



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
**Timothy Wilson, d/b/a** ) **Docket No. FIFRA-07-2023-0135**  
**Wilson’s Pest Control,** )  
 )  
**Respondent.** )

**ORDER ON COMPLAINANT’S MOTIONS**

Currently pending before this Tribunal are three motions filed by Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 7 of the United States Environmental Protection Agency (“EPA”): a Motion to Amend the Complaint, filed on August 9, 2024; a Motion to Supplement Complainant’s Prehearing Exchange, filed on August 27, 2024; and a Second Motion for Extension of Time to File Dispositive Motions Regarding Liability, filed on August 30, 2024. Each motion was electronically served on counsel for Respondent, Timothy Wilson d/b/a Wilson’s Pest Control, but to date, Respondent has not responded to the motions. For the reasons set forth below, the motions are granted.

**A. Motion to Amend the Complaint**

This matter was initiated on February 8, 2024, when Complainant filed a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent seeking the assessment of a civil penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l. In its Motion to Amend the Complaint (“Motion to Amend”), Complainant moves to amend the Complaint in order to “correct typing and grammatical errors”; “add specificity to the statutory and regulatory framework section”; and “more closely align the alleged violations to the factual bases underlying the Complaint.” Mot. to Amend at 1. Complainant then lists a series of proposed amendments that it seeks to make. *Id.* at 1-4. Complainant attached to the Motion to Amend a signed copy of its proposed Amended Complaint and Notice of Opportunity for Hearing, which reflects those proposed amendments.

Under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), set forth at 40 C.F.R. Part 22, “[t]he 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.” 40 C.F.R. § 22.14(c). However,

as observed by the EPA’s Environmental Appeals Board (“Board”), the Rules of Practice do not set a standard by which to adjudicate a motion to amend a complaint after the filing of an answer. *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002). Where the Rules of Practice are silent on a particular subject, the Board has looked to the Federal Rules of Civil Procedure and related caselaw for guidance on analogous circumstances. *Id.*

Federal Rule of Civil Procedure 15 states that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Supreme Court has interpreted this language as calling for a liberal approach to the amendment of pleadings. *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (“Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded.”). Simultaneously, the Court recognized the discretion of district courts in deciding on how to rule on a motion to amend a complaint, and it identified factors for courts to consider in exercising their discretion in this context. *Id.* Specifically, the Court directed that, in the spirit of Rule 15, leave to amend a complaint should be freely given unless there is “any apparent or declared reason” – including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment” – that counsels otherwise. *Id.* The Board has since adopted the permissive approach articulated in Rule 15 and *Foman*, while also recognizing the “frequently cited factors” delineated in *Foman* that counsel against freely permitting an amendment. *Carroll Oil*, 10 E.A.D. at 649-50.

In the instant matter, I do not see any evidence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendment on the part of Complainant, undue prejudice to Respondent, or futility of the proposed amendments. Moreover, Respondent has not filed any response in opposition of the Motion and, thus, is deemed to have waived any objection. 40 C.F.R. § 22.16(b) (“A party’s response to any written motion must be filed within 15 days after service of such motion. . . . Any party who fails to respond within the designated period waives any objection to the granting of the motion.”). Accordingly, Complainant’s Motion to Amend is hereby **GRANTED**. Because Respondent and this Tribunal already received a signed copy of the proposed Amended Complaint and Notice of Opportunity for Hearing, it is hereby deemed to have been filed and served as of the date of this Order, and it is now the governing complaint in this matter.<sup>1</sup> Respondent shall file any

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<sup>1</sup> The Certificate of Service appended to the Amended Complaint and Notice of Opportunity for Hearing states that a copy was served both electronically on counsel for Respondent and by certified mail, return receipt requested, on Respondent at his mailing address of record. Complainant subsequently filed a copy of a certified mail receipt (“green card”) with the title “Receipt of Service of Amended Complaint,” which reflects that it was sent by certified mail not to Respondent directly but to counsel for Respondent, Melvin Raymond, and that counsel received and signed for the document. The date of receipt that counsel handwrote on the green card is not entirely discernable, but it seemingly is August 16, 2024.

answer to the Amended Complaint and Notice of Opportunity for Hearing within 20 days from the date of this Order. See 40 C.F.R. § 22.14(c).

B. Motion to Supplement Complainant’s Prehearing Exchange

Pursuant to the Prehearing Order issued on March 20, 2024, the parties participated in a prehearing exchange of information, with Complainant filing its Initial Prehearing Exchange on May 3, 2024; Respondent filing his Prehearing Exchange on May 24, 2024; and Complainant filing its Rebuttal Prehearing Exchange on June 4, 2024. In its Motion to Supplement Complainant’s Prehearing Exchange (“Motion to Supplement”), Complainant seeks leave to supplement its prehearing exchange with three additional proposed exhibits, identified as CX 27-29. It also requests that this Tribunal replace the proposed exhibit identified as CX 9, which it submitted as part of its Initial Prehearing Exchange, with a revised version that Complainant avers is “the correct pesticide label approval, which was valid at the time of the EPA’s June 15, 2022 inspection of Respondent’s facility located at 2400 North Grand Boulevard, St. Louis, MO.” Mot. to Supp. C’s PHE at 2.

As noted by Complainant, the Rules of Practice address the supplementation of prehearing exchanges as follows:

A party who has made an information exchange under paragraph (a) of this section . . . shall promptly supplement or correct the exchange when the party learns that the information exchanged . . . is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

40 C.F.R. § 22.19(f). I also addressed the topic in the Prehearing Order, advising the parties that any addition of a proposed witness or exhibit to a party’s prehearing exchange pursuant to 40 C.F.R. § 22.19(f) must be filed with an accompanying motion to supplement the prehearing exchange only when supplementation is sought within 60 days of the scheduled hearing.

In the instant matter, a hearing has yet to be scheduled. Thus, it was unnecessary for Complainant to seek leave to supplement and correct its prehearing exchange as outlined in its Motion to Supplement. Given that Complainant was free to supplement its prehearing exchange without motion at this stage of the proceeding, it is also unnecessary for me to delay ruling until the prescribed time for Respondent to respond to the Motion has expired. On these bases, Complainant’s Motion to Supplement is hereby **GRANTED**.

C. Second Motion for Extension of Time to File Dispositive Motions Regarding Liability

As extended by Order dated July 10, 2024, the deadline for the parties to file any dispositive motions was September 5, 2024. In its Second Motion for Extension of Time to File Dispositive Motions Regarding Liability (“Motion for Extension”), Complainant requests that this

deadline be extended by 60 days, until November 4, 2024, citing the pendency of its Motion to Amend and Motion to Supplement.

The Rules of Practice provide that I “may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b).

Here, the Complainant’s Motion for Extension was timely and shows good cause. Moreover, Respondent will not be prejudiced by the requested extension. Therefore, even though Respondent’s time to respond has not expired, I find no response to be necessary, and Complainant’s Motion for Extension is hereby **GRANTED**. The deadline for the parties to file any dispositive motions is now November 4, 2024.

**SO ORDERED.**



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Susan L. Biro  
Chief Administrative Law Judge

Dated: September 5, 2024  
Washington, D.C.

In the Matter of Timothy Wilson, d/b/a Wilson's Pest Control, Respondent  
Docket No. FIFRA-07-2023-0135

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Order on Complainant's Motions dated September 6, 2024, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

  
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Pamela Taylor  
Paralegal Specialist

**Copy by OALJ E-Filing System to:**

Mary Angeles, Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave. NW  
Washington, DC 20004

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Dated: September 5, 2024  
Washington, D.C.