

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Energy Gases, Inc.,) Docket No. EPCRA-02-2000-4002
)
Respondent)

ORDER DENYING EPA'S MOTION
TO AMEND COMPLAINT

This enforcement proceeding involves alleged reporting violations of Sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"). 42 U.S.C. §§ 11021 & 11022. The U.S. Environmental Protection Agency ("EPA") has filed a complaint charging Energy Gases, Inc. ("Energy Gases"), with Section 311 and Section 312 violations. Section 311 involves the submission of "Material Safety Data Sheets" and Section 312 involves the submission of "Emergency and Hazardous Chemical Inventory Forms." EPA now moves to add Central City Enterprises, Ltd. ("Central City"), the parent company of Energy Gases, as a respondent.

The sole question to be decided is whether Central City is a proper party. EPA's side arguments that administrative pleadings may be liberally amended and that the respondents Energy Gases and Central City would not otherwise be prejudiced by the amendment sought in this case must give way to this central issue – *i.e.*, whether Central City is a proper party in the first place.

Here, it is undisputed that Energy Gases is a wholly owned subsidiary of Central City and that Central City owns the property where Energy Gases conducts its business. Pipines Aff. & Marsh Decl. However, little else is settled at this preliminary stage. For example, while EPA points to complainant's proposed Exhibit 6, which is a "Tier Two" Emergency and Hazardous Chemical Inventory reporting form listing Central City as the "Owner/Operator" of the Energy Gases facility, James T. Pipines, the President of both Energy Gases and Central City, submitted an affidavit averring that "Central City does not operate Energy Gases or the facility located at 5851 Butternut Drive, East Syracuse, New York." Pipines Aff.

The fact that Central City is the parent company of Energy Gases and the owner of the property where Energy Gases conducts its business simply is not enough to bring Central City into this case as a respondent. In that regard, while EPCRA Sections 311 and 312 refer to the "owner or operator" of a facility, they do so in the context of the facility's reporting obligations. The purpose of Sections 311 and 312 is for a business entity to provide the appropriate governmental units with information relative to the workings of its facility. As the record now stands, Central City is nothing more than a landlord. Energy Gases is the operator

of the involved facility and so far it has been shown that only Energy Gases has the information required by EPCRA Section 311 and Section 312. Accordingly, EPA's reading of the term "owner" as it appears in these statutory sections is too broad and its motion to amend, therefore, is *denied*.¹

Nevertheless, given the fact that this case is at a fairly early stage, and given the contents of the discovery order issued this date, EPA is free to again seek an amendment of the complaint if it discovers facts which would support bringing in another respondent.

Carl C. Charneski
Administrative Law Judge

Issued: October 31, 2001
Washington, D.C.

¹ EPA states that it is not otherwise attempting to pierce the corporate veil. It relies solely upon the statutory language of EPCRA to support its motion to amend.