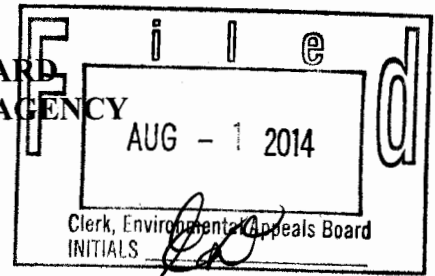


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:

EarthECycle, LLC

Docket No. RCRA-HQ-2009-001

RCRA (3008) Appeal No. 09-(02)

**ORDER GRANTING MOTION TO FILE SECOND AMENDED COMPLAINT,
COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING**

On June 19, 2014, U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance ("EPA") filed a motion requesting leave to file a second amended complaint in the above-captioned matter pursuant to section 22.14(c) of EPA's Consolidated Rules of Practice. *See* Motion to Request Leave to File Second Amended Complaint, Compliance Order and Notice of Opportunity for Hearing ("Motion"). EPA had initially filed a complaint against Respondent EarthECycle, LLC, in this matter on June 5, 2009, under sections 3002 and 3017 of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6922 and 6938, and the Pennsylvania hazardous waste management regulations. *See* Complaint, Compliance Order and Notice for Opportunity for Hearing at 1. Shortly thereafter, EPA had filed an amended complaint pursuant to 40 C.F.R. § 22.14(c), which allows amendment of the complaint "once as a matter of right * * * before the answer is filed." *See generally* Amended Complaint, Compliance Order and Notice of Opportunity for Hearing (June 26, 2009). Respondent has not yet filed an answer.

Under the Consolidated Rules of Practice, the complainant may amend the complaint a second time "only upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c).

Because an answer has not yet been filed, the Environmental Appeals Board ("Board") acts as the presiding officer. *See id.* § 22.4(a)(1).

EPA states that a number of activities have occurred in connection with this matter since EPA filed the First Amended Complaint and Compliance Order. Motion at 2-5. Based both on these recent activities and new evidence that EPA has obtained, EPA states that the compliance obligations requested in the Compliance Order attached to the First Amended Complaint are now moot. Motion at 2. EPA therefore believes that "the most appropriate next step is to seek leave to file a Second Amended Complaint that includes an administrative penalty and to issue an accompanying Compliance Order that narrows the injunctive relief requested based upon the actions and evidence obtained since the First Amended Complaint was filed." *Id.* at 5.

For good cause shown, the Board GRANTS the Motion. Under the Consolidated Rules of Practice, Respondent has 20 additional days from the date of service of the amended complaint to file its answer. 40 C.F.R. § 22.14(c).

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: August 1, 2014

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Order Granting Motion to File Second Amended Complaint, Compliance Order and Notice of Opportunity for Hearing* in the matter of EarthECycle, LLC, Docket No. RCRA-HQ-2009-001, were sent to the following persons in the manner indicated:

By Interoffice Mail:

Sybil Anderson (1900R)
Headquarters Hearing Clerk
Office of Administrative Law Judges

Lynne Davies (2201A)
Attorney-Advisor
Waste and Chemical Enforcement Division
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

By First Class Mail:

Mr. Jeffrey Nixon
EarthECycle, LLC
7401 E. 46th Place
Tulsa, OK 74145

Dated: AUG - 1 2014


Annette Duncan
Secretary