

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
ADAMAS CONSTRUCTION AND ) COMPLAINANT’S MOTION FOR  
DEVELOPMENT SERVICES, PLLC ) LEAVE TO AMEND THE  
) COMPLAINT  
)  
AND )  
)  
NATHAN PIERCE, )  
)  
Respondents ) Docket No. CWA-07-2019-0262  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )

COMPLAINANT’S MOTION FOR LEAVE TO AMEND THE COMPLAINT

COMES NOW, the United States Environmental Protection Agency (“EPA” or “Complainant”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 and submits this Motion for Leave to Amend the Complaint.

1. The Complaint in this matter was filed September 6, 2019. The Complaint contains two counts alleging that Respondent violated the Clean Water Act (“CWA”). The counts allege that Respondents failed to maintain records as required by 33 U.S.C. § 1345 and failed to respond to an information request as required by 33 U.S.C. § 1318. EPA pleaded a penalty of \$59,583.
2. Respondents filed an Answer with EPA’s Regional Hearing Clerk on October 16, 2019. Hearing on this matter has not yet been scheduled.

3. Complainant seeks to amend the Complaint primarily to address information provided by Respondents and the Indian Health Services after the Complaint was filed. Despite the issuance of information requests and repeated efforts by EPA to engage Respondents in discussion, substantive information about Respondents' sewage sludge activities was not forthcoming. This substantive information, which has been included in Complainant's Prehearing Exchange, was in Respondents' possession prior to Complaint filing. The amendment also seeks to correct minor drafting errors.

4. Complainant contacted Respondents' counsel on December 12, 2019. Respondents' counsel notified Complainant on December 16, 2019, that Respondents' default position is to oppose the motion to amend the complaint (See complete email correspondence attached hereto).

5. Complainant seeks to amend the Complaint as follows. First, Complainant seeks to amend any references to "Respondent" to the "Respondents" to ensure that the allegations are accurately stated to include both Adamas Construction and Development Services, P.L.L.C and Mr. Nathan Pierce.

6. Second, Complainant seeks to identify Respondents as "preparers of sewage sludge" as that term is defined in 40 C.F.R. § 503.9(r) (Paragraph 35) and add the applicability provision from 40 C.F.R. § 503.7 within the Statutory and Regulatory Framework (Paragraph 13).

7. Third, Complainant seeks to add the definition of "treat or treatment of sewage sludge" from 40 C.F.R. § 503.9(z) within the Statutory or Regulatory Framework (Paragraph 15) and the applicability provision from 40 C.F.R. § 503.10(a) (Paragraph 16).

8. Fourth, Complainant seeks to amend the Complaint to allege that Respondents are "operators" of the Lame Deer Publicly Owned Treatment Works (POTW) and add the statutory definition of "point source" within the Factual Background (Paragraph 33).

9. Fifth, Complainant seeks to amend Paragraph 38 to add a reference to Respondents' activities related to dewatering the lagoon.

10. Finally, based on information received from Respondents after the Complaint was filed such as the presence and identity of a subcontractor, Complainant seeks to amend Paragraph 39 to add a reference to Respondents' subcontractors.

4. Pursuant to 40 C.F.R. 22.14, the Complainant may amend the complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer.

5. Such motions are freely granted where the ends of justice are served and no prejudice to the opposing party results. It is a general legal principle that "administrative pleadings are liberally construed and easily amended" and permission to amend will usually be freely given. *Yaffe Iron & Metal Co., Inc. v. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985). If leave to amend 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. *In re: Port of Oakland*, MPRSA Appeal No. 91-1 (EAB, August 5, 1992).

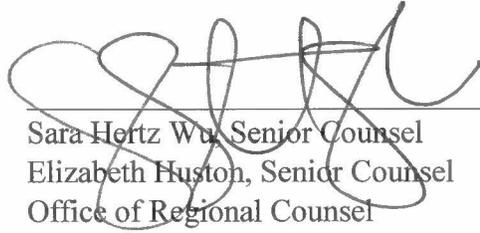
6. After review of the evidence and facts of the case in light of applicable case law, Complainant seeks to amend the Complaint as described in detail in Paragraphs 5-10.

7. Granting this motion to amend will not cause prejudice beyond mere inconvenience. Importantly, the EPA does not seek to add additional violation counts and does not seek to modify the proposed penalty. Respondents' potential liability is unchanged. Also, this motion to amend is still early in the 40 C.F.R. Part 22 hearing process. Complainant is providing notice to Respondents and an opportunity to answer before a hearing date is scheduled. Respondent has the opportunity to address the amendment in their Prehearing Exchange and the amendment will not cause prejudice. As stated above, the information supporting these amendments is

information that Respondents had in their possession at the time the Complaint was filed and was included in Complainant's Prehearing Exchange. Finally, this amendment is in the public interest and will promote the justiciable disposition of this matter.

8. For the reasons cited above, Complainant respectfully requests leave of the Court to amend the Complaint.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December 2019.

A handwritten signature in black ink, appearing to be 'Sara Hertz Wu', written over a horizontal line.

Sara Hertz Wu, Senior Counsel

Elizabeth Huston, Senior Counsel

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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Motion to Amend the Complaint, Docket No. CWA-07-2019-0262, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email and postal mail to:

Attorney for Respondents Adamas Construction and Development Services PLLC and Nathan Pierce:

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Date: 12/17/2019

/s Sara Hertz Wu \_\_\_\_\_

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