

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2009 JUN -9 AM 10: 29
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)	
)	
Altec Petroleum Group, Inc.,)	Docket No. CWA-06-2008-1832
)	
Respondent.)	

ORDER GRANTING MOTION TO AMEND COMPLAINT

This action, initiated by the Complainant, the Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency Region 6 ("EPA"), seeks to assess a Class I administrative penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Class I penalty actions are governed by procedures set forth in the revised rules for non-Administrative Procedures Act (non-APA) cases. *See* 40 C.F.R. Part 22, Subpart I. I have been assigned to act as Presiding Officer in this case.

Complainant filed the Administrative Complaint ("Complaint") in this action on May 20, 2008. A request by Respondent Altec Petroleum Group, Inc., for a hearing in this matter was filed with the Regional Hearing Clerk on June 26, 2008. A Scheduling Order for this case was filed on June 30, 2008, which, among other things required the parties to confer regarding the possibility of settlement and to report on the status of their settlement negotiation. As required by the Scheduling Order, the parties filed a Joint Status Report on July 23, 2008. In their report, they stated that they had conferred regarding settlement, that settlement had not been reached, but the parties believe that settlement of the matter is likely. Based on their assessment of the prospects for settlement, the parties requested an extension of the deadline for filing prehearing exchanges.¹ On July 31, 2008, the Presiding Officer filed the First Amended Scheduling Order, which reset the deadline for filing pre-hearing exchanges to September 26, 2008, and scheduled a prehearing conference for October 28, 2008 at 2:00 p.m. central time. As required by the Amended Scheduling Order, Complainant filed Complainant's Pre Hearing Exchange on September 26, 2008. Respondent has not filed a prehearing exchange. On October 23, 2008, Complainant filed a Motion to Amend Complaint. Both parties failed to appear for the prehearing conference on October 28, 2008.

In support of its Motion to Amend the Complaint, Complainant, asserts that Complainant consulted with Respondent prior to filing the motion and that Respondent does not object to the

¹The Scheduling Order also required the Respondent to file an answer to the Complaint, as described in 40 C.F.R. § 22.15, on or before July 30, 2008. Respondent failed to comply with this requirement of the Scheduling Order, and the parties did not request an extension of this deadline. Respondent has not filed an answer as of the date of this Order.

motion. Complainant further asserts that no harm will come to Respondent's case if the motion is granted because a hearing date has not been set, and ample time exists for each party to prepare its case for hearing. According to the certificate of service accompanying Complainant's motion, a copy of the motion was served on the Respondent on October 20, 2008. Pursuant to 40 C.F.R. § 22.16(b), Respondent's response to the motion was due 15 days after it was served, and a party who fails to respond within the designated period waives any objection to the granting of the motion. Under the circumstances, the Complainant's Motion to Amend the Complaint is **GRANTED**.

THEREFORE, IT IS ORDERED:


The Complainant shall file the Amended Complaint on or before **July 8, 2009**.

Respondent is advised that, pursuant to 40 C.F.R. § 22.14(c), Respondent has 20 days from the date of service of the Amended Complaint to file its answer with the Regional Hearing Clerk. The contents of an answer are described in 40 C.F.R. § 22.15(b) as follows:

The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

According to 40 C.F.R. § 22.15(d), failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint will be deemed an admission of the allegation.

SO ORDERED, this 9th day of June 2009.



MICHAEL C. BARRA
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk for the Region 6 office of the Environmental Protection Agency, do hereby certify that a TRUE AND CORRECT copy of the Order Granting Motion to Amend Complaint for CWA 06-2008-1832 as served upon the parties on the date and in the manner set forth below:

Patrick Adams
President
Altec Testing and Engineering, Inc.
6035 Fremont Street
Riverside, CA 92504

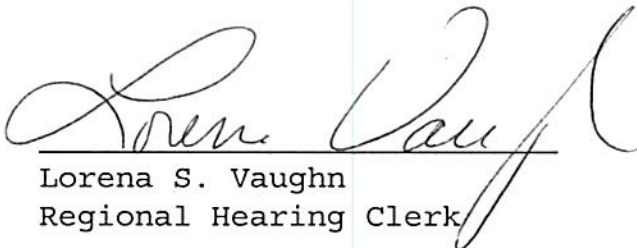
U.S. First Class Mail
Return Receipt Requested

Lorraine Dixon
Assistant Regional Counsel
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

HAND-DELIVERED

DATE:

6-9-09



Lorena S. Vaughn
Regional Hearing Clerk