



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
Joe W. Morgan, Inc., d/b/a ) Docket No. CAA-05-2005-0018  
Intrametco Processing, Inc., )  
)  
RESPONDENT )  
\_\_\_\_\_ )

**ORDER GRANTING MOTION FOR LEAVE TO AMEND COMPLAINT**  
**AND**  
**ORDER RETURNING JURISDICTION TO THE ADR NEUTRAL**

This proceeding was initiated by a Complaint filed on March 31, 2005, alleging that Respondent violated the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) for Secondary Aluminum Processing set forth at 40 C.F.R. §§ 63.1500 through 63.1520. The Complaint proposed a penalty of \$107,800 for two counts of alleged violation. Respondent filed an Answer and Request for Hearing on May 2, 2005.

Pursuant to the request of the parties, this Tribunal issued an Order on May 17, 2005 initiating an alternative dispute resolution (“ADR”) process. That Order also appointed Administrative Law Judge Barbara A. Gunning as a neutral to initiate and conduct the ADR process.

Complainant filed the instant “Motion for Leave to Amend Complaint” (“Motion”), along with an “Amended Complaint” and a Memorandum in Support (“Memo”), on May 26, 2005. Therein, Complainant states:

During the course of negotiations, Complainant discovered that Respondent processed “clean” scrap in its rotary scrap dryer in September of 2003. The scrap processed through the rotary dryer in May and in July was of different source and quality. The initial Complaint ... did not account for the difference between the materials processed ... on the testing dates, in May and July of 2003, and the materials processed ... during Respondent’s September operations.

Memo at 1-2. Specifically, Complainant moves to amend the original Complaint by “eliminat[ing] the September operating dates from the dates of violation, and reduc[ing] the ... [proposed] penalty ... from \$107,800 to \$80,300.” *Id.* at 2. Complainant asserts that it will serve the proposed Amended Complaint in accordance with 40 C.F.R. § 22.5(b)(1) if the Motion is granted. *Id.* at 3.

On June 2, 2005, the “ADR Neutral,” Judge Gunning, issued an Order returning this case to the Chief Administrative Law Judge for resolution of the pending motion.

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”), 40 C.F.R. Part 22. The Rules provide at 40 C.F.R. § 22.14(c) that after the answer is filed, the complainant may amend the complaint only upon motion granted by the presiding officer. No standard is provided in the Rules for determining whether to grant an amendment. The general rule, however, is that administrative pleadings are “liberally construed and easily amended.” *Port of Oakland and Great Lakes Dredge and Dock Company*, 4 E.A.D. 170, 205 (EAB 1992)(quoting *Yaffe Iron & Metal Co., Inc. v. U.S. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985)). *See also, Lazarus, Inc.*, 7 E.A.D. 318, 331 (EAB 1997). The standard in Federal court<sup>1</sup> for amendment of pleadings is set forth in *Foman v. Davis*, 371 U.S. 178, 181-182 (1962), as follows: “[i]n the absence of ... undue delay, bad faith or dilatory motive on the part of the movant ... undue prejudice to the opposing party ... [or] futility of amendment,” leave to amend pleadings should be allowed.

In the present case, good cause exists for the granting of Complainant’s Motion in that it is in the interests of the parties and judicial economy for the alleged violations to be succinctly plead. In addition, there is no evidence of “undue delay, bad faith or dilatory motive” on the part of Complainant. Further, nothing in the record or the arguments of the parties suggests that Complainant’s proposed amendments would be “futile.” Finally, the proposed amendment reduces the proposed penalty and, as Judge Gunning noted in her Order of June 2, 2005, Respondent does not oppose the motion. Therefore, no “undue prejudice” to Respondent will result from Complainant’s proposed amendments.

Therefore, Complainant’s Motion is hereby **GRANTED**, as set forth below:

1. Complainant’s Motion for leave to file the Amended Complaint, as attached to the

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<sup>1</sup>The Environmental Appeals Board (“EAB”) has stated: “In the exercise of ... discretion, the Board finds it instructive to examine analogous federal procedural rules and federal court decisions applying those rules. *See In re Wego Chemical & Mineral Corporation*, TSCA Appeal No. 92-4, at 13 n.10 (EAB, Feb. 24, 1993) (although the Federal Rules of Civil Procedure do not apply to Agency proceedings under Part 22, the Board may look to them for guidance); *In re Detroit Plastic Molding*, TSCA Appeal No. 87-7, at 7 (CJO, Mar. 1, 1990) (same).” *Patrick J. Neman, D/B/A The Main Exchange*, 5 E.A.D. 450, 455, n.2 (EAB 1994).

Motion, is **granted**.<sup>2</sup> Complainant shall, within five (5) days of the date of this Order, file the Amended Complaint with the Regional Hearing Clerk and serve the Amended Complaint upon Respondent.

2. Respondent shall have twenty (20) days from the date of service of the Amended Complaint to file an answer.
3. This matter is hereby returned to the jurisdiction of Administrative Law Judge Barbara A. Gunning as the “ADR Neutral” to conduct such processes as may facilitate a settlement of this proceeding, as described in this Tribunal’s ADR Order of May 17, 2005.

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Susan L. Biro  
Chief Administrative Law Judge

Dated: June 9, 2005  
Washington, D.C.

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<sup>2</sup>The Amended Complaint is **NOT** “automatically filed” by the issuance this Order. Rather, Complainant must file the Amended Complaint with the appropriate Regional Hearing Clerk in accordance with 40 C.F.R. § 22.14 and serve the Amended Complaint in accordance with 40 C.F.R. § 22.14(b)(1). Pursuant to 40 C.F.R. § 22.14(c), Respondent shall have 20 days from the date of service of the Amended Complaint to file its Amended Answer.