

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
RICHARD M. STERN, REGINA STERN,)
LYNDA COSLOV, JUDY S. GUTTMAN,)
Co-Executors of the Estate of) DOCKET NO. 5-TSCA-97-007
Ernest Stern, AND)
MICHAEL J. MANUSZAK, Ancillary)
Administrator of the Estate of)
Ernest Stern,)
)
)
)
RESPONDENTS)

ORDER GRANTING MOTION TO AMEND COMPLAINT

The Complainant's "Motion to Amend Complaint" is **Granted.**⁽¹⁾ In this motion filed on August 5, 1997, the Complainant moves to amend the Complaint and to reduce the amount of the proposed civil administrative penalty from \$177,000 to \$142,000. The Respondents have not responded to the motion to amend the Complaint. See Sections 22.14(d) and 22.16(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Rules of Practice").

Section 22.14(d) of the Rules of Practice provides that the Complainant may amend the Complaint upon motion granted by the Presiding Officer.⁽²⁾ 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 be freely given when justice so requires."⁽³⁾ 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 case before me, the Respondents have not responded to the motion to amend the Complaint. Pursuant to Section 22.16(b) of the Rules of Practice, if no response to a written motion is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. In the instant case, the designated response period of 20 days elapsed on September 2, 1997. Sections 22.06 and 22.14(d) of the Rules of Practice. Inasmuch as the Respondents are deemed to have waived any objection to the granting of the motion and there is no apparent reason to deny the motion to amend the Complaint, the motion is granted. The granting of this motion is subject to the Complainant filing its First Amended Complaint.

original signed by undersigned

Barbara A. Gunning

Administrative Law Judge

Dated: 9-03-97

Washington, DC

1. The Complainant has failed to file the First Amended Complaint.
2. 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.
3. 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).