

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

2009 NOV -9 PM 2:44

BEFORE THE ADMINISTRATOR

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
MERIDIAN COMMERCIAL ) Docket No. CWA-08-2009-0015  
CONSTRUCTION, LLC. )  
)  
Respondent.<sup>1</sup> )

ORDER GRANTING MOTION TO AMEND ANSWER

On August 14, 2009, while this action was pending in this Tribunal's Alternative Dispute Resolution (ADR) process, the Respondent submitted a Motion to Amend Answer and Unopposed Amended Answer and Request for Hearing, both supported by the Affidavit of Kyle G. Pender, Respondent's counsel. Due to the fact that the case was then pending in ADR, no ruling on the Amended Answer was issued.

The Affidavit indicates that the amendment is necessitated by the previous filing of an Answer failing to meet the requirements of Rule 22.15(b) (40 C.F.R. § 22.15(b)) which provides that an Answer must "clearly and directly admit, deny or explain *each of the factual allegations contained in the complaint* . . . [t]he circumstances or arguments which are alleged to constitute the grounds for any defense; the facts which respondent disputes; the basis for opposing any proposed relief and whether a hearing is requested." The Affidavit further indicates that the Amendment is unopposed.

Section 22.15(e) of the Rules of Practice (40 C.F.R. § 22.15(e)) provides that a Respondent may amend the Answer 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

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<sup>1</sup> The caption has been changed to reflect the withdrawal of a previously named Respondent.

provides that "leave [to amend] shall be freely given when justice so requires."<sup>12</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.*

Therefore, Respondent's Motion to Amend Answer is hereby **GRANTED** and the Amended Answer submitted with such Motion is deemed filed as of this date.



Susan L. Hira  
Chief Administrative Law Judge

Date: November 5, 2009  
Washington, D.C.

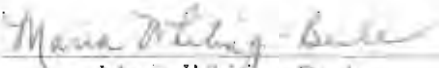
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<sup>12</sup> The Federal Rules of Civil Procedure are not binding on administrative agencies but many times these rules provide useful and instructive guidance in applying the Consolidated Rules of Practice. See, *Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n. 3 (E.D.N.Y. 1982); *In re Wego Chemical & Mineral Corporation*, 4 E.A.D. 513, 524 n.10 (EAB 1993).

In the Matter of Meridian Commercial Construction, LLC, Respondent  
Docket No. CWA-08-2009-0015

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Answer**, dated November 5, 2009, was sent this day in the following manner to the addressees listed below:

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: November 5, 2009

Original And One Copy By Pouch Mail To:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA  
1595 Wynkoop  
Denver, CO 80202-1129

Copy By Pouch Mail To:

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Enforcement Counsel (8ENF-L)  
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