

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JACKSON & SON DISTRIBUTORS, INC.,  
dba JACKSON AND SON OIL,

Seaside, Oregon,

Respondent.

DOCKET NO. CWA-10-2025-0023

**COMPLAINANT'S MOTION FOR LEAVE  
TO AMEND THE AMENDED COMPLAINT**

COMES NOW, the United States Environmental Protection Agency Region 10 ("EPA" or "Complainant"), by and through its undersigned counsel and pursuant to 40 C.F.R. § 22.14(c), to respectfully request that this Tribunal grant Complainant's Motion for Leave to Amend the Amended Complaint. Complainant seeks to amend the Amended Complaint to remove Counts 2 through 28 from the alleged violations. Complainant has conferred with Respondent, and Respondent does not oppose this Motion.

**PROCEDURAL HISTORY**

The Complaint in this matter was filed on December 18, 2024. Respondent filed an Answer and Request for Hearing on January 17, 2025. Complainant filed a Motion for Leave to File an Amended Pleading on August 15, 2025, in which Complainant sought to amend the Complaint to: (1) to include additional compliance information; (2) to update the volume relevant for the reasonable expectation of a discharge analysis; (3) to update the receiving water and pathway for the reasonable expectation of a discharge analysis; and (4) to adjust the statutory penalty to account for the most recent inflation adjustment.<sup>1</sup> Respondent opposed this Motion and timely filed a Response in Opposition on September 2, 2025. Complainant filed a Reply in Support of its Motion on September 12, 2025. Complainant's Motion for Leave to Amend was

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<sup>1</sup> Complainant's Mot. for Leave to Amend the Complaint, at 1.

granted by this Tribunal on October 7, 2025.<sup>2</sup> Respondent timely filed an Answer to the Amended Complaint on October 27, 2025. A hearing in this matter has not yet been scheduled.

### STANDARD OF REVIEW

Pursuant to 40 C.F.R. § 22.14, Complainant may amend the complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer. 40 C.F.R. § 22.14(c) does not provide a standard for the Presiding Officer’s review of such a motion.<sup>3</sup> As a result, the Environmental Appeals Board has adopted the standard provided in Federal Rule of Civil Procedure 15 and *Foman v. Davis*, 371 U.S. 178 (1962).<sup>4</sup> The former states that leave to amend a complaint “shall be freely given when justice so requires.”<sup>5</sup> The latter states that the decision to grant or deny a motion to amend a complaint is “within the discretion of the [court],” but that leave should be “freely given” consistent with Fed. R. Civ. P. 15(a) unless there is “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, [or] undue prejudice to the opposing party.”<sup>6</sup>

The most significant factor is undue prejudice to the opposing party.<sup>7</sup> If leave is to be denied, it must generally be shown that the amendment will result in prejudice to the opposing party, and that the prejudice would constitute a serious disadvantage that goes beyond mere inconvenience.<sup>8</sup>

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<sup>2</sup> Order on Complainant’s Motion for Leave to Amend the Complaint, at 7.

<sup>3</sup> *In re Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002).

<sup>4</sup> *Id.*; see also *In re Asbestos Specialists*, 4 E.A.D. 819, \*830 (EAB 1993) (“[I]t is our view that the policy component of Rule 15(a) should apply to Agency practice. The objective of the Agency’s rules should be to get to the merits of the controversy.”); *In re Wego Chem. & Mineral Corp.*, 4 E.A.D. 513, 525 n.11 (EAB 1993) (“[A]dministrative pleadings should be liberally construed and easily amended to serve the merits of the action.”); *In re Port of Oakland*, 4 E.A.D. 170, 205 (EAB 1992) (“[T]he Board adheres to the generally accepted legal principle that ‘administrative pleadings are liberally construed and easily amended, and that permission to amend a complaint will ordinarily be freely granted.’”) (quoting *Yaffe Iron & Metal Co., Inc. v. U.S. Env’t Prot. Agency*, 774 F.2d 1008, 1012 (10th Cir. 1985)).

<sup>5</sup> Fed. R. Civ. P. 15(a).

<sup>6</sup> *Foman*, 371 U.S. at 182.

<sup>7</sup> *In re Carroll Oil Co.*, 10 E.A.D. at 650.

<sup>8</sup> *In re Port of Oakland*, 4 E.A.D. at 205-06, n. 84.

