

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
MORAN BEEF, INC., ) DOCKET NO. CWA-07-2010-0080  
 )  
 )  
RESPONDENT )

ORDER GRANTING COMPLAINANT'S MOTION FOR LEAVE TO AMEND COMPLAINT

On March 31, 2010, the United States Environmental Protection Agency ("EPA"), Region 7, ("Complainant") initiated this proceeding by filing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Moran Beef, Inc. ("Respondent"). The Complaint alleges in two counts that Respondent violated Sections 301, 308, and/or 402 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. §§ 1311, 1318, and/or 1342 and the implementing regulations. The first count alleges that Respondent, a point source, discharged pollutants into a water of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit. The second count alleges that Respondent failed to apply for a NPDES permit. Complainant sought a civil administrative penalty in an amount up to the statutory maximum of \$177,500.

On February 1, 2011, Complainant filed a Motion for Leave to Amend Complaint ("Motion to Amend"), in which Complainant moves for leave to amend the Complaint to 1) include additional alleged CWA violations identified by EPA on follow-up inspections in June and September 2010, after the original Complaint was filed; 2) allege that Respondent is subject to CWA discharge requirements as a Large or Medium Concentrated Animal Feeding Operation ("CAFO"); and 3) amend the amount of the proposed penalty to \$79,000. Complainant also filed a proposed Amended Complaint and Notice of Opportunity for Hearing ("proposed Amended Complaint") as an attachment to the Motion to Amend.<sup>1/</sup>

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<sup>1/</sup> The certificates of service for the Motion to Amend and proposed Amended Complaint incorrectly state that the originals and  
(continued...)

Respondent has not filed a response to the Motion To Amend.

Upon consideration, and for good cause shown, the unopposed Motion to Amend is hereby **GRANTED**. The proposed Amended Complaint is deemed to have been filed as of the date of the entry of this Order.

  
Barbara A. Gunning  
Administrative Law Judge

Dated: March 2, 2011  
Washington, D.C.

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<sup>1/</sup> (...continued)  
copies of the documents were "hand-delivered" to the Office of Administrative Law Judges Hearing Clerk on January 28, 2011. The documents were filed by Federal Express on February 1, 2011.

In the ADR Matter of *Moran Beef, Inc.*, Respondent  
Docket No. CWA-07-2010-0080

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order Granting Complainant's Motion For Leave To Amend Complaint**, dated March 2, 2011, was sent in the following manner to the addressees listed below.

  
Mary Angeles  
Legal Staff Assistant

Original And One Copy Interoffice Mail Tto:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Copy By Pouch Mail And Facsimile To:

Chris Muehlberger, Esquire  
Assistant Regional Counsel  
U.S. EPA / Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

Copy By Regular Mail And Facsimile To:

Eldon McAfee, Esquire  
Bevings, Swanson & Forrest, PC  
321 E. Walnut Street, Suite 200  
Des Moines, IA 50309

**Dated: March 2, 2011**  
**Washington, D.C.**