



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
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CITY OF WEST CHICAGO, ) DOCKET NO. CWA-5-99-013  
 )  
 )  
RESPONDENT )

ORDER ON COMPLAINANT'S MOTION TO AMEND COMPLAINT

The Complaint in this matter was filed on September 28, 1999. The Respondent's Answer was filed on October 21, 1999. On December 29, 1999, a Prehearing Order was entered directing the parties to submit their prehearing exchange in *seriatim* manner, commencing April 17, 2000.

On February 11, 2000, the Complainant filed an Amended Administrative Complaint.

On February 15, 2000, the Complainant filed a Motion to Amend Complaint. The Complainant states that the motion is based on the Respondent's Answer and information submitted during settlement negotiations. Specifically, the Complainant moves to amend the Complaint to reduce the number of alleged violations from 84 to 20 under Count V and to correspondingly reduce the proposed penalty from \$95,000 to \$57,000. The Complainant contends that the proposed changes to the original Complaint will not prejudice the Respondent given that the parties are still in settlement negotiations and no prehearing exchange has been filed.

On February 18, 2000, the Respondent mailed its Answer to Amended Administrative Complaint filed on February 11, 2000.

As previously noted in the Prehearing Order entered by the undersigned on December 29, 1999, this proceeding is governed by 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 (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The procedural rule governing amendment of the complaint is found at

Section 22.14(c) of the Rules of Practice, 40 C.F.R. § 22.14(c). Section 22.14(c) provides:

Amendment of the complaint. The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

The Rules of Practice do not, however, illuminate the circumstances when amendment of the complaint is or is not appropriate. Nevertheless, some parameters have been developed through various administrative decisions. In particular, the Environmental Appeals Board ("EAB") has offered guidance on the subject, informed by the Federal Rules of Civil Procedure ("FRCP"). The EAB has held that a complainant should be given leave to freely amend a complaint in EPA proceedings, in accord with the liberal policy of FRCP 15(a), inasmuch as it promotes accurate decisions on the merits of each case. See *In the Matter of Asbestos Specialists, Inc.*, TSCA Appeal 92-3, 4 EAD 819, 830 (EAB Oct. 6, 1993); see also *In the Matter of Port of Oakland and Great Lakes Dredge and Dock Company*, MPRSA Appeal No. 91-1, 4 EAD 170, 205 (EAB Aug. 5, 1992).<sup>1/</sup>

With regard to the amendment of pleadings, the United States Supreme Court has interpreted FRCP 15 to mean that there should be a strong liberality in allowing amendments to pleadings. *Foman v. Davis*, 371 U.S. 178, 181-82 (1962). Leave to amend pleadings under Rule 15(a) should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. See *Id.*

As noted above, Section 22.14(c) of the Rules of Practice, 40 C.F.R. § 22.14(c), provides that the Complainant, after the answer is filed, may amend the complaint only upon motion granted by the

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<sup>1/</sup> The Federal Rules of Civil Procedure are not binding on administrative agencies but many times these rules provide useful and instructive guidance in applying the Rules of Practice. See *Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n. 3 (E.D.N.Y. 1982); *In re Wego Chemical & Mineral Corporation*, TSCA Appeal No. 92-4, 4 EAD 513, n. 10 (EAB Feb. 24, 1993).

Presiding Officer.<sup>2/</sup> In the instant matter, the Amended Administrative Complaint was filed improperly before the Motion to Amend the Complaint was filed and granted. Given that the Respondent has raised no objection to the improper filing and has signaled its agreement with the Motion to Amend the Complaint by its filing of its Answer to Amended Administrative Complaint and there is no apparent reason to deny the motion, the Motion to Amend Complaint is **Granted**.<sup>3/</sup> See Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b).

Original signed by undersigned

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Barbara A. Gunning  
Administrative Law Judge

Dated: 2-25-00  
Washington, DC

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<sup>2/</sup> The term "Presiding Officer" refers to the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as the Presiding Officer. 40 C.F.R. § 22.3(a).