Anderson, the Office of Administrative Law Judges Hearing Clerk, and sent one true and correct copy:

via Federal Express:

Mr. Eldon McAfee, Esq.
Beving, Swanson & Forrest, P.C.
321 East Walnut Street, Suite 200
Des Moines, Iowa 50309

via Federal Express:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005


Signature of Sender