



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 BEFORE THE ADMINISTRATOR

RECEIVED
 JUN 10 2011

REGIONAL HEARING CLERK
 USEPA
 REGION 5

IN THE MATTER OF:)
)
 LAKE'S FARM SERVICE LLC,) DOCKET NO. CAA-05-2010-0058
)
)
 RESPONDENT)

ORDER GRANTING COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE
 COMPLAINT TO DECREASE PROPOSED PENALTY

The United States Environmental Protection Agency, Region 5 ("Complainant"), initiated this proceeding by filing an Administrative Complaint ("Complaint") on August 16, 2010, pursuant to its authority under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) ("Act"). Lake's Farm Service LLC ("Respondent") filed its Answer to Environmental Protection Agency Complaint ("Answer") on December 22, 2010. By Order dated April 4, 2011, the Chief Administrative Law Judge designated the undersigned as the presiding Administrative Law Judge in this proceeding.

On May 13, 2011, Complainant filed a Motion for Leave to Amend the Complaint to Decrease Proposed Penalty and Memorandum in Support of Complainant's Motion ("Motion") and a proposed Amended Administrative Complaint ("Proposed Amended Complaint"). In its Motion, Complainant seeks to amend the Complaint by decreasing the proposed penalty because the originally proposed penalty contained a miscalculation and because Complainant believes the "duration of violation" component of the penalty should be reduced based on the federal statute of limitations set forth at 28 U.S.C. § 2462. Specifically, Complainant seeks to reduce the proposed penalty from \$112,000 to \$76,000. Complainant asserts in its Motion that Respondent will not be prejudiced by the proposed amendment of penalty reduction. Motion at 2.

Respondent filed an Answer to United States Environmental Protection Agency's Amended Complaint ("Proposed Amended Answer")

on May 23, 2011.¹ Respondent's Proposed Amended Answer presupposes the granting of Complainant's Motion, and it does not present any objection to Complainant's proposed amendment of the Complaint to lower the proposed penalty.

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. Section 22.14(c) of the Rules of Practice allows the complainant to amend the complaint once as a matter of right at any time before the answer is filed and otherwise "only upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c). The Rules of Practice do not, however, provide a standard for adjudicating such a motion. In the absence of administrative rules of a subject, I may consult the Federal Rules of Civil Procedure ("FRCP") for guidance in analogous situations. See *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002); *Asbestos Specialists, Inc.*, 4 E.A.D. 819, 827 n. 20 (EAB 1993).

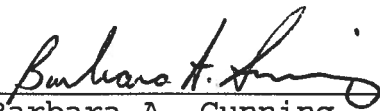
The FRCP adopt a liberal stance toward amending pleadings, stating that "[t]he court should freely give leave [to amend a complaint] when justice so requires." Fed. R. Civ. P. 15(a)(2). In construing Rule 15(a), the Supreme Court has held that, "in the absence of . . . undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party . . . [or] futility of amendment," a motion for leave to amend pleadings should be granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Here, nothing in the record suggests that Complainant seeks leave to amend the complaint for any of the above-described reasons. Moreover, Respondent does not object to the Motion.

Accordingly, Complainant's Motion for Leave to File Amended Complaint to Decrease Proposed Penalty is hereby **GRANTED** for good

¹ The Certificate of Service attached to Respondent's Proposed Amended Answer reflects that Respondent properly filed it with the Regional Hearing Clerk and served it on counsel for Complainant. However, Respondent failed to serve its Proposed Amended Answer on the undersigned. The parties are reminded that the regulations governing this proceeding require the parties to file all documents intended to be a part of the record with the Regional Hearing Clerk and serve the same on each party and the Presiding Officer in the matter. 40 C.F.R. §§ 22.5(a)(1) and (b).

cause shown. Although Respondent has already filed a Proposed Amended Answer, such answer is deemed to have been filed as of the date of filing of the Amended Administrative Complaint.



Barbara A. Gunning
Administrative Law Judge

Dated: June 8, 2011
Washington, DC

**In the Matter of *Lake's Farm Service LLC*, Respondent.
Docket No. CAA-05-2010-0058**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this **Order Granting Complainant's Motion for Leave to Amend the Complaint to Decrease Proposed Penalty**, issued by Barbara A. Gunning, Administrative Law Judge, dated June 8, 2011, in Docket No. CAA-05-2010-0058, was sent to the following parties on this 8th day of June 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E-19J
77 West Jackson Blvd.,
Chicago, IL 60604-3590

Copy by Pouch Mail to:

Louise Gross, Esq.
Associate Regional Counsel
ORC / U.S. EPA / Region V, C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Regular Mail to:

Michael J. Schmidt, Esq.
Stephen A. Studer, Esq.
John H. Lloyd, Esq.
Krieg DeVault, LLP
4101 Edison Lakes Pkway., Ste. 100
Mishawaka, IN 46545

**Dated: June 8, 2011
Washington, DC**

