



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
DEPENDABLE TOWING &) Docket No. CWA-02-2011-3601
RECOVERY, INC., ET AL.,)
)
Respondents.)

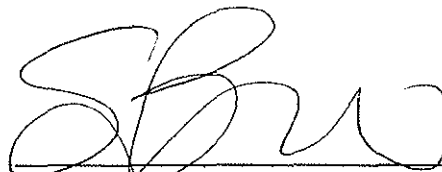
ORDER GRANTING MOTION TO AMEND ANSWER

By Motion dated June 23, 2011, Respondents submitted a Motion to Amend the Answer to Complaint ("Motion"). The reason asserted for the Motion is to allow Respondents to raise a statute of limitations defense based upon information that has recently come to Respondents' attention. On July 7, 2011, Complainant filed a response to the Motion indicating that it does not object thereto.

Section 22.15(e) of the Rules of Practice (40 C.F.R. § 22.15(e)) provides that once an answer has been filed, the Respondent may amend the Answer only upon motion granted by the Presiding Officer. However, the Rules of Practice provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure concerning amended pleadings provides that "leave [to amend] shall be freely given when justice so requires."¹ The United States Supreme Court has interpreted this Rule to mean that there should be a "strong liberality...in allowing amendments" to pleadings. *Forman v. Davis*, 371 U.S. 178 (1962). Leave to amend pleadings under Rule 15(a) 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. *Id.*

¹ The Federal Rules of Civil Procedure are not binding on administrative agencies but many times these rules provide useful and instructive guidance in applying the Consolidated Rules of Practice. See, *Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n. 3 (E.D.N.Y. 1982); *In re Wego Chemical & Mineral Corporation*, 4 E.A.D. 513, 524 n.10 (EAB 1993).

Therefore, the Motion is hereby, **GRANTED**, and the Respondents' Amended Answer to Complaint as filed attached to the Motion is deemed filed as of this date. **This case is hereby returned to the Neutral Judge for completion of the Alternative Dispute Resolution process begun previously.**

A handwritten signature in black ink, appearing to read 'S. Biro', written over a horizontal line.

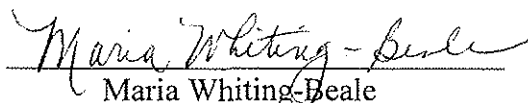
Susan L. Biro
Chief Administrative Law Judge

Date: July 8, 2011
Washington, D.C.

In the Matter of Dependable Towing & Recovery, Inc. & David A. Whitehill, Respondents
Docket No. CWA-02-2011-3601

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Answer**, dated July 8, 2011, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: July 8, 2011

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