UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
CAVCO INDUSTRIES, L.L.C.,	)	DOCKET NO. EPCRA-9-2000-0018
	)	
RESPONDENT	)	

ORDER GRANTING LEAVE TO AMEND THE COMPLAINT

The Complaint in this proceeding under Section 325(c) of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 et seq. alleging that the Respondent failed to timely file Form Rs, was originally filed on August 23, 2000. On January 18, 2001, Complainant filed a motion for leave to amend the Complaint, for the purpose of clerical amendments to Paragraph 43, Count VIII. Complainant also seeks leave to clerically amend paragraph 23 of the Complaint.

No Response was filed, although Respondent had previously asked for the dismissal of the count on these grounds, and opposed the motion subsequently in an unrelated document. Respondent's Motion for Accelerated Decision,12-13; Respondent's Reply In Support of Its Motion for Accelerated Judgment, 5. In these documents the Respondent argues that these Counts should be dismissed, due to failure to state a claim. The Respondent further states that even if leave to amend were granted, the mere incorporation of the named paragraphs from other complaints would not be sufficient to remedy the defects of the Counts at issue, because those paragraphs come from a Count against Respondent's Litchfield plant, whereas the deficient Counts are specific to Respondent's Durango and Buckeye plants. Respondent's Reply In Support of Its Motion for Accelerated Decision, 5. The Respondent further objects to the incorporation of what is essentially a motion for leave to further amend the Complaint, as contained within Complainant's Response to Respondent's Motion for Accelerated Decision and Motion for Accelerated Decision.

Discussion

Amendments of the complaint in this matter are governed by 40 C.F.R. § 22.14(d), which provides that "[t]he complainant may amend the complaint once as a matter of right at any time before the answer has been filed." Otherwise, the complainant may amend the complaint only upon motion granted by the Court. Thus, the decision to allow or deny amendment of the

complaint is within the Presiding Officer's discretion. *See, e.g.,* Port of Oakland and Great Lakes Dredge and Dock Co., MPRSA Appeal No. 91-1 (EAB, August 5, 1992); Patrick J. Norman, d/b/a The Main Exchange, 1995 EPA ALJ LEXIS. However, 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. Environmental Protection Agency, 774 F.2d 1008, 1012 (10th Cir. 1985); Reynolds Metal Company, Docket No. RCRA-1092-05-30-3008(a) (EPA ALJ, February 5, 1993). 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. Port of Oakland and Great Lakes Dredge and Dock Co., MPRSA Appeal No. 91-1 (EAB, August 5, 1992); Spang & Co., Inc., Docket Nos. EPCRA-III-037 & 048 (Order Granting Motion To Amend Complaint, April 7, 1992).

In this case, Respondent has not been prejudiced by the errors in the Complaint, which are clerical in nature. Although the counts in question may have been technically deficient, the nature of the violation alleged was clear within the four corners of the Complaint. Each count involves a failure to timely file a Form R, and the counts differ only in the exact year and facility referred to by each count. The Respondent was aware of the nature of the alleged violations and the facilities involved and was therefore able to begin to prepare its defense. Further, the motion is sufficiently before the hearing date to permit the Respondent to take whatever additional measures may be necessary hypothetically for the purpose of its defense.

Moreover, the Court rejects the Respondent's contention that the changes requested would not be sufficient to repair the deficient counts of the Complaint. Although the paragraphs that the Complainant now wishes to incorporate by reference were originally found within other counts, the paragraphs are general, rather than count-specific, statements. Paragraphs 13 and 14 merely summarize provisions of EPCRA. Complaint, 3. Therefore, they may be construed as applicable to the entire document. Paragraph 12 states that "[r]espondent failed to submit a Form R to the Administrator EPA and to the State of Arizona on or before September 8, 1997," and the Complainant is attempting to incorporate that paragraph by reference into Count IV, which involves the same failure to submit Form Rs within that same time frame for another facility. Since the only difference between the two counts involves location, and paragraph 12 is not a location specific statement, its incorporation into paragraph 23 of Count IV would remedy the defects of Count IV, especially in light of the legal principle that administrative pleadings should be construed liberally.

Similarly, Respondent's argument that the motion for leave to amend Count IV should be denied due to the Complainant's failure to explicitly mention it in the title of the Response and Motion is also rejected. When the Complainant's intention cannot be in doubt, the failure to formally file a motion for leave to amend will not be considered a material omission. *See* Nassau County Department of Public Works et al., Docket No. MPRSA-II-92-02 (Order Granting Motion to Amend the Complaint, September 11, 1992).

On the foregoing grounds, Complainant's motions to amend the Complaint are **GRANTED**. Complainant shall immediately file the amended Complaint and Respondent shall file its Answer, or submit a statement that it relies upon its original Answer, within 10 days of service of the Complaint.

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William B. Moran
United States Administrative Law Judge

Dated: July 2, 2001
Washington, DC