## ARGUMENT

### **1. Granting this Motion Promotes Judicial Efficiency.**

Complainant seeks to amend the Amended Complaint to remove Counts 2 through 28 and in so doing, greatly reduce the number of facts that need to be established with respect to liability, which benefits both parties. In its Answer to the Amended Complaint, Respondent continues to deny all of these allegations.<sup>9</sup> In moving to amend the Amended Complaint, Complainant seeks to focus the areas of dispute. Removing Counts 2 through 28 significantly streamlines the number of alleged violations and is therefore in the interest of judicial economy.

Amendment to allege only Count 1—failure to prepare and implement an SPCC Plan—vastly simplifies the number of contested issues in this case. While amendment does not alter the threshold consideration of whether the Respondent is subject to the 40 C.F.R. Part 112 regulations,<sup>10</sup> it simplifies this case because once threshold applicability is established, the only contested issue with respect to liability is whether the Respondent had an SPCC Plan or not.

As alleged in Paragraph 4.1 of the proposed Second Amended Complaint, failure to prepare and implement an SPCC Plan remains a significant violation.<sup>11</sup> The fundamental purpose of the regulations at 40 C.F.R. Part 112 is to prevent, or at least minimize, the impact of oil spills.<sup>12</sup> Absence of an SPCC Plan “completely thwarts the stated purpose of Section 311 of the Clean Water Act.”<sup>13</sup>

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<sup>9</sup> See generally, Respondent’s Answer to Amended Complaint at 7-10.

<sup>10</sup> 40 C.F.R. § 112.1(b). Owners and operators of non-transportation, onshore facilities engaged in storing oil and oil products must prepare and implement an SPCC Plan when the facility could, due to its location, be reasonably expected to discharge oil to waters of the United States or adjoining shorelines.

<sup>11</sup> Second Amended Complaint at ¶ 4.1.

<sup>12</sup> *In re Pepperell Assocs.*, 1999 EPA ALJ LEXIS 16, \*75-76 (Feb. 26, 1999) (noting that respondent’s failure to prepare an SPCC Plan is “one of the most egregious violations of the SPCC regulations”).

<sup>13</sup> *Id.*

Accordingly, amendment to remove Counts 2 through 28 is in the interest of judicial efficiency and conserves the resources of all parties and this Tribunal.

## **2. Granting this Motion Will Not Cause Undue Prejudice to Respondent.**

Complainant's proposed amendment to the Amended Complaint will not prejudice Respondent. Generally, "administrative pleadings are liberally construed and easily amended."<sup>14</sup> Thus, denial of leave to amend requires a showing that amendment will result in prejudice to the opposing party that constitutes a serious disadvantage beyond mere inconvenience.<sup>15</sup>

Amending the Complaint to limit the number of allegations and factual disputes with respect to liability would not result in prejudice to the opposing party that creates a serious disadvantage. The proposed revisions to the Amended Complaint to remove Counts 2 through 28 save the resources of all parties by reducing the number of issues in dispute. Thus, Respondent will not be prejudiced.

Finally, the EPA seeks leave to amend before a hearing has been scheduled and before the parties have submitted prehearing exchanges. Courts have previously granted leave to amend in cases where, as here, the proposed amendments were filed before prehearing exchange deadlines and before a hearing was scheduled.<sup>16</sup> Thus, granting Complainant's Motion should not result in prejudice to the Respondent.

In sum, Complainant's motion is in the interest of judicial efficiency and does not result in prejudice to Respondent constituting a serious disadvantage. Accordingly, for the reasons stated herein, Complainant respectfully requests leave of this Tribunal to amend the Amended Complaint.

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<sup>14</sup> *Yaffe Iron & Metal Co.*, 774 F.2d at 1012.

<sup>15</sup> *In re Port of Oakland*, 4 E.A.D. 205-06, n. 84.

<sup>16</sup> See e.g., *In re Adamas Constr. & Dev. Serv., PLLC*, 2020 EPA ALJ LEXIS 10, \*7 (Jan. 2, 2020).

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION 10:

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DATE

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In the Matter of *Jackson & Son Distributors, Inc.*, *d/b/a Jackson and Son Oil*, Respondent.  
Docket No. CWA-10-2025-0023

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Complainant's Motion for Leave to Amend the Amended Complaint**, dated December 15, 2025, was sent this day to the following parties in the manner indicated below.

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Dated: December 15, 2025