

2/2

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
THORNTON POWDER COATING CO.,)	Docket No. CWA-A-O-023-93
)	
Respondent)	

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND COMPLAINT

For the reasons stated in its motion filed December 27, 1994, complainant seeks to amend its complaint. By order of January 12, 1995 /1/, complainant's motion was granted, there being at that time no response by respondent. However, respondent did serve a response in opposition to the motion on January 9, received on January 13. (The

order and response having apparently crossed in the mail.) By order

issued January 24, that of January 12 was vacated and complainant

directed to reply to respondent's opposition no later than February 3.

The reply was served on February 1.

/1/ Unless otherwise specified, all dates hereinafter are for the year 1995.

The pertinent section of the Consolidated Rules of Practice (Rules) permit the amendment of a complaint. Complainant may do so once as a matter of right before the answer is filed. After the answer is filed, complainant may amend its complaint only upon motion granted by the Administrative Law Judge. A respondent may have 20 additional days from the date of service of the amended complaint to file its answer. 40 C.F.R. 22.14(b). To be decided

- 2 -

here is whether or not complainant's motion to amend should be granted.

The Rules do not provide any criteria to be used in motions to amend the complaint or other pleadings. Although the Federal Rules of Civil Procedure (Fed. R. Civ. P.) are not applicable to this proceeding, they may be turned to for guidance. Rule 15(a) of the Fed. R. Civ. P. relates that leave to amend "shall be freely given where justice so requires." Also, "Courts have shown strong liberality . . . in allowing

amendments under Rule 15(a)." 3 Moore's Federal Practice, 15.08(2) at 59 (2d ed. 1980), (footnote omitted), in order to encourage the disposition of cases on their merits. See Conley v. Gibson, 355 U.S. 41 (1957); United States v. Hougham, 364 U.S. 310 (1960). In Foman v. Davis, 371 U.S. 178, 182 (1962), the Supreme Court stated that leave should be freely given in the absence of a finding of "undue delay, bad faith, or dilatory motive on the part of a movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment"

In the instant matter it does not appear that complainant's motion is motivated by "bad faith" or a "dilatory motive." Nor will respondent be prejudiced by the amended complaint. As complainant observes, the proposed amended complaint will allege fewer violations than the original pleading, all but one of which respondent had prior notice. (Reply at 3.) In its motion and reply, complainant has presented cogent arguments in its favor.

- 3 -

IT IS ORDERED that:

1. Complainant's motion to amend the complaint be GRANTED.

2. The amended complaint shall be served no later than 15 days

from the service date of this order.

/s/
Frank W. Vanderheyden
Administrative Law Judge

Date: February 21, 1995

- 4 -

IN THE MATTER OF THORNTON POWDER COATING CO., Respondent,
Docket No. CWA-A-0-023-93

Certificate of Service

I certify that the foregoing Order, dated 2/21/95, was sent
this day in the following manner to the below addressees:

Original by Regular Mail to: Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by Regular Mail to:

Attorney for Complainant: Susan Tennenbaum, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 5 (CA-29A)
77 West Jackson Boulevard
Chicago, IL 60604-3590

Attorney for Respondent: Theodore J. Esborn, Esquire
MCDONALD, HOPKINS, BURKE &
HABER
2100 Bank One Center
600 Superior Avenue, E.
Cleveland, OH 44114-2653

Marion Walzel
Legal Staff Assistant

Dated: Feb. 21, 1995

* End of Document *
