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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
ULTRAMAR DIAMOND SHAMROCK CORP.,)	DOCKET NO. UST- 99- 001-
AO- 1)	
)	
RESPONDENT)	

ORDER ON COMPLAINANT'S MOTION FOR
LEAVE TO FILE AN AMENDED COMPLAINT

On October 27, 1999, the Complainant filed a Motion for Leave to File an Amended Complaint. Specifically, the Complainant moves for an order allowing it to file an Amended Complaint in order to allege in the Complaint that notice of this action has been given to the States of Texas and Arkansas and to add Total Petroleum Inc., et al., as a named Respondent to the Complaint. The Complainant states that the Amended Complaint will further define the Respondent as Ultramar Diamond Shamrock Corporation and/or Total Petroleum Inc. In addition, the Complainant requests that the additional twenty(20)-day period to answer the Amended Complaint be waived. Counsel for the Complainant states that the Respondent is in agreement with this motion.

The procedural rule governing the amendment of the complaint is found at Section 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. ⁽¹⁾ Section 22.14(c) provides:

Amendment of the complaint. The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

40 C.F.R. § 22.14(c).

Section 22.14(c) of the Rules of Practice does not require the Complainant to obtain advance permission to file a motion to amend the complaint. Rather, this section provides that the complaint may be amended only upon motion granted by the Administrative Law Judge. The proposed amended complaint must accompany the motion to amend the complaint to provide proper notice of the proposed amendment to the other parties and for informed adjudication by the Administrative Law Judge.

The Complainant's motion for leave to file an amended complaint is problematic. First, I note that the motion is not accompanied by the proposed amended complaint. The Complainant requests leave to file an amended complaint which apparently has not been drafted. As such, the motion only requests leave to file a motion to amend the complaint. The Complainant, however, requests concomitantly that the twenty-day response period for filing an Amended Answer be waived. The Complainant's description of what the amended complaint will contain upon amendment is not sufficient for adjudication and cannot be used as the basis for waiving the regulatory response period for filing an amended answer. Thus, the efficacy of the instant motion is not apparent.

Second, I note that an amended complaint must be served properly on all parties. The amended complaint becomes the complaint upon the Administrative Law Judge's granting of the motion to amend the complaint and the filing of the amended complaint with the Regional Hearing Clerk. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a). Section 22.5(b)(1) of the Rules of Practice provides that service of the filed complaint on the respondent(s) shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. Service of the complaint is complete when the return receipt is signed. Section 22.7(c) of the Rules of Practice, 40 C.F.R. § 22.7(c). It is assumed that the manner of service of the amended complaint must be the same as that of the complaint, and the parties cannot waive this jurisdictional requirement. In the instant matter, an amended complaint has not been filed, and the Motion for Leave to File an Amended Complaint was sent to the Respondent by regular mail.

For the foregoing reasons, the Complainant's Motion for Leave to File an Amended Complaint is Denied.

Original signed by undersigned

Barbara A. Gunning
Administrative Law Judge

Dated: 11-23-99
Washington, DC

1. The Rules of Practice were revised effective August 23, 1999. Proceedings commenced before August 23, 1999, are subject to the revised Rules of Practice unless to do so would result in substantial injustice.

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