

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Allen Family Foods, Inc., ) Docket No. CWA-3-2001-0002  
 )  
Respondent )

ORDER GRANTING MOTION  
TO AMEND COMPLAINT

The United States Environmental Protection Agency (“EPA”) has filed a complaint against Allen Family Foods, Inc. (“Allen”), charging that the company violated Sections 301 and 307 of the Clean Water Act. 33 U.S.C. §§ 1311 & 1317. For these alleged violations, EPA seeks a civil penalty of \$137,500. EPA now seeks to amend the complaint to further charge that respondent’s conduct also constitutes a violation of Section 308 of the Clean Water Act. 33 U.S.C. § 1318. Allen denies the charges asserted by EPA and opposes the complainant’s amending the complaint. For the reasons set forth below, EPA’s motion to amend the complaint is *granted*.

Allen owns and operates a poultry processing facility located in Hurlock, Maryland. Ans. ¶ 4. EPA asserts that respondent’s facility discharges pollutants to the Publicly Owned Treatment Works (“POTW”) owned and operated by the Town of Hurlock. EPA further asserts that the Town of Hurlock’s POTW, in turn, discharges these pollutants into Wrights Branch, a “water of the United States.”

From at least 1994, Allen has discharged wastewater to the Town of Hurlock POTW. Ans. ¶ 13. EPA asserts that in order to lawfully discharge its wastewater, Allen had obtained a Wastewater Discharge Permit from the Town of Hurlock. In that regard, EPA further asserts that Allen’s Wastewater Discharge Permit limits the amount and, or, concentration of biochemical oxygen demand (“BOD<sub>5</sub>”), total flow, total suspended solids (“TSS”), oil and grease (“O&G”), and pH. Compl. ¶ 15.

Insofar as Allen’s wastewater discharges are concerned, in the initial complaint EPA maintains that respondent discharged pollutants to the Town of Hurlock POTW in excess of its Wastewater Discharge Permit. Specifically, EPA contends that since September of 1996, on at least 84 occasions the effluent limitations for BOD<sub>5</sub> were exceeded, the effluent limitations for total flow were exceeded on at least 147 occasions, the TSS limitations exceeded on at least 2 occasions, and both the O&G and pH limitations exceeded on at least 1 occasion. Compl. ¶ 16.

In addition, EPA contends that Allen failed to report to the Town of Hurlock POTW the monitoring results of its wastewater discharges for BOD<sub>5</sub>, TSS, O&G, pH, and chemical oxygen demand. In that regard, EPA submits that “[o]n numerous occasions since April of 1996,” Allen failed to submit its wastewater monitoring results as required by its applicable Wastewater Discharge Permit. Compl. ¶¶ 18-21. Finally, EPA submits that “[o]n numerous occasions since February of 1997,” Allen failed to notify the Town of Hurlock POTW of effluent limitations violations, as required by its Wastewater Discharge Permit. Compl. ¶ 24.

Thus, EPA’s allegations that Allen exceeded the effluent limitations of its Wastewater Discharge Permit, failed to report to the Town of Hurlock POTW wastewater monitoring results, and failed also to report violations of the discharge permit form the basis in the initial complaint for the charges that Allen violated Sections 301 and 307 of the Clean Water Act.

EPA now seeks to amend its complaint, but not to add additional counts, and not to seek additional sanctions. Rather, the purpose of EPA’s proposed amendment is to additionally allege that respondent’s failure to provide the required reports to the Town of Hurlock POTW also constitutes a violation of Section 308 of the Clean Water Act.<sup>1</sup> The proposed amendment is limited to paragraphs 22 and 25 of the complaint. As grounds for its motion, EPA recites the familiar litany that amendments to pleadings are to be liberally granted and that respondent would not be prejudiced by such an amendment. In this particular case, EPA happens to be correct.

In opposition to the amendment, Allen argues that the introduction of Clean Water Act Section 308 into the case would raise a “new and complex issue” that would prejudice respondent. In addition, Allen is troubled by the fact that EPA is seeking to expand the legal theory of its case 11 months after the filing of the complaint. Opp. at 3.

Respondent’s arguments are not persuasive. EPA is not asserting new facts, nor is complainant proposing increasingly severe sanctions for the alleged violations. All that EPA is seeking to do is to add to its list of legal arguments. Certainly the argument is a new one, and it might even be proven to be complex. However, there has been absolutely no showing that allowing EPA to raise it at this fairly early point in the case would result in undue prejudice to the respondent. Moreover, the fact that the motion to amend was filed 11 months after the initial complaint could well be explained by the parties having previously spent a considerable amount of time trying to resolve this matter in the Alternative Dispute Resolution process.<sup>2</sup>

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<sup>1</sup> EPA’s proposed amendment also references 40 C.F.R. 403.12.

<sup>2</sup> A note on the status of this case. A conference call will be held on January 4, 2002, to discuss any Confidential Business Information documents that might have been submitted by the respondent. During this conference call the parties are to be prepared to discuss an expedited handling of this case.

Accordingly, EPA's motion to amend the complaint is *granted*. Upon the filing of this amended complaint, Allen is to file an amended answer within the time frame specified in the Consolidated Procedural Rules. 40 C.F.R. Part 22.

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Carl C. Charneski  
Administrative Law Judge

Issued: January 4, 2002  
Washington, D.C.