

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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IN THE MATTER OF:)
)
Town of North Providence,)
North Providence, Rhode Island,)
)
Respondent.)
_____)

Docket No. CWA 01-2009-0093

EPA CRC
OFFICE OF
PRESIDING CLERK

COMPLAINANT'S 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 and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules"), the U.S. Environmental Protection Agency, Region 1 (the "Complainant"), moves to amend the Complaint in this case. The purpose of the amendment is to add a count relating to an unauthorized discharge which Complainant alleges is a violation of the Clean Water Act, 33 U.S.C. § 1251 et seq. This unauthorized discharge occurred on or about September 22, 2009, after Complainant had filed the original Complaint.

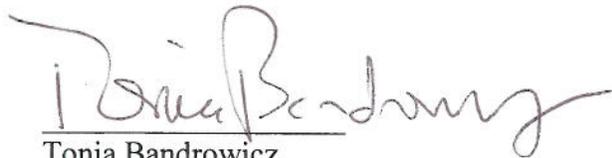
Section 22.14(c) of the Consolidated Rules provides that the complainant may amend the complaint after the answer is filed upon motion granted by the Presiding Officer. The Environmental Appeals Board has found that a complainant should be given leave to freely amend a complaint in accordance within the liberal policy of Rule 15(a) of the Federal Rules of Civil Procedure because it promotes accurate decisions on the merits of the case. *In re JDN Intermountain Holdings, Inc.*, 2004 WL 1658585 (ALJ Gunning June 10, 2004) (citing *In re Asbestos Specialists, Inc.*, 4 E.A.D.819, 830 (EAB 2002), *In re Port of Oakland and Great Lakes Dredge and Dock Company*, 4 E.A.D. 170, 205 (EAB 1992)).

Including this count in the pending action is appropriate because the alleged reporting violations in the original Complaint relate to unauthorized discharges, such as the one that occurred on or about September 22, 2009. Amendment of the Complaint is also appropriate in this case because the Complainant could not have included this new count in the original Complaint as Complainant did not become aware of the unauthorized discharge until after the filing of the case. Moreover, Respondent will not be prejudiced by such amendment as the hearing in this case has not yet been scheduled so that there is ample time for Respondent to prepare its defense.

For the good cause shown, the Presiding Officer should grant Complainant's motion to amend the Complaint in this case as attached. Once granted, Complainant will file and serve the Amended Complaint.

Respectfully submitted,

Dated: 11/4/09



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