



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

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2008 OCT 8 AM 9:13

James K. Laducer and Debra Werner )  
)  
United C-Store )  
BIA 7 South )  
Belcourt, ND 58316 )  
EPA ID Number 3050006 )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. RCRA-08-2008-0005

ORDER REGARDING MOTIONS TO AMEND COMPLAINT

On June 25, 2008, Complainant filed a Motion to Amend Complaint pursuant to 40 C.F.R. §§ 22.14(c) and 22.16(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Rules of Practice"). In its Motion, Complainant requests to amend the Complaint by dismissing Respondent, James K. Laducer and adding Respondent Mike Werner. Respondent Debra Werner filed a response to the Motion on July 15, 2008. In her response, Ms. Werner states she opposes adding Mike Werner to the Complaint. Ms. Werner also states she does not oppose the dismissal of Mr. Laducer from the Complaint.

On July 24, 2008, Complainant filed a Motion for Extension of Time requesting until August 14, 2008 to file a reply to Respondent's response of July 15, 2008. Complainant's motion was granted. On August 14, 2008, Complainant filed its Motion in Opposition to

Respondent's Response to Complainant's Motion to Amend Complaint. On August 20, 2008, this Court issued an Order on the Motion to Amend Complaint. The Order contained the following:

1. Complainant's Motion to Amend Complaint is hereby **GRANTED**. Complainant **shall file the First Amended Administrative Complaint within seven (7) days from the date of this Order**.

2. Respondent James K. Laducer is dismissed from the Complaint. Respondents Mike Werner and United Oil and Gas, Inc. may be added as Respondents to the Complaint.

3. Respondents may file an Answer to the First Amended Complaint within 20 days of the date of service of the First Amended Complaint.

(Emphasis added). To date, the First Amended Complaint has not been filed with the Regional Hearing Clerk and Complainant is in violation of the August 20, 2008 Order.

On September 3, 2008, Respondent Debra Werner filed a document requesting that a third party, Leon Morin, be added as a Respondent. The letter states that Ms. Werner had discussions with Complainant's counsel regarding the matter. Therefore, Complainant is aware of the facts and circumstances that relate to Ms. Werner's request. If Complainant needed additional time to determine whether to add an additional Respondent, Counsel should have requested such from the Court.

Furthermore, it is not clear if Respondent's September 3, 2008 request is a motion to the Presiding Officer to add Respondent or a plea to the Agency to do so. If Respondent was requesting the former, there is not adequate information for the Presiding Officer to make this determination. Pursuant to 40 C.F.R. §22.16, all motions...shall be in writing, state the grounds for the motion with particularity, set forth the relief sought and provide an affidavit, certificate or other evidence or legal memorandum relied upon. 40 C.F.R. §22.16(a). I understand

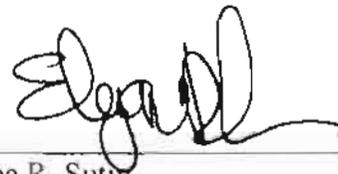
Respondent Debra Werner is Pro Se, representing herself in this matter, however; all the parties need to aware of the Part 22 Rules of Practice and follow them as best they can. If Respondent was requesting the Agency address adding another Respondent, it is Complainant's prerogative and obligation to make a determination and let the parties and the court know of its decision.

This matter has languished for an unreasonable amount of time in my opinion. Since I am the Presiding Officer only until the Amended Complaint and Amended Answer are filed, it is in the best interest of the parties to determine quickly how they want to proceed so that the Administrative Law Judge in Washington, D.C., who will ultimately preside over this matter, is not delayed further.

**ORDER:**

1. Complainant shall file the First Amended Administrative Complaint as directed in the August 20, 2008 Order, within five (5) working days, to and including October 15, 2008.
2. Respondent Werner may file a motion requesting the addition of a third party if she chooses within seven (7) to and including October 17, 2008. The motion shall follow the Part 22 Rules of Practice, specifically 40 C.F.R. § 22.16.
3. Complainant may file a motion to request a Second Amended Complaint to add another Respondent if it chooses within seven (7) days, to and including October 17, 2008.

Dated this 8<sup>th</sup> day of October, 2008.



Elyana R. Sutin  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER REGARDING MOTIONS TO AMEND COMPLAING** in the matter of the **JAMES K. LADUCER and DEBRA WERNER, UNITED C-STORE, DOCKET NO.: RCRA-08-2008-0005** was filed with the Regional Hearing Clerk on October 8, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky , Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States Mail certified/return receipt requested on October 8, 2008, to:

Mike and Debra Werner  
United Oil and Gas of Bottineau  
P. O. Box 386  
Bottineau, ND 58318

James K. Laducer  
Laducer & Associates, Inc.  
201 Missouri Drive  
Mandan, ND 58554

October 8, 2008



Tina Artemis  
Paralegal/Regional Hearing Clerk