



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of:

Nelcon, Inc.,

Respondent

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Docket No. CWA-08-2012-0025

ORDER GRANTING MOTION TO AMEND COMPLAINT

On August 29, 2012, the U.S. Environmental Protection Agency, Region 5 ("Complainant"), initiated this action by filing an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") against Nelcon, Inc. ("Respondent"), pursuant to section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g) and 40 C.F.R. § 22.13. An Answer and Request for Hearing ("Answer") was filed on December 11, 2012. A Prehearing Order was issued in this matter on May 17, 2013, directing the parties to engage in settlement conferences, establishing deadlines for pre-hearing exchanges, and if the case is settled, to file a fully executed Consent Agreement and Final Order ("CAFO") no later than June 28, 2013. On June 19, 2013, this Tribunal issued an Order Granting Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges, extending the deadline to file a fully executed CAFO to July 26, 2013, in order to allow the parties to address all allegations in the complaint as well as additional matters discovered by the Complainant after the Complaint was filed.

On July 2, 2013, Complainant filed an Unopposed Motion to Amend Complaint ("Motion"), stating that in order for the parties to fully settle all matters in this case, Complainant must first be allowed to amend the Complaint to incorporate additional matters discovered by the Complainant after the Complaint was filed. The Motion indicates that Complainant wishes to amend the Complaint in order to incorporate new allegations, and modify certain allegations and paragraphs to reflect the addition of these new allegations. Furthermore, the Complainant reports that Respondent has no objection to this Motion.

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 judge. The Rules of Practice, however, provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure provides that "leave [to amend a complaint] shall be freely given when justice so requires." The Supreme Court has interpreted Rule 15(a) to mean that leave to amend pleadings should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive

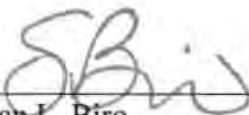
on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Therefore, upon consideration, Complainant's Unopposed Motion to Amend Complaint is hereby **GRANTED**. The proposed "First Amended Complaint," attached to Complainant's Motion, is hereby deemed filed as of the date of this Order. **Respondent shall have twenty (20) days from the date of this Order to file its Answer to the Amended Administrative Complaint.** Additionally, the deadlines previously established in the Order Granting Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges shall be extended. Accordingly, the parties shall file a fully executed Consent Agreement and Final Order by **August 30, 2013.**

If necessary, the parties will file prehearing exchanges *in seriatim*, pursuant to the following schedule:

August 30, 2013	Complainant's Initial Prehearing Exchange
September 20, 2013	Respondent's Prehearing Exchange
October 4, 2013	Complainant's Rebuttal Prehearing Exchange

SO ORDERED.



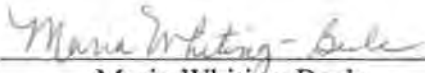
Susan L. Biro
Chief Administrative Law Judge

Dated: July 10, 2013
Washington, D.C.

In the Matter of Nelcon, Inc., Respondent
Docket No. CWA-08-2012-0025

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Complaint**, dated July 10, 2013, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: July 10, 2013

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