



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
David E. Easterday & Co., Inc.,)
d/b/a Woodwright Finishing,) Docket No. FIFRA-05-2019-0005
Respondent.)

ORDER GRANTING COMPLAINANT’S MOTION FOR LEAVE TO AMEND COMPLAINT

Complainant initiated this proceeding under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a), by filing and serving a Complaint on December 19, 2018. I was designated to preside over this matter on February 6, 2019, and I issued a Prehearing Order on February 8, 2019, scheduling certain prehearing filing deadlines, including filing deadlines for the prehearing exchange of information. Consistent with these filing deadlines the parties have filed their prehearing exchanges.¹

On May 9, 2019, Complainant filed a Motion for Leave to Amend Complaint (“Motion to Amend”). In its Motion to Amend, Complainant requests leave to amend the Complaint to modify language and reduce the number of violations alleged. Complainant represents that it consulted with Respondent regarding this request, and that the request is not opposed by Respondent.

The rules that govern this proceeding (“Rules of Practice”), set forth at 40 C.F.R. Part 22, provide, in relevant part, that:

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.

40 C.F.R. § 22.14(c). The Rules of Practice do not state the circumstances under which it is appropriate to grant leave to amend a complaint. However, the Environmental Appeals Board (“EAB”) has “expressly adopted” the policy behind Rule 15(a) of the Federal Rules of Civil Procedure, supporting liberal amendment of the pleadings within the context of administrative

¹ Following the Prehearing Order, the filing deadline for Complainant’s Rebuttal Prehearing Exchange was extended by order issued May 3, 2019, upon Complainant’s unopposed motion.

adjudication. *Lazarus*, 7 E.A.D. 318, 333 (EAB 1997); *see also Asbestos Specialists, Inc.*, 4 E.A.D. 819, 830 (EAB 1993); *Port of Oakland*, 4 E.A.D. 170, 205 (EAB 1992).

Under the Federal Rules of Civil Procedure, leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The Supreme Court has endorsed liberality in interpreting Rule 15(a), finding that “the Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)). Accordingly, amendment under the Federal Rules of Civil Procedure is acceptable 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.* at 182.

Here, the proposed Amended Complaint will not result in undue delay, it is not the product of bad faith or dilatory motive on the Complainant’s part, it is not futile, nor is it the result of repeated failure to cure deficiencies by previous amendment. Indeed, the amendment requested is for the purpose of more accurately stating the charges alleged against Respondent in response to information provided during administrative litigation. Additionally, the requested amendment does not prejudice Respondent, as it eliminates counts of violation alleged in the Complaint. Further, Complainant’s requested amendment is unopposed. Accordingly, it is appropriate to grant Complainant leave to amend the Complaint as requested. As a result, the Motion to Amend is **GRANTED**. Complainant shall file the Amended Complaint no later than **May 24, 2019**, and Respondent shall file an Amended Answer within 20 days of being served with the Amended Complaint.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Date: May 14, 2019
Washington, D.C.

In the Matter of *David E. Easterday & Co., Inc., d/b/a Woodwright Finishing*, Respondent.
Docket No. FIFRA-05-2019-0005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Complainant's Motion for Leave to Amend Complaint**, dated May 14, 2019, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Andrea Priest
Attorney Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
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Dated: May 14, 2019
Washington, D.C.