

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
PARADIGM LABS, INC.,) DOCKET NO. FIFRA-03-2008-0168
)
RESPONDENT)

ORDER GRANTING MOTION FOR LEAVE TO FILE AMEND^{ED} COMPLAINT
AND MOTION TO FILE AMENDED ANSWER

I. Background

On March 31, 2008 the U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”), initiated this action by filing an Administrative Complaint against Paradigm Labs, Inc. (“Respondent”). The Complaint charges Respondent with six counts of violating of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.* In brief, the Complaint alleges that in violation of FIFRA, Respondent sold or delivered three unregistered and misbranded pesticides known as Microbloc MMR, Microbloc DSP, and Microbloc MSE. Complainant proposed the assessment of an aggregate penalty for these six violations of \$53,145. Respondent filed an Answer to the Complaint on or about April 25, 2008 denying the violations and requesting a hearing thereon.

Thereafter, on May 13, 2008, Complainant moved for leave to file an Amended Complaint in this matter. In its Motion, Complainant states that in response to the Answer filed, it wishes to add to the Complaint two attachments that were referenced in the Answer and to make changes to Complaint Paragraphs 42, 88, 89 in order to clarify the allegations in question. Complainant’s Motion further indicates that the relief sought is unopposed.

On or about May 27, 2008, Respondent moved for leave to file an Amended Answer to which Complainant filed a response indicating that it did not oppose the relief sought therein although it noted that it was premature for Respondent to file an amended answer because the Presiding Officer has not yet issued an Order on Complainant’s Motion to Amend the Complaint. Complainant response further clarifies that, “Complainant’s communication to Respondent did not include a possible response to the three changes contained in Complainant’s proposed Amended Complaint”

II. The Applicable Standard

Sections 22.14(c) and 22.15(e) of the Consolidated Rules of Practice, 40 C.F.R. §§

22.14(c) and 22.15(e), provide that only upon motion granted by the Presiding Officer may a Complainant amend the Complaint (after an answer is file) or a Respondent amend its Answer. However, the Rules of Practice provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure concerning amended pleadings provides that "leave [to amend] shall be freely given when justice so requires."¹ The United States Supreme Court has interpreted this Rule to mean that there should be a "strong liberality...in allowing amendments" to pleadings. *Forman v. Davis*, 371 U.S. 178 (1962). Leave to amend pleadings under Rule 15(a) should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Id.*

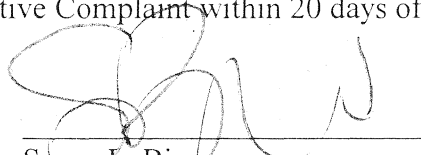
III. Discussion

Both Motions at issue here are unopposed and none of the *Foman* factors weigh against granting these motions. Thus, for good cause shown, Complainant's Motion for Leave to File an Amended Complaint and Respondent's Motion for Leave to File an Amended Answer are hereby granted.

ORDER

1. Complainant's Motion to Amend the Complaint is hereby **GRANTED**. Complainant shall file the Amended Administrative Complaint, as described in its Motion to Amend Complaint, within seven (7) days from the date of this Order.

2. Respondent's Motion to Amend the Answer is hereby **GRANTED**. Respondent shall file an Answer to the Amended Administrative Complaint within 20 days of the date of service of the Amended Complaint.



Susan L. Birq
Chief Administrative Law Judge

Issued: July 3, 2008
Washington, D.C.

The Federal Rules of Civil Procedure are not binding on administrative agencies but many times these rules provide useful and instructive guidance in applying the Consolidated Rules of Practice. See, *Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n. 3 (E.D.N.Y. 1982); *In re Wego Chemical & Mineral Corporation*, 4 E.A.D. 513, 524 n.10 (EAB 1993).

**In the ADR Matter of *Paradigm Labs, Inc.*, Respondent.
Docket No. FIFRA-03-2008-0168**

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion for Leave to File Amended Complaint and Motion to File Amended Answer**, dated July 3, 2008, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Lydia Guy
Regional Hearing Clerk
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1650 Arch Street
Philadelphia, PA 19103-2029
Fx: 215.814.2603

One Copy by Facsimile and Pouch Mail to:

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Assistant Regional Counsel
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One Copy by Facsimile and Regular Mail to:

Terry Maier
President
Paradigm Labs, Inc.
7 Roberts Road
Pine Grove, PA 17963
Fx: 570.345.2800

**Dated: July 3, 2008
Washington, D.C.**