



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of: )

**Dr. Daniel J. McGowan** )

Respondent. )

) Docket No. CWA-07-2014-0060

) Dated: March 10, 2015

**ORDER GRANTING MOTION TO AMEND COMPLAINT**

The Complaint in this matter was issued on March 6, 2014 by Complainant, the United States Environmental Protection Agency, under Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). The Complaint alleges violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and the regulations promulgated thereunder, in connection with Respondent’s alleged discharge of pollutants from a point source into waters of the United States, without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Respondent filed an Answer to the Complaint on April 4, 2014, denying allegations in the Complaint. After the parties engaged in Alternative Dispute Resolution (ADR) in an attempt to settle this matter, a settlement not having been reached, the undersigned was designated to preside in this matter. A Prehearing Order was issued on December 19, 2014, setting the schedule for the parties’ prehearing exchange of information.

On February 27, 2015, Complainant submitted a Motion for Leave to Amend Complaint, seeking to include additional regulatory citations, found at 40 C.F.R. § 232.2, defining the terms “discharge of dredged material” and “dredged material.” Complainant further seeks to amend the Complaint to allege that Respondent’s discharges of sediment from the dam constitute the “discharge of dredged material,” and that the sediment meets the definition of “dredged material” as these terms are defined at 40 C.F.R. § 232.2. In the accompanying Memorandum in Support of Complainant’s Motion, Complainant states that opposing counsel was contacted on February 20, 2015 regarding this Motion, and that opposing counsel does not object to it.

The Rules provide that once an answer has been filed, “the complainant may amend the complaint only upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(c). The Rules do not provide any standard for granting leave to amend a complaint, but the Federal Rules of Civil Procedure (“FRCP”) and federal court decisions interpreting the FRCP provide guidance.

FRCP 15(a) provides that “[t]he court should freely give leave” to amend a complaint “when justice so requires.” In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court stated:

In the absence of any apparent or declared reason -- such as 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, futility of amendment, etc. -- the leave sought should, as the rules require, be “freely given.”

There is no undue delay, bad faith, dilatory motive, futility of amendment, or repeated failure to cure deficiencies apparent in this case. Further, the Motion was filed early in this proceeding, the hearing has not yet been scheduled, and the proposed changes to the Complaint do not cause any undue prejudice to Respondent.

The Rules provide at 40 C.F.R. § 22.14(c) that “Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.”

Accordingly, **IT IS ORDERED THAT:**

1. The Motion to Amend Complaint is **GRANTED**.
2. Complainant shall file the First Amended Complaint and serve it on the Respondent on or before **March 20, 2015**.
3. Respondent shall have 20 days from the date of service of the First Amended Complaint to file an answer thereto, or a statement that its Answer dated April 14, 2014 suffices as an answer to the First Amended Complaint.



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M. Lisa Buschmann  
Administrative Law Judge

In the Matter of Dr. Daniel J. McGowan, Respondent  
Docket No. CWA-07-2014-0060

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Complaint**, dated March 10, 2015, was sent this day in the following manner to the addressees listed below:

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

Dated: March 10, 2015

Original And One Copy To:

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