



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Detroit Renovations, LLC, and) Docket No. TSCA-HQ-2018-5006
Nicole Curtis)
Respondents.)

ORDER ON COMPLAINANT’S UNOPPOSED MOTION FOR LEAVE TO AMEND THE COMPLAINT

On August 1, 2018, the Director of the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, of the U.S. Environmental Protection Agency (“Complainant”) commenced a civil administrative proceeding against Nicole Curtis and Detroit Renovations, LLC (“Respondents”) with the filing of a Civil Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Sections 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”), 40 C.F.R. Part 22.

On January 2, 2019, Respondents belatedly filed their Answer, denying each allegation in the Complaint.

On June 17, 2019, on behalf of Complainant, counsel filed Complainant’s Unopposed Motion for Leave to Amend the Complaint (“Motion”), with a proposed amended complaint attached as Exhibit 1 thereto. Grounds for the Motion are that Complainant has reassessed its position on several counts and seeks to amend the Complaint to drop 18 of the 26 counts in the an effort to progress toward a settlement of this matter. Mot at. 1. Complainant would propose a penalty of \$48,877 instead of the current \$139,849 proposed penalty, as a result of the amendment. Mot. at 1-2. In its Motion, Complainant states that Respondents would not oppose the the Motion. Mot. at 1.

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 offer any standard for granting leave to amend a complaint, but the Federal Rules of Civil Procedure and federal court decisions interpreting the federal rules provide guidance: A court “should freely give leave” to amend a complaint “when justice so requires.” Fed. R. Civ. P. 15(a). In Farnan v. Davis, the United States 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.”

371 U.S. 178, 182 (1962). Here, there is no apparent undue delay, bad faith, dilatory motive, futility of amendment, or repeated failure to cure deficiencies. Further, despite the overall length of time that has elapsed, the Motion was filed in the early stages of the litigation process, the hearing has not yet been scheduled, and the proposed changes to the Complaint do not cause any undue prejudice to Respondents. Indeed, Complainant seeks a lower penalty from Respondents, which is to their advantage.

Consequently, Complainant’s Motion is **GRANTED**. Complainant shall file its Amended Civil Complaint and Notice of Opportunity for Hearing (Exhibit 1 appended to its Motion) and serve it on Respondents on or before **June 28, 2019**. Furthermore, immediately upon completion of service, Complainant shall file proof thereof with the Headquarters Hearing Clerk. As set forth in the Rules, Respondents shall have 20 days from the date of service of the amended complaint to submit their Answers. *See* 40 C.F.R. § 22.14(c). Respondents’ failure to timely file Answers will subject them to default.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: June 21, 2019
Washington, D.C.

In the Matter of *Detroit Renovations, LLC, and Nicole Curtis* Respondents.
Docket No. TSCA-HQ-2018-5006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Unopposed Motion for Leave to Amend Complaint**, dated June 21, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Michael B. Wright
Attorney Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
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Copy by Electronic Mail to:

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For Complainant

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For Complainant

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For Respondents

Dated: June 21, 2019
Washington, D.C.