UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

ROGERS CORPORATION, DOCKET NO. TSCA-I-94-1079

RESPONDENT

ORDER GRANTING MOTION TO AMEND ANSWER

The Respondent's "Motion For Leave To Amend Its Answer To The Complaint" is **Granted,** and the "First Amended Answer And Request For Hearing" attached to the motion is deemed to be the Answer to the Complaint in this matter. In this motion filed on April 8, 1997, the Respondent moves to amend the Answer to add two additional affirmative defenses. First Amended Answer at Affirmative Defenses Ten and Eleven.

The Complainant objects to the motion to amend the Answer on the grounds that the two new affirmative defenses are legally insufficient and irrelevant. The Respondent objects to the Complainant's objections to amend the Answer.

Section 22.15(e) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Rules of Practice") provides that a respondent may amend the answer to the complaint upon motion granted by the Presiding Officer. [1/] However, the Rules of Practice provide no standard for determining when leave to amend should be granted. I note that Rule 15 (a) of the Federal Rules of Civil procedure concerning amended pleadings provides that "leave [to amend] shall shall be freely given when justice so requires." [2/] 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. In the instant case, the Complainant has not demonstrated undue prejudice and there is no apparent reason to deny the motion to amend the answer.

Accordingly, without ruling on the merits of the amendments to the Answer, the objections to the amendments, or the objections to the objections to the amendments, the motion to amend the Answer is granted. As previously noted in the undersigned's Prehearing Order entered on February 27, 1997, the relevancy of evidence and arguments in question can only be determined after the underlying factual matter is fully developed at an evidentiary hearing. As previously stated in the February 27, 1997, Prehearing Order, regarding similar arguments and objections:

While this case ultimately presents the issue of the governing statute and/or regulation, the applicability of such law turns on the determinative findings of fact; that is, whether there was an improper disposal of PCBs in 1993 as alleged in the Complaint by the Complainant. Such factual determination can only be made following a full evidentiary hearing.

Generalized defenses or objections, without reference to specific supporting facts or citation to supporting legal authority, will be denied at the hearing. Similarly, irrelevant evidence and arguments will be denied at the hearing.

Barbara A. Gunning

Administrative Law Judge

Dated: 6/19/97

Washington, DC

[1/] The term "Presiding Officer" means the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as the Presiding officer. Section 22.03(a) of the Rules of Practice.

[2/] 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 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, TSCA Appeal No. 92-4, at 13 n. 10 (EAB, Feb. 24, 1993).

CERTIFICATE OF SERVICE

I hereby certify that the original of this **ORDER GRANTING MOTION TO AMEND ANSWER,** dated June 19, 1997, **in re: ROGERS CORPORATION,** Dkt. No. TSCA-I-94-

1079, was mailed to the Regional Hearing Clerk, Reg. I, and a copy was mailed by certified mail, return receipt requested to Respondent and Complainant (see list of addressees).

Date: June 19,1997

Helen F. Handon
Legal Staff Assistant

ADDRESSEES:

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kenneth A. Reich, Esq.

Sarah G. Hunt, Esq.

Day, Berry & Howard

260 Franklin St..

Boston, MA 02110

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Gregory M. Kennan, Esq.

Senior Litigation Counsel

U.S. EPA, Region I

J.F. Kennedy Fed. Bldg.

Boston, MA 02203

REGULAR MAIL

Ms. Mary Anne Gavin

Regional Hearing Clerk

U.S. EPA, Region I

J.F. Kennedy Fed. Bldg.

Boston, MA 02203