



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 6
 DALLAS, TEXAS



IN THE MATTER OF)	
)	
RAINER COMPANY, LTD., a)	DOCKET NO. VI-99-1629
Texas Limited Liability)	
Partnership,)	ORDER GRANTING MOTION TO
)	AMEND AND DISMISSING
Respondent.)	IMPROPER RESPONDENT
)	
NPDES Permit No. TXU001209)	
)	

BACKGROUND

This action filed jointly by Complainant, the Region 6 Water Enforcement Branch Chief, Environmental Protection Agency (EPA), and Michael Balloun, doing business as M.B. Development & Construction, on December 14, 1999, seeks an amendment to the original complaint filed on August 19, 1999. Through the original and proposed amended complaint, Complainant seeks to assess a Class I administrative penalty under the provisions of the federal Clean Water Act (CWA), Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A). Class I penalty actions are governed by procedures set forth in the Consolidated Rules of Practice for non-Administrative Procedures Act (non-APA) cases. See 40 C.F.R. Part 22, published at 64 Fed. Reg. 40138 (July 23, 1999).

On September 3, 1999, in response to the original complaint, Michael Balloun, doing business as M.B. Development & Construction, served an answer to the complaint, which also included a hearing request. Respondent, Rainer Company, LTD., did not serve a response to the complaint. Moreover, the joint motion to amend identifies Michael Balloun, doing business as M.B. Development & Construction, as the responsible party for the activities alleged in the complaint.

JOINT MOTION TO AMEND

The joint motion to amend the complaint was requested for good reasons including an agreement in principle between Complainant and the responsible party, clarity, and legal

sufficiency. Thus, under the authority provided in 40 C.F.R. §§ 22.4(b) & (c), I find that the motion to amend the complaint should be granted here. Reasons supporting such a finding are explained below.

The Consolidated Rules of Practice [40 C.F.R. § 22.14(c)] provide that Complainant may amend the complaint once as a matter of right before an answer is filed, or upon leave from the Presiding Officer. Unfortunately, the Consolidated Rules do not provide a legal standard to determine if an amendment is proper or not. Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend pleadings should be freely given when justice so requires.¹

According to applicable regulation and guidance, this joint motion to amend should falter if it causes undue prejudice, and unnecessary delay. In addition, the amendment motion should fail if it constitutes an exercise in either futility, or bad faith. Without such defects, coupled with this tribunal's liberality in allowing amendments, it is apparent that the amendment is proper here. See Forman v. Davis, 371 U.S, 178 (1962).

Record information shows that Complainant and the responsible party both agree that this matter will be resolved amicably. The proposed amended complaint drops Respondent, Rainer Company, LTD., and adds Michael Balloun, d/b/a/ M.B. Development & Construction as the proposed Respondent. After carefully reviewing the answer to the original complaint, it is clear that Michael Balloun, d/b/a/ M.B. Development & Construction, takes full responsibility for addressing the allegations in the complaint.

In addition, by signing the joint motion to amend, Complainant acknowledges that it incorrectly named Respondent (Rainer Company, LTD.), as a party to this action. As such, pursuant to authority granted to this tribunal in 40 C.F.R. §§ 22.4(b) and (c), it is appropriate to dismiss Respondent (Rainer Company, LTD.) from this administrative penalty

¹ While the Federal Rules of Civil Procedure impose no binding obligations upon EPA administrative actions, they may be used as guidance in applying EPA's Consolidated Rules of Practice. See In re Wego Chemical & Mineral Corporation, 4 EAD 513, 524 (EAB 1993).

action. Such dismissal will not prejudice Complainant, Respondent or the responsible party identified in the joint motion.²

AMENDMENT AND DISMISSAL ORDER

Therefore, the joint motion to amend the complaint is hereby granted as requested. Complainant's first amended complaint naming Michael Balloun, d/b/a/ M.B. Development & Construction, as the proper party shall be filed with the Regional Hearing Clerk within in thirty (30) days of receipt of this Order. Thereafter, Complainant and the proper party are encouraged to quickly settle this matter and forgo the time and expense associated with administrative litigation. If a settlement is reached, the parties shall file the settlement agreement with the Regional Hearing Clerk in accordance with 40 C.F.R. § 22.5.

Provided a settlement is not filed with the Regional Hearing Clerk within sixty (60) days of receipt of this Order, Complainant shall file a status report within sixty (60) days of receipt of this Order. Failure to comply with this Order without leave from this tribunal may result in the issuance of a default order pursuant to 40 C.F.R. § 22.17(a).

SO ORDERED, this 6th day of January 2000.

_____/S/
GEORGE MALONE, III
REGIONAL JUDICIAL OFFICER

² Apparently, by signing the joint motion, Michael Balloun, also a part owner of Respondent (Rainer Company, LTD.), represented Respondent's legal position. Such action promoted the best interests of Respondent, and resulted in Respondent's dismissal from this administrative penalty action. Thus, Respondent will not suffer any prejudice here.

In the Matter of Rainer Company, LTD., Respondent, Docket No.
CWA VI-99-1629

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, Regional Hearing Clerk for the Region 6, U.S. Environmental Protection Agency located in Dallas, Texas, hereby certify that I served true and correct copies of the foregoing Order dated January 6, 2000, on the persons listed below, in the manner and date indicated:

Mr. Mike S. Balloun, Owner	U.S. CERTIFIED MAIL
M.B. Development & Construction	RETURN RECEIPT REQUESTED
2110 Hidden Woods Ct.	
Arlington, Texas 76006	

Mr. Efren Ordonez, Esq.	HAND DELIVERY
U.S. EPA - Region 6 (6RC-EW)	
1445 Ross Avenue	
Dallas, Texas 75202-2733	

Date:

Lorena S. Vaughn
Regional Hearing Clerk