

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the matter of)	
)	
Wood Waste of Boston, Inc.,)	Docket No. CWA-01-2006-0090
)	
Respondent)	

**ORDER GRANTING COMPLAINANT'S
MOTION TO AMEND COMPLAINT**

This case arises under the Clean Water Act (the "Act"). 33 U.S.C. § 1251 *et seq.* The U.S. Environmental Protection Agency ("EPA") has filed a Motion To Amend Complaint in this matter against Wood Waste of Boston, Inc. ("Wood Waste"). 40 C.F.R. 22.14(c). EPA seeks to amend the administrative Complaint so as to specifically include the number of days of alleged Clean Water Act violation. In all other respects, the Complaint is unchanged. For example, the charges that respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), by releasing, without a permit, storm water associated with industrial activity to "waters of the United States" and that it violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), by failing "to file for coverage under the Storm Water MSGP for Industrial Activities or to obtain an individual or group NPDES permit Facility" are the same. See ¶¶ 29 & 30. The penalty amount sought by EPA also is the same¹

EPA's motion to amend the Complaint is *granted*. The proposed Amended Complaint merely provides the actual number of days of alleged violation that are described, but not specifically enumerated, in the original Complaint. The Amended Complaint adds nothing substantively to the pending charges of violation. For example, the original Complaint, filed on June 30, 2006, lists the period of violation as existing "[s]ince at least September, 1999." ¶ 28. In a penalty proposal submission, subsequently filed on November 17, 2006, EPA set forth the

¹ Putting EPA's motion to amend into perspective, complainant readily admits that its purpose "is to address the issue raised by Respondent in its November 13, 2006 Motion for a Partial Accelerated Decision." Mot. to Amend at 1. In this motion for partial summary judgment, Wood Waste argues that because EPA did not specify in the complaint the number of days of alleged violation, the Complaint either should be dismissed, or EPA should be limited to seeking a maximum one-day penalty of \$11,000, and not multiple day penalties totaling a maximum allowable penalty amount of \$157,500, as presently is the case. See 33 U.S.C. 1319(g); 31 U.S.C. § 3701 (the Debt Collection Improvement Act of 1996); & 40 C.F.R. Part 19. EPA opposes the motion for partial accelerated decision arguing that the Complaint is legally sufficient as originally pled. By separate order issued this date, and in light of the present order granting EPA leave to file an Amended Complaint, respondent's Motion for Partial Accelerated Decision has been dismissed as moot.

basis for seeking the maximum penalty in this case stating, in part, that the period of violation “is alleged to be from September 1999, when the company took control of the site, through at least the date of issuance of the Complaint.” Compl. Pen. Pro. at 6. The Amended Complaint merely provides more detail as to the reasons why the government seeks the penalty that it does for the Section 301(a) and Section 308(a) alleged violations.

Thus, this Tribunal finds no prejudice to Wood Waste by granting EPA leave to amend the Complaint, and it is unconvinced by respondent’s general claims to the contrary. Moreover, the hearing in this matter is not scheduled to begin until March 13, 2007, thus allowing respondent ample time to make any adjustments to its anticipated case-in-chief.

Accordingly, EPA is to file a signed copy of the Amended Complaint no later than **January 19, 2007**, and Wood Waste is to file an Amended Answer no later than **February 2, 2007**.

Carl C. Charneski
Administrative Law Judge

Issued: January 12, 2007
Washington, D.C.