

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

**IN THE MATTER OF:** )  
 )  
**MARK AND DAN JOHNSON,** ) **DOCKET NO. CWA-08-2003-0098**  
 )  
**RESPONDENTS.** )

**ORDER GRANTING LEAVE TO AMEND COMPLAINT AND EXTENSION OF TIME**

By Motion dated April 27, 2004, Complainant moved for leave to amend the Complaint filed in this matter on September 25, 2003 in numerous respects. The Motion indicates that the Respondents oppose some of the proposed amendments, but do not oppose others.

By Motion dated May 7, 2004, Respondents moved for an indefinite extension of the deadlines for filing the prehearing exchanges on the basis that the parties have reached a settlement. Respondents' Motion indicated that the Complainant did not oppose the extension sought. Accompanying the Motion was a letter from counsel for the Respondents representing that "in light of the settlement, Respondents hereby withdraw their previous objection to the pending motion to amend the complaint and request that it be granted."

Section 22.14(c) of the Rules of Practice (40 C.F.R. § 22.14(c)) provides that once an answer has been filed, the Complainant may amend the Complaint only upon motion granted by the Presiding Officer. However, the Rules of Practice provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure concerning amended pleadings provides that "leave [to amend] shall be freely given when justice so requires."<sup>1/</sup> The United States Supreme Court has interpreted this Rule to mean that there should be a "strong liberality...in allowing amendments" to pleadings. *Forman v. Davis*, 371 U.S. 178 (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. *Id.*

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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 Consolidated Rules of Practice. *See, Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n. 3 (E.D.N.Y. 1982); *Wego Chemical & Mineral Corporation*, 4 E.A.D. 513 (EAB 1993).

In that Respondents no longer object to the Motion for Leave to Amend Complaint, that Motion is hereby, **GRANTED**, and Complainant shall file and serve the Amended Complaint within 20 days of this Order.

Further, in light of the fact that Complainant does not object, the Respondent's Motion seeking an extension of time in regard to the prehearing exchange is hereby, **GRANTED**. However, an indefinite extension of time is not appropriate.<sup>2/</sup> Therefore, the parties shall have until **June 30, 2004**, to either file their initial prehearing exchanges or the fully executed Consent Agreement and Final Order.

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Susan L. Biro  
Chief Administrative Law Judge

Date: May 11, 2004  
Washington, D.C.

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<sup>2/</sup> Pursuant to Rule 22.4(10) (40 C.F.R. § 22.4(1)), it is the responsibility of the Presiding Judge to "take all measures necessary . . . for the efficient . . . adjudication" of proceedings. As a result, the Office of Administrative Law Judges has established a goal of completing cases within 18 months. Therefore, "indefinite extensions" are rarely appropriate.