



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of: )  
 )  
Homeca Recycling Center Co., Inc., ) Docket No. CAA-02-2024-1201  
 )  
Respondent. )

**ORDER ON COMPLAINANT’S MOTION FOR LEAVE TO CORRECT COMPLAINT**

This proceeding was initiated on October 20, 2023, when Complainant, the Director of the Caribbean Environmental Protection Division of Region 2 of the United States Environmental Protection Agency, filed a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) against Respondent Homeca Recycling Center Co., Inc., for alleged violations of Sections 112 and 113 of the Clean Air Act, 42 U.S.C. §§ 7412 and 7413, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M. After Respondent filed an Answer to Complaint and Request for Hearing on December 5, 2023, the matter was forwarded to this Tribunal for adjudication, and I was designated to preside.

Pursuant to a Prehearing Order I issued on January 19, 2024, in which I directed the parties to engage in a prehearing exchange of information, Complainant filed its Initial Prehearing Exchange on March 1, 2024. Therein, Complainant identified two errors in the Complaint: first, in paragraph 66, Complainant referred to 40 C.F.R. § 61.145(c)(6), instead of 40 C.F.R. § 61.145(c)(3); and second, in paragraph 77, Complainant referred to 40 C.F.R. § 61.150(a)(1)(iv), instead of 40 C.F.R. § 61.150(a)(1)(v). Initial PHE at 13, 15. Complainant then stated its intent to file a motion seeking leave to correct those errors. *Id.* at 13, n. 3; 15, n. 4.

Before me now is Complainant’s Motion for Leave to Correct Typographical Errors in the Complaint (“Motion for Leave to Correct Complaint”), in which Complainant requests leave to correct the “two (2) minor, non-substantive typographical errors in the Complaint.” Mot. at 1. Complainant states that it notified Respondent of its intent to identify the errors in its Initial Prehearing Exchange and subsequently seek leave to correct them, and that Respondent consented to the proposed corrections, as memorialized in a “Stipulation of Settlement” attached to the Motion.<sup>1</sup> Mot. at 1, ¶¶ 4, 10. Complainant then moves for an order granting its Motion, “entering the attached Stipulation of Settlement memorializing the proposed changes agreed to between Complainant and the Respondent, and providing that the typographical

---

<sup>1</sup> While Complainant refers to the agreement of the parties about the proposed corrections as a “Stipulation of Settlement” in the body of its Motion, the document itself bears the title “Stipulation to Correct Typographical Errors in Complaint.”

corrections cited to therein will be incorporated by reference into the Complaint to automatically take effect upon issuance of the Order.” Mot. at ¶ 14.

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 of Practice”), set forth at 40 C.F.R. Part 22. The Rules of Practice provide, in pertinent part, that once an answer has been filed, “the complainant may amend the complaint only upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(c).

While the Rules of Practice do not provide a standard for adjudicating such a motion, I may look to the Federal Rules of Civil Procedure (“FRCP”) and related case law for guidance when the Rules are silent on a particular subject. *See, e.g., Env'tl. Prot. Servs., Inc.*, 13 E.A.D. 506, 560 n.65 (EAB 2008) (citing *J. Phillip Adams*, 13 E.A.D. 310, 330 n.22 (EAB 2007); *Lazarus, Inc.*, 7 E.A.D. 318, 330 n.25 (EAB 1997)); *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002); *Asbestos Specialists, Inc.*, 4 E.A.D. 819, 827 n.20 (EAB 1993). On the subject of amended pleadings, Rule 15 of the FRCP provides that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). In turn, the United States Supreme Court ruled in the leading case on the issue, *Foman v. Davis*, 371 U.S. 178 (1962), that leave to amend a pleading should be freely given in the absence of any apparent or declared reason, such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” *Id.* at 182. The Court observed that “[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Id.* at 181-82 (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)). The Court further stated that “[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Id.* at 182.

The liberal standard articulated in Rule 15 and *Foman* has since been adopted by the Environmental Appeals Board (“EAB” or “Board”). *Asbestos Specialists*, 4 E.A.D. at 830 (“[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.”); *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.”); *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.”)(internal quotation marks omitted).

Applying that standard here, I do not discern any bad faith, dilatory motive, futility, undue prejudice, or other reason to deny Complainant’s Motion for Leave to Correct Complaint. Complainant is seeking leave, with Respondent’s consent, to correct two citations in the counts of violation in the Complaint, not to add new counts or parties or propose any

additional penalties. For the foregoing reasons, Complainant's Motion for Leave to Correct Complaint is hereby **GRANTED**, inasmuch as Complainant may correct the errors identified. While Complainant requested that the proposed corrections be incorporated into the Complaint by reference to the parties' Stipulation, with the corrections taking effect upon issuance of this Order, that particular request is denied. Instead, in the interest of clarity in the record, Complainant shall file with this Tribunal and serve on Respondent an amended Complaint reflecting the proposed corrections on or before **March 22, 2024**. Upon filing, the amended Complaint will become the governing complaint in this matter. Consistent with the Rules of Practice on the subject, Respondent may file an answer to the amended Complaint within 20 days from the date of service. See 40 C.F.R. § 22.14(c). If Respondent elects not to file an answer to the amended Complaint, the Answer to Complaint and Request for Hearing filed by Respondent on December 5, 2023, will be deemed to be the governing answer to the amended Complaint.

**SO ORDERED.**



---

Michael B. Wright  
Administrative Law Judge

Dated: March 15, 2024  
Washington, D.C.

In the Matter of *Homeca Recycling Center Co., Inc.*, Respondent.  
Docket No. CAA-02-2024-1201

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order on Complainant's Motion for Leave to Correct Complaint**, dated March 15, 2024, and issued by Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.



---

Mary Angeles  
Paralegal Specialist

Original by OALJ E-Filing System to:  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Copy by Electronic Mail to:  
Evelyn Rivera-Ocasio, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel – Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
Email: [rivera-ocasio.evelyn@epa.gov](mailto:rivera-ocasio.evelyn@epa.gov)  
*Counsel for Complainant*

Rafael A. Toro-Ramírez  
TORO & ARSUAGA, LLC  
Email: [rtoro@toro-arsuaga.com](mailto:rtoro@toro-arsuaga.com)  
*For Respondent*

Dated: March 15, 2024  
Washington, D.C